

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

House Bill 1029
Judiciary

(Delegate A. Jones, *et al.*)

Crimes - Harassment and Obstructing Exercise of Religious Belief - Penalties

This bill expands the basis for which an individual is prohibited from committing a hate crime to include hate crimes against people based on their disability, sexual orientation, ancestry, or gender. It also adds conditions concerning penalties and terms of probation for individuals convicted of hate crimes and allows a civil action for hate crime violations.

Fiscal Summary

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

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

Small Business Effect: None.

Analysis

Bill Summary: A person may not, by force or threat of force, willfully obstruct, injure, intimidate, interfere with, or oppress another individual in the free exercise of that person's religious beliefs, or attempt to commit such an act.

Wholly or partly because of the person's belief or perception regarding another's race, color, religious beliefs, disability, sexual orientation, ancestry, gender, or national origin, whether or not the person's belief or perception was correct, a person may not: (1) harass

or commit a crime against that person; (2) damage, deface, or destroy or attempt to damage, deface, or destroy the real or personal property of that person; or (3) burn or attempt to burn an object or the real or personal property of that person.

Disability means physical disability, infirmity, malformation, or disfigurement that is caused by bodily injury, birth defect, or illness. Disability includes: (1) epilepsy; (2) any degree of paralysis, amputation, lack of physical coordination, blindness or visual impairment, deafness or hearing impairment, muteness or speech impediment, or physical reliance on a seeing eye dog, wheelchair, or other remedial appliance or device; and (3) mental impairment or deficiency that constitutes retardation or another condition that may have required remedial or special education and related services.

A person who violates these provisions, if the violation involves property damage, is guilty of a misdemeanor and on conviction is subject to a prison term of up to 30 months or a fine of up to three times the value of the property damage, or both.

The court must consider the following aggravating factors in determining whether to impose a prison term or to impose a more severe sentence: (1) the sentence is necessary to deter others from committing the same crime; (2) the defendant committed the crime against a person who has a disability or against that person's property; (3) wholly or partly because of the defendant's belief or perception regarding another's race, color, religious beliefs, disability, sexual orientation, ancestry, gender, or national origin the defendant committed the crime against (i) the person or property of that person; (ii) the person or property of a person who has an association with, is married to, or has a friendship with the other person; or (iii) the person or property of a relative by blood or marriage of a person allowed in (i) or (ii); or (4) the crime took place in or on the grounds of a church, synagogue, or other place of worship immediately before, during, or immediately following services.

Any order of probation or conditional discharge entered following a conviction for any of these hate crimes must include a condition that the offender perform public or community service of at least 200 hours if that service exists in the county where the offender was convicted of a hate crime and any other condition the court considers necessary.

An individual whose person or property is injured as a result of a hate crime may bring a civil action for damages, injunction, or other appropriate relief against the violator. In a civil action, the court may award actual damages, including damages for emotional distress, or punitive damages, attorney fees, and costs. A parent or legal guardian, other than the court-appointed guardian, is liable for the amount of judgment for actual damages rendered against the minor.

Current Law: A person may not by force or threat of force obstruct, or attempt to obstruct, another in the free exercise of that person's religious beliefs. There is no consideration under current law for whether the obstruction was willful.

A person may not deface, damage, or destroy, or attempt to deface, damage, or destroy personal or real property that is owned, leased, or used by a religious entity or for any religious purpose including: (1) a church, synagogue, or other place of worship; (2) a cemetery; (3) a religious school, educational facility, or community center; and (4) the grounds adjacent to them.

A person may not deface, damage, or destroy, attempt to deface, damage, or destroy, burn or attempt 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, including a cemetery, library, meeting hall, recreation center, or school: (1) because a person or group of a particular race, color, religious belief, or national origin 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, or national origin of that person or group.

If the violation involves a separate crime that is a felony, the person is guilty of a felony and on conviction is subject to a prison term of up to ten years or a fine up to \$10,000, or both. If the violation also results in the death of a victim, the violator on conviction is subject to a prison term of up to 20 years or a fine of up to \$20,000, or both. In all other cases, the violator is guilty of a misdemeanor and upon conviction is subject to a prison term of up to three years or a fine of up to \$5,000, or both.

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 additional people convicted pursuant to the bill is expected to be minimal.

Generally, 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 \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$300 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. 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 2003 are estimated to range from \$10 to \$61 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

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

Local Expenditures: Expenditures could increase minimally 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 \$20 to \$84 per inmate in fiscal 2003.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, Department of Legislative Services

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