

Department of Legislative Services
Maryland General Assembly
1999 Session

FISCAL NOTE

Senate Bill 139 (The President, *et al.*) (Administration)

Judicial Proceedings

Crimes - Gender and Sexual Orientation Crimes - Prohibitions

This Administration bill forbids a person from harassing or committing a crime upon a person or damaging the property of: (1) a person because of that person's gender or sexual orientation; or (2) an institution because of the institution's contacts or association with a person or group of a particular gender or sexual orientation, or where there is evidence that the person committing the act exhibits animosity against a person or group because of that person's or group's gender or sexual orientation.

If the violation involves a separate crime that is a felony, the violator is guilty of a felony and subject to imprisonment not to exceed ten years, or a fine not to exceed \$10,000, or both. If the violation involves a separate crime that is a felony and results in death to a victim, the violator is guilty of a felony and subject to imprisonment for not more than 20 years, or a fine not to exceed \$20,000, or both. In all other cases, violators are guilty of a misdemeanor and subject to imprisonment not to exceed three years, or a fine not to exceed \$5,000, or both.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Minimal increase in revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: A small business impact statement was not provided by the Administration in time for inclusion in this fiscal note. A revised fiscal note will be issued when the Administration's assessment becomes available.

Fiscal Analysis

State Revenues: General fund revenues could increase minimally as a result of the bill's

monetary penalty provisions from cases heard in the District Court.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's incarceration penalties due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime and sentenced to more time is not expected to be significant. This expectation is based on the State's experience with race based hate crimes.

Persons serving a sentence longer than one year are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,600 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. The average variable cost of housing a new DOC inmate (food, medical care, etc.), excluding overhead, is \$275 per month. For illustrative purposes, under the bill's maximum incarceration penalty for the misdemeanor offense the average time served would be 18 months. Assuming the variable inmate costs of \$275 per month, State costs could increase by \$4,950 for each person imprisoned under the bill.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2000 are estimated to range from \$8 to \$48 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in a DOC facility. The Baltimore City Detention Center (BCDC), a State operated facility, is used primarily for pretrial detentions.

Some advocates argue that rape is always a hate crime under a gender motivated hate crime statute. If this were true, this bill could have a meaningful effect on State finances due to the bill's penalty provisions. However, this analysis assumes that certain rapes *can* be construed as hate crimes against women based on examination of their specific facts, but that rape does not necessarily constitute a hate crime. Just as rape can be the underlying offense for a racially motivated hate crime, it can be the underlying offense for a gender based hate crime. Similarly, murder can be the underlying offense to a gender-based hate crime, but specific facts must be proven to show that the offender was motivated by gender.

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

Local Expenditures: Expenditures could increase as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$15 to \$80 per inmate in fiscal 2000.

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Additional Comments: The bill defines "harass" to mean to knowingly threaten a person under circumstances that would reasonably create a fear in the person that the threat will be carried out to: (1) cause bodily injury to the person; (2) cause physical damage to the property of the person; (3) subject the person to any physical confinement or restraint; or (4) do any act which is intended to substantially harm the person's physical or mental health or safety. This analysis assumes that the bill's definition of the word harass is not significantly broader than the current law. Neither Article 27 Crimes and Punishments §470A nor the courts have defined the term "harass" as it is applied under the current law to race, color, religious beliefs, or national origin. However, in a 1992 opinion, the Attorney General addressed the issue. Citing United States v. Wilson (4th Cir.1976), the Attorney General observed that harassment is conduct that is designed and intended to badger, disturb, or pester. However, the Attorney General pointed out that if "speech alone, as distinct from a pattern of behavior of which speech was but a part, were the gravamen of a charge of harassment, this portion of the statute might be held to be unconstitutionally overbroad." Relying on R.A.V. v. St. Paul (S.Ct. 1992), the Attorney General further concluded that if the Maryland courts were to construe the term harass in §470A in a case involving speech alone, they would limit the reach of the provisions to the category of fighting words.

Information Sources: Department of Public Safety and Correctional Services (Division of Correction), Attorney General's Office, Judiciary, Public Defender

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Analysis by: Jo Ellan Jordan

Direct Inquiries to:

John Rixey, Coordinating Analyst

(410) 946-5510

(301) 970-5510