

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 609

(Senator Folden, *et al.*)

Judicial Proceedings

Criminal Law - Hate Crimes - Law Enforcement Officers

This bill adds law enforcement officers to the protected classes under specified State hate crimes statutes. “Law enforcement officer” has the meaning stated in § 3-201 of the Criminal Law Article.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to expanded application of existing penalties.

Local Effect: Minimal increase in local revenues and expenditures due to expanded application of existing penalties.

Small Business Effect: None.

Analysis

Bill Summary/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 (hate crimes – commission of a crime or destruction of property), 10-305 (damage to an associated building), and 10-305.1 (prohibition on use of item or symbol to threaten or intimidate).

Section 10-304 (Hate Crime – Commission of a Crime or Destruction of Property)

Under § 10-304 of the Criminal Law Article, a person may not engage in specified 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. The bill adds a person's status as a law enforcement officer to the list of specified motivations under this provision.

The specified acts, which remain unchanged by the bill, are:

- commit a crime or attempt or threaten to commit a crime against that person or group;
- deface, damage, or destroy, or attempt or threaten to deface, damage, or destroy the real or personal property of that person or group;
- burn or attempt or threaten 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).

Section 10-305 (Damage to an Associated Building)

Under current law, a person may not deface, damage, or destroy; attempt or threaten to deface, damage, or destroy; burn or attempt or threaten 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 or group of a particular race, color, religious belief, sexual orientation, gender, gender identity, disability, 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 because of the race, color, religious beliefs, sexual orientation, gender, gender identity, disability, or national origin of that person or group or because that person or group is homeless.

The bill expands this provision to prohibit a person from engaging in these specified acts (1) because a law enforcement officer or group of law enforcement officers has contacts or is associated with the building or (2) if there is evidence that exhibits animosity against a person or group because that person is a law enforcement officer or because that group consists of law enforcement officers.

Penalties

Under current law, a person who violates these provisions is guilty of a misdemeanor, punishable by imprisonment for up to three 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 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.

First Amendment Rights

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.

Law Enforcement Officer

Section 3-201 of the Criminal Law Article defines a "law enforcement officer" as an individual who, in an official capacity, is authorized by law to make arrests and is a member of specified law enforcement units. "Law enforcement officer" includes a correctional officer at a correctional facility and an officer employed by the Washington Metropolitan Area Transit Authority Metro Transit Police who is subject to specified jurisdictional limitations.

State Revenues: General fund revenues increase minimally as a result of the bill's expanded application of existing monetary penalty provisions from cases heard in the District Court.

State Expenditures: General fund expenditures increase minimally as a result of the bill's expanded application of existing incarceration penalties due to more people being committed to State correctional facilities and increased payments to counties for reimbursement of costs for incarcerated individuals. The number of people convicted of under the bill is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per incarcerated individual, including overhead, is estimated at \$5,110 per month. Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. The State provides assistance to the counties for locally sentenced incarcerated individuals and for (1) incarcerated individuals who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced incarcerated individuals confined in a local detention center between 12 and 18 months; and (3) incarcerated individuals who have

been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from a local facility.

The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

While it does not cite any specific data or projections, the Office of the Public Defender advises that the bill requires one additional attorney to handle new cases and an increased level of effort in existing cases. The Department of Legislative Services advises that it is unlikely that the bill alone will generate the need for additional personnel. Individuals charged with committing a hate crime against a law enforcement officer are likely to face additional charges requiring an appreciable level of effort.

The Judiciary can implement the bill with existing budgeted resources. According to the Judiciary, during fiscal 2023, there were 143 violations and 6 conviction the State's trial courts under § 10-304; during that same time, there were 8 violations and 2 convictions in the State's trials courts under § 10-305. The Department of Public Safety and Correctional Services advises that during fiscal 2023, the Division of Corrections conducted zero intakes and the Division of Parole and Probation opened 20 cases related to violations of § 10-304 of the Criminal Law Article.

Local Revenues: Revenues increase minimally as a result of the bill's expanded application of existing monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's expanded application of an existing incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. *Per diem* operating costs of local detention facilities have ranged from approximately \$90 to \$300 per incarcerated individual in recent years.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 99 and HB 286 of 2021.

Designated Cross File: None.

Information Source(s): Baltimore City; Prince George's County; Maryland Association of Counties; Maryland Municipal League; Maryland State Commission on Criminal
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Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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Analysis by: Amanda L. Douglas

Direct Inquiries to:

(410) 946-5510

(301) 970-5510