

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 941
Judiciary

(Delegate Rosenberg)

Criminal Law - Threats and Stalking - Recklessness

This bill generally alters the required mental state for the following offenses in the Criminal Law Article from a “knowledge” standard to a “reckless” standard: § 3-708 (threat against State or local official), § 3-802 (stalking), and § 3-1001(b) (threat of mass violence). In addition, for § 10-304 (hate crimes – commission of a crime or destruction of property), which does not currently include a knowledge standard, the bill specifies that threats must be made recklessly.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances or operations.

Local Effect: The bill is not expected to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Bill Summary/Current Law: The provisions of current law affected by the bill are discussed below. Italicized text represents statutory language replaced with a reckless standard under the bill, as indicated below.

Section 3-708 of the Criminal Law Article – Threat Against State or Local Official

A person may not *knowingly and willfully* (“recklessly” under the bill) make a threat to take the life of, kidnap, or cause physical injury to a State official, a local official, a deputy State’s Attorney, an assistant State’s Attorney, or an assistant public defender. A person may not knowingly send, deliver, part with, or make for the purpose of sending or

delivering a prohibited threat. A violator is guilty of a misdemeanor, punishable by imprisonment for up to three years and/or a \$2,500 maximum fine.

“Threat” includes (1) an oral threat or (2) a threat in any written form, whether or not the writing is signed, or if the writing is signed, whether or not it is signed with a fictitious name or any other mark. “Local official” means an individual serving in a publicly elected office of a local government unit. “State official” means a:

- constitutional officer or officer-elect in an executive unit;
- member or member-elect of the General Assembly;
- judge or judge-elect;
- judicial appointee;
- State’s Attorney;
- clerk of the circuit court;
- register of wills; or
- sheriff.

The Governor, Governor-elect, Lieutenant Governor, and Lieutenant Governor-elect are specifically included as State officials under this prohibition.

Section 3-802 of the Criminal Law Article – Stalking

A person may not engage in “stalking.” “Stalking” means a malicious course of conduct (including conduct that is in person, via electronic communication, or through the use of a location tracking device) that includes approaching or pursuing another where:

- the person intends to place or *knows or reasonably should have known the conduct would place* (“recklessly places” under the bill) another in reasonable fear of serious bodily injury or death; of an assault in any degree; of rape or sexual offense as defined by §§ 3-303 through 3-308 of the Criminal Law Article or attempted rape or sexual offense in any degree; of false imprisonment; or that a third person likely will suffer any of these acts; or
- the person intends to cause or *knows or reasonably should have known that the conduct would cause* (“recklessly causes” under the bill) serious emotional distress to another.

The prohibition against stalking does not apply to conduct that is performed to ensure compliance with a court order; performed to carry out a specific lawful commercial purpose; or authorized, required, or protected by local, State, or federal law.

Stalking is a misdemeanor, punishable by imprisonment for up to five years and/or a \$5,000 maximum fine. A sentence imposed for stalking may be separate from and

consecutive to or concurrent with a sentence for any other crime based on the acts establishing the stalking violation.

Section 3-1001(b) of the Criminal Law Article – Threat of Mass Violence

A person may not *knowingly* (“recklessly” under the bill) threaten to commit or threaten to cause to be committed a “crime of violence,” as defined in § 14-101 of the Criminal Law Article, that would place five or more people at substantial risk of death or serious physical injury if the threat were carried out. This prohibition applies to oral threats, written threats, or electronic threats, as specified. Violators are guilty of a misdemeanor punishable by imprisonment for up to 10 years and/or a \$10,000 maximum fine. If appropriate, a court must also order a person convicted of this offense to reimburse entities or persons for expenses and losses incurred to respond to the threat, as specified. Specified venue provisions also apply.

Section 10-304 of the Criminal Law Article – Hate Crimes – Commission of a Crime or Destruction of Property

A person may not engage in the following acts while motivated either in whole or in substantial part by another person’s or group’s race, color, religious beliefs, sexual orientation, gender, gender identity, disability, or national origin, or because another person or group is homeless:

- commit a crime or attempt or *threaten* (“recklessly threaten” under the bill) to commit a crime against that person or group;
- deface, damage, or destroy, or attempt or *threaten* (“recklessly threaten” under the bill) to deface, damage, or destroy the real or personal property of that person or group;
- burn or attempt or *threaten* (“recklessly threaten” under the bill) to burn an object on the real or personal property of that person or group; or
- make or cause to be made a false statement, report, or complaint to specified law enforcement officers about that person or group with the intent to deceive and to cause an investigation or other action to be taken as a result of the statement, report, or complaint, in violation of § 9-501 of the Criminal Law Article (making a false statement to a law enforcement officer).

In general, violators are guilty of a misdemeanor, punishable by imprisonment for up to 3 years and/or a maximum fine of \$5,000. However, if a violation 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 results in the death of the victim, the violator is guilty of a felony and is subject to imprisonment for up to 20 years and/or a fine of up to \$20,000. In addition to any other penalties imposed, the court may require a person to complete an antibias education program.

Under current law, 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.

United States Supreme Court – Counterman v. Colorado

In *Counterman v. Colorado*, the U.S. Supreme Court held that even though true threats of violence are not protected by the First Amendment, they still require, at the very least, a showing of recklessness, which occurs when a person “consciously disregard[s] a substantial [and unjustifiable] risk that the conduct will cause harm to another.” 143 S.Ct. 2106, 2117 (2023), citing *Voisine v. United States*, 579 U. S. 686 (2016).

Additional Comments: The Maryland Sentencing Guidelines Database indicates the following activity in the State’s circuit courts during fiscal 2023 for the offenses affected by the bill: § 3-708 (one individual sentenced to one count); § 3-802 (six individuals sentenced to six counts); § 3-1001 (five individuals sentenced to five counts); § 10-304(1) (one individual sentenced to one count); and § 10-304(2) (zero individuals sentenced).

The Department of Public Safety and Correctional Services advises that during fiscal 2023, the Division of Correction conducted zero intakes and the Division of Parole and Probation opened 20 cases related to violations of § 10-304 of the Criminal Law Article.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Baltimore, Frederick, and Montgomery counties; Maryland Municipal League; Governor’s Office; 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 Public Safety and Correctional Services; Department of Legislative Services

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