

Department of Legislative Services  
Maryland General Assembly  
2019 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 473

(Senator Kramer, *et al.*)

Judicial Proceedings

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Hate Crimes - Civil Remedy

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This bill authorizes a person who is aggrieved by an act that would constitute a violation of the State's hate crime laws to bring a civil action against the person or persons who committed the act and authorizes a court to award a variety of specified remedies. The bill also authorizes the Office of the Attorney General (OAG) to bring such an action on behalf of the aggrieved person(s). The bill applies prospectively to causes of action arising on or after the bill's October 1, 2019 effective date.

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Fiscal Summary

**State Effect:** Any increase in District Court proceedings as a result of the bill can be handled with existing resources. OAG can implement the bill with existing budgeted resources, as discussed below. The bill is not expected to materially affect State revenues.

**Local Effect:** Any increase in circuit court proceedings as a result of the bill can be handled with existing resources. Local revenues are not affected.

**Small Business Effect:** Minimal or none.

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Analysis

**Bill Summary:** The court may issue an injunction to prevent or restrain an act that would constitute a violation of the State's hate crime laws and award the following: (1) economic damages and any other pecuniary loss sustained by the plaintiff that was proximately caused by the hate crimes violation; (2) noneconomic damages, including pain and suffering; emotional distress; mental anguish; loss of enjoyment; loss of companionship, services, and consortium; and other nonpecuniary loss sustained by the plaintiff that was

proximately caused by the act that would constitute a hate crimes violation; (3) punitive damages awarded to the Attorney General if the Attorney General brings the civil action; and (4) reasonable attorney's fees and court costs to the prevailing plaintiff or the Attorney General. Economic and noneconomic damages awarded by a court may be equal to three times the amount of actual damages. The availability of a civil remedy does not affect any legal or equitable right or remedy otherwise provided by law.

**Current Law:** The State's hate crimes statutes are contained in Title 10, Subtitle 3 of the Criminal Law Article, specifically §§ 10-302 (damaging property of a religious entity), 10-303 (obstructing exercise of religious beliefs), 10-304 (harassment or destruction of property), and 10-305 (damage to an associated building).

*Section 10-302 (Damaging Property of a Religious Entity)*

A person may not deface, damage, destroy, or attempt to deface, damage, or destroy real or personal property that is owned, leased, or used by a religious entity or for any religious purpose.

*Section 10-303 (Obstructing Exercise of Religious Beliefs)*

A person may not, by force or the threat of force, obstruct or attempt to obstruct the free exercise of religious beliefs.

*Section 10-304 (Harassment or Destruction of Property)*

A person may not engage in the following acts because another person or group is homeless or because of another person's or group's race, color, religious beliefs, sexual orientation, gender, or national origin:

- commit a crime or attempt to commit a crime against another person or group;
- damage the real or personal property of another person or group;
- deface, damage, or destroy, or attempt to deface, damage, or destroy the real or personal property of another person or group;
- burn or attempt to burn an object on the real or personal property of another person or group; or
- commit a hate crime that involves a separate crime that is a felony or that results in the death of a victim.

*Section 10-305 (Damage to an Associated Building)*

A person may not deface, damage, or destroy; attempt to deface, damage, or destroy; burn or attempt to burn an object on; or damage the real or personal property connected to a

building that is publicly or privately owned, leased, or used (1) because a person of a particular race, color, religious belief, sexual orientation, gender, or national origin, or because a person or group that is homeless, has contacts, or is associated with the building or (2) if there is evidence that exhibits animosity against a person or group due to the race, color, religious beliefs, sexual orientation, gender, or national origin of that group or because that person or group is homeless.

### *Penalties*

In general, an individual who violates these provisions is guilty of a misdemeanor, punishable by imprisonment for up to 3 years and/or a maximum fine of \$5,000. However, if a violation of § 10-304 involves a separate felony, the violator is guilty of a felony and is subject to imprisonment for up to 10 years and/or a fine of up to \$10,000. If a violation of § 10-304 results in the death of the victim, the violator is subject to imprisonment for up to 20 years and/or a fine of up to \$20,000.

### *First Amendment Rights*

Nothing in the hate crimes statutes may be construed to infringe on the speech of a religious leader or other individual during peaceable activity intended to express the leader's or individual's religious beliefs or convictions.

**Background:** According to a November 2018 publication by the Federal Bureau of Investigation (FBI), law enforcement agencies reported 7,175 bias-motivated criminal incidents nationwide, a 17% increase compared to the 6,121 incidents reported in 2016. The FBI received information on 48 criminal incidents from 18 participating agencies (cities, counties, colleges, police departments, etc.) in Maryland. The remaining 136 participating agencies indicated no incidents of hate crime for the quarters for which they submitted reports during 2017. According to news reports following an October 2018 shooting in which 11 people were killed inside a Pittsburgh synagogue, the U.S. Department of Justice is studying how hate crimes are reported.

In September 2018, the Department of State Police (DSP) published the *State of Maryland 2017 Hate/Bias Report*. According to the report, 398 hate/bias incidents were reported to law enforcement agencies in the State during calendar 2017, representing a 34.9% increase from the 295 incidents reported in calendar 2016. Of the 398 incidents in 2017, 183 were verified to have been motivated by bias, 208 were inconclusive regarding motivation, and 7 were determined to be unfounded. The data in DSP's report includes incidents that may or may not be considered criminal activity; the FBI data is limited to hate/bias-based crimes.

The Department of Public Safety and Correctional Services advises that it conducted intake on one inmate sentenced to a State correctional facility for a conviction under § 10-304 of the Criminal Law Article and no intakes for the other hate crimes offenses during fiscal 2018.

**State Expenditures:** OAG advises that it needs to hire an assistant Attorney General to investigate claims brought to OAG under the bill; however, OAG did not provide any additional information regarding the need for staff. Due to the small number of cases to which this bill applies, the number of cases in which actually collecting civil damages from a defendant is likely, and the fact that the bill authorizes, rather than requires, OAG to accept and litigate these cases, the Department of Legislative Services advises that OAG can implement the bill with existing budgeted resources.

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### **Additional Information**

**Prior Introductions:** HB 1119 of 2018, a similar bill, received a hearing in the House Judiciary Committee. No further action was taken on the bill.

**Cross File:** None.

**Information Source(s):** Office of the Attorney General; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of State Police; Department of Legislative Services

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