

SENATE BILL 139

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1999 Regular Session
9lr0200
CF 9lr0394

By: **The President (Administration) and Senators Hoffman, Hollinger,
Kelley, and Lawlah**

Introduced and read first time: January 22, 1999

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Crimes - Gender and Sexual Orientation Crimes - Prohibitions**

3 FOR the purpose of prohibiting a person from committing certain crimes against
4 another person or institution, or damaging the property of another person or
5 institution, because of that person's gender or sexual orientation or because of
6 the institution's contacts or associations with a person or group of a particular
7 gender or sexual orientation; defining certain terms; and generally relating to
8 the prohibition of crimes against persons based on gender or sexual orientation.

9 BY repealing and reenacting, with amendments,
10 Article 27 - Crimes and Punishments
11 Section 470A
12 Annotated Code of Maryland
13 (1996 Replacement Volume and 1998 Supplement)

14 Preamble

15 WHEREAS, Chief Justice Rehnquist wrote for a unanimous Supreme Court in
16 *Wisconsin v. Mitchell* that a defendant's motive for committing a crime has
17 traditionally been an important factor in sentencing; and

18 WHEREAS, A defendant's abstract beliefs, which are protected by the First
19 Amendment of the Constitution of the United States, cannot be admitted into
20 evidence when they are not relevant to criminal conduct; and

21 WHEREAS, Bias-inspired crimes are more likely to provoke retaliatory crimes,
22 inflict emotional harm on victims, and incite community unrest; and

23 WHEREAS, There is a long standing tradition in the law that crimes "which are
24 the most destructive of the public safety and happiness" should be the most severely
25 punished; now, therefore,

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
27 MARYLAND, That the Laws of Maryland read as follows:

Article 27 - Crimes and Punishments

2 470A.

3 (a) (1) In this section the following words have the meanings indicated.

4 (2) "HARASS" MEANS, WITHOUT LAWFUL AUTHORITY, TO KNOWINGLY
5 THREATEN A PERSON UNDER CIRCUMSTANCES THAT WOULD REASONABLY CREATE
6 A FEAR IN THE PERSON THAT THE THREAT WILL BE CARRIED OUT TO:

7 (I) CAUSE BODILY INJURY TO THE PERSON;

8 (II) CAUSE PHYSICAL DAMAGE TO THE PROPERTY OF THE PERSON;

9 (III) SUBJECT THE PERSON TO ANY PHYSICAL CONFINEMENT OR
10 RESTRAINT; OR

11 (IV) DO ANY ACT WHICH IS INTENDED TO SUBSTANTIALLY HARM
12 THE PERSON'S PHYSICAL OR MENTAL HEALTH OR SAFETY.

13 (3) "Institution" means a publicly or privately owned, leased, or used
14 building, including:

15 (i) A school;

16 (ii) A library;

17 (iii) A recreation center;

18 (iv) A meeting hall; or

19 (v) A cemetery.

20 [(3)] (4) "Religious real property" includes:

21 (i) A church, synagogue, or other place of worship;

22 (ii) A cemetery;

23 (iii) A religious school, educational facility, community center,
24 structure, or other real property used for any religious purpose; and

25 (iv) The grounds adjacent to the property described in items (i)
26 through (iii) of this paragraph.

27 (5) "SEXUAL ORIENTATION" MEANS:

28 (I) THE IDENTIFICATION OF AN INDIVIDUAL AS TO MALE OR
29 FEMALE HOMOSEXUALITY, HETEROSEXUALITY, OR BISEXUALITY; OR

1 (II) HAVING OR BEING PERCEIVED AS HAVING AN IDENTITY,
2 EXPRESSION, OR PHYSICAL CHARACTERISTIC NOT TRADITIONALLY ASSOCIATED
3 WITH AN INDIVIDUAL'S BIOLOGICAL SEX OR SEX AT BIRTH.

4 (b) A person may not:

5 (1) Deface, damage, or destroy or attempt to deface, damage, or destroy
6 religious real or personal property that is owned, leased, or used by a religious entity;

7 (2) Obstruct, or attempt to obstruct by force or threat of force, a person in
8 the free exercise of that person's religious beliefs;

9 (3) Harass or commit a crime upon a person or damage the real or
10 personal property of:

11 (i) A person because of that person's race, color, religious beliefs,
12 GENDER, SEXUAL ORIENTATION, or national origin; or

13 (ii) An institution:

14 1. Because of the institution's contacts or association with a
15 person or group of a particular race, color, religious belief, GENDER, SEXUAL
16 ORIENTATION, or national origin; or

17 2. Where there is evidence that exhibits animosity on the
18 part of the person committing the act against a person or group because of that
19 person's or group's race, color, religious beliefs, GENDER, SEXUAL ORIENTATION, or
20 national origin; or

21 (4) Deface, damage, or destroy, attempt to deface, damage, or destroy, or
22 burn or attempt to burn any object on, the real or personal property of:

23 (i) A person because of that person's race, color, religious beliefs,
24 GENDER, SEXUAL ORIENTATION, or national origin; or

25 (ii) An institution:

26 1. Because of the institution's contacts or association with a
27 person or group of a particular race, color, religious belief, GENDER, SEXUAL
28 ORIENTATION, or national origin; or

29 2. Where there is evidence that exhibits animosity on the
30 part of the person committing the act against a person or group because of that
31 person's or group's race, color, religious beliefs, GENDER, SEXUAL ORIENTATION, or
32 national origin.

33 (c) A person who violates the provisions of this section is subject to the
34 following penalties:

1 (1) If the violation involves a separate crime that is a felony, the person
2 is guilty of a felony and upon conviction is subject to imprisonment for not more than
3 10 years, or a fine of not more than \$10,000, or both.

4 (2) If the violation involves a separate crime that is a felony and results
5 in death to a victim, the person is guilty of a felony and upon conviction is subject to
6 imprisonment for not more than 20 years, or a fine of not more than \$20,000, or both.

7 (3) In all other cases, the person is guilty of a misdemeanor and upon
8 conviction is subject to imprisonment for not more than 3 years, or a fine of not more
9 than \$5,000, or both.

10 (d) Prosecution of a person under this section does not preclude prosecution
11 and imposition of penalties for any other crime in addition to any penalties imposed
12 under this section.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 1999.