

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 616

(Senator McKay)

Judicial Proceedings

Criminal Law – Human Remains, Pet Remains, and Cemeteries – Prohibitions

This bill (1) prohibits a person from tampering with human remains interred in a cemetery or damaging, desecrating, mutilating, storing, tampering with, trafficking, or transporting human remains; (2) prohibits a person from removing (or attempting to remove) pet remains from a cemetery without the permission of the pet’s owner or the cemetery or damaging, desecrating, mutilating, storing, tampering with, trafficking, or transportation pet remains in any way; (3) establishes criminal penalties for these new offenses and increases penalties for existing related offenses; (4) alters specified prohibitions on conduct in a cemetery; (5) authorizes the denial of an occupational license or certificate to an applicant convicted of specified offenses; (6) grants a family member or descendant the right to bring a civil action for damages for specified offenses; and (7) alters the definition of “permanent cemetery.”

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures as a result of the bill’s incarceration penalties. The bill *may* result in delays for the State Highway Administration (SHA) and increased expenditures for the Transportation Trust Fund (TTF), as discussed below. Otherwise, the bill is not anticipated to materially affect State finances or operations.

Local Effect: Potential minimal increase in local revenues due to the bill’s monetary penalties. The bill is not expected to materially affect local expenditures.

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law:

Definition of Permanent Cemetery

Under current law, a “permanent cemetery” means a cemetery that is owned by a cemetery company regulated under Title 5 of the Business Regulation Article, a nonprofit organization, or the State. The bill expands the definition of “permanent cemetery” to include a cemetery owned by a family or religious organization.

Prohibited Actions – Conduct in a Cemetery

Under § 10-404(a) of the Criminal Law Article, a person may not willfully destroy, damage, deface, or remove (1) an associated funerary object or another structure placed in a cemetery or (2) a building, wall, fence, railing, or other work, for the use, protection, or ornamentation of a cemetery. However, removing a funerary object or a building, wall, fence, railing, or other object from a cemetery is not prohibited if done (1) for the purpose of repair or replacement and (2) at the request of or with the permission of heirs or descendants of the deceased or the owner or manager of the cemetery. The bill does not alter this prohibition.

Pursuant to § 10-404(b), a person is prohibited from willfully destroying, damaging, or removing a tree, plant, or shrub in a cemetery, unless engaged in normal maintenance of a cemetery or burial site. The bill adds to this prohibition by specifying that a person may not willfully destroy, damage, or remove other landscaping in a cemetery.

Under § 10-404(c) of the Criminal Law Article, a person may not engage in indecent or disorderly conduct in a cemetery. The bill repeals this prohibition and replaces it with a prohibition on engaging in malicious, abusive, or disorderly activities in a cemetery.

Under current law, a violation of § 10-404 is a misdemeanor and is subject to the following penalties:

- § 10-404(a): Imprisonment for up to five years and/or a \$10,000 maximum fine; and
- § 10-404(b) or (c): Imprisonment for up to two years and/or a \$500 maximum fine.

Under the bill, a violation of § 10-404 is a felony and is subject to the following penalties:

- First Violation: Imprisonment for no less than 5 years and up to 10 years and/or a fine of at least \$20,000; and
- Subsequent Violation: Imprisonment for no less than 10 years and up to 15 years and/or a fine of at least \$30,000.

Under current law and the bill, a person who violates § 10-404 must pay for the restoration of any damaged or defaced real or personal property in a cemetery to the owner of the property or the owner of the cemetery.

Prohibited Actions – Human Remains

Under § 10-402 of the Criminal Law Article, a person may not remove (or attempt to remove) human remains from a burial site, except as otherwise specified. The bill expands § 10-402 to prohibit a person from tampering with human remains interred in a cemetery.

The bill further establishes (under the new § 10-402.1 of the Criminal Law Article) that a person, except as authorized by law, may not damage, desecrate, mutilate, store, tamper with, traffic, or transport human remains.

Under current law, a violation of § 10-402 is a misdemeanor punishable by imprisonment for up to 5 years and/or a \$10,000 maximum fine. Under the bill, a person who violates § 10-402 or the new § 10-402.1 is guilty of a felony, which is punishable by imprisonment for at least 5 years and up to 10 years and/or a fine of at least \$20,000 for a first violation. Subsequent violations are punishable by imprisonment for at least 10 years and up to 15 years and/or a fine of at least \$30,000.

Prohibited Actions – Pet Remains

The bill prohibits a person from removing (or attempt to remove) pet remains from a cemetery without the permission of the pet's owner or the cemetery. The bill also prohibits a person from damaging, desecrating, mutilating, storing, tampering with, trafficking, or transporting pet remains in any way, unless the action is taken for the purposes of burying, cremating, or otherwise preserving the pet for the owner's benefit. A person who violates either of these prohibitions is guilty of a felony. On conviction, a first-time offender is subject to imprisonment for at least 5 years and up to 10 years and/or a fine of at least \$20,000; a subsequent offender faces imprisonment for at least 10 years and up to 15 years and/or a fine of at least \$30,000. The bill also contains provisions requiring a violator of these prohibitions to pay for restoration of damaged or defaced property in a cemetery, as specified.

Denial of Occupational Licenses

Under § 1-209 of the Criminal Procedure Article, it is the policy of the State to encourage the employment of *nonviolent* ex-offenders and remove barriers to their ability to demonstrate fitness for occupational licenses or certifications required by the State. In general, a department (as defined in § 1-209(a)) may not deny an occupational license or certificate to an applicant solely on the basis that the applicant has previously been convicted of a crime, unless the department determines that (1) there is a direct relationship between the applicant's previous conviction and the specific occupational license or certificate sought or (2) the issuance of the license or certificate would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. Also, with the exception of a crime for which registration on the sex offender registry is required, if at least seven years have passed since an applicant completed serving the sentence for a crime, including all imprisonment, mandatory supervision, probation, and parole, and the applicant has not been charged with another crime other than a minor traffic violation during that time, a department may not deny an occupational license or certificate to the applicant solely on the basis that the applicant was previously convicted of the crime.

Current law specifies that § 1-209 does not apply to a person who was previously convicted of a crime of violence (as defined in § 14-101 of the Criminal Law Article). Under the bill, § 1-209 also does not apply to a person previously convicted of a crime relating to (1) human remains under Title 10, Subtitle 4 of the Criminal Law Article or (2) pet remains under § 10-627 of the Criminal Law Article.

Furthermore, the bill explicitly authorizes a department to deny an occupational license or certificate to an applicant (or revoke an existing holder's license or certificate) if the applicant (or holder) is convicted of violating Title 10, Subtitle 4 or § 10-627.

Right to Bring a Civil Action for Damages

Pursuant to the bill, a family member or descendant may bring a civil action to recover economic and noneconomic damages resulting from a violation of § 10-402(a), § 10-402.1, or § 10-404 of the Criminal Law Article. If an individual who brings such an action is awarded damages, the individual may also seek reasonable attorney's fees.

State Expenditures: General fund expenditures may increase minimally as a result of the bill's incarceration penalties. The bill may also delay SHA projects and increase TTF expenditures, as discussed below. This estimate assumes that (1) few individuals are currently convicted for violations of § 10-402 and § 10-404 in the District Court; (2) the bill does not materially alter the number of convictions under those provisions and few individuals will be convicted of the offenses established by the bill; and (3) the handling

of these cases and sentencing practices will adjust in response to the bill’s minimum incarceration penalties (*e.g.*, plea bargaining, increased use of probation, etc.).

Relevant Offense Data

Exhibit 1 contains information on the number of violations and guilty dispositions in the circuit courts over the last two fiscal years for violations of provisions under § 10-402 and § 10-404 of the Criminal Law Article. Data is not readily available for charges and convictions for these offenses in the District Court. However, during fiscal 2023, the Division of Corrections (DOC) conducted one intake and the Division of Parole and Probation opened one case related to a violation of § 10-404(a); DOC conducted zero intakes under § 10-404 during fiscal 2024.

Exhibit 1
Violations and Guilty Dispositions in the Circuit Courts

<u>Criminal Law Article Offenses</u>	<u>Fiscal 2023</u>		<u>Fiscal 2024</u>	
	<u>Violations</u>	<u>Guilty Dispositions</u>	<u>Violations</u>	<u>Guilty Dispositions</u>
§ 10-402(a)	1	0	0	0
§ 10-404(a)	14	1	1	1
§ 10-404(b)	0	0	1	1
§ 10-404(c)	0	0	1	0

Source: Maryland Judiciary

Maryland Department of Transportation

The Maryland Department of Transportation (MDOT) advises that the bill may impact SHA employees or contractors that are engaged in activities related to the evaluation of roadway projects. MDOT is concerned that SHA employees and contractors could be subject to criminal penalties for accidentally disturbing human or animal remains, cemeteries, or even vegetation within unmarked cemeteries. MDOT notes that activities to evaluate roadway project impacts may require litigation to ensure they are not subject to the criminal penalties. According to MDOT, there is also a risk that the bill could cause delays on projects where cemeteries or potential animal or human remains are involved.

The Department of Legislative Services advises that, to the extent the bill causes delays on roadway projects in the State or results in litigation involving SHA employees or contractors (which cannot be reliably determined at this time), TTF expenditures may increase.

Local Revenues: Local revenues may increase minimally from fines imposed in the circuit courts.

Additional Comment: The bill contains multiple references to § 2-109 of the Criminal Procedure Article. Those references should be to § 1-209 of the Criminal Procedure Article.

Additional Information

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

Designated Cross File: HB 1000 (Delegate Simmons, *et al.*) - Judiciary and Health and Government Operations.

Information Source(s): Anne Arundel and Baltimore counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland Department of Agriculture; Maryland Department of the Environment; Maryland Department of Health; Department of Human Services; Maryland Department of Labor; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - February 12, 2025
js/aad

Analysis by: Ralph W. Kettell

Direct Inquiries to:
(410) 946-5510
(301) 970-5510