

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

House Bill 692
Judiciary

(Delegate Jones, *et al.*)

Judicial Proceedings

Hate Crimes Penalties Act - Expanding Prohibitions and Protected Classes of People

This bill expands the scope of hate crimes legislation to include crimes based on the sexual orientation of another person.

Fiscal Summary

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

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

Small Business Effect: None.

Analysis

Bill Summary: The bill provides that because of another's sexual orientation a person may not:

- harass or commit a crime against another;
- deface, damage, or destroy the real or personal property of another;
- attempt to deface, damage, or destroy real or personal property; or
- burn or attempt to burn an object on real or personal property of another.

The prohibition against property defacement, damage, or destruction includes real or personal property connected to public or private buildings because a person of a particular sexual orientation, gender identity, or expression is associated with the building or because of evidence against a person or group due to the sexual orientation of that person or group. The bill also prohibits defacement, damage, or destruction of “a place of worship” rather than a church, synagogue, or other place of worship.

“Sexual orientation” is defined as the identification of an individual with male or female homosexuality, heterosexuality, bisexuality, or gender-related identity.

The bill may not be construed to infringe on the speech of a religious leader or other individual during peaceable activity that expresses the leader’s or individual’s convictions.

Current Law: A person may not deface, damage, destroy, or attempt to deface, damage, or destroy real or personal property that is owned, leased, or used by a religious entity or for any religious purpose. A person may not, by force or the threat of force, obstruct or attempt to obstruct the free exercise of religious beliefs.

Because of another’s race, color, religious beliefs, or national origin, a person may not:

- harass or commit a crime against another person;
- damage the real or personal property of another person;
- deface, damage, or destroy, or attempt to deface, damage, or destroy the real or personal property of another person; or
- burn or attempt to burn an object on the real or personal property of another person.

The prohibition against property defacement, damage, or destruction includes real or personal property connected to public or private buildings because a person of a particular race, color, religious belief, or national origin is associated with the building or because of evidence that shows animosity against a person or group due to the race, color, religious beliefs, or national origin of that person or group.

If a violation of this provision 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 results in the death of a victim, the violator is subject to imprisonment for up to 20 years, and/or a fine of up to \$20,000. For violations not involving a separate felony, the person is guilty of a misdemeanor and is subject to imprisonment not exceeding three years, and/or a maximum fine of \$5,000.

Background: According to the *Uniform Crime Reports* for calendar 2003, the latest year for which statistics are available, the Federal Bureau of Investigation (FBI) reports that 7,489 hate-based offenses occurred nationwide, and 7,485 resulted from a single bias. Of the 7,485 single bias offenses, 51.4% or 3,847 were motivated by racial bias, 17.9% or 1,340 were motivated by religious bias, 16.6% or 1,243 were motivated by sexual orientation bias, and 13.7% or 1,025 were motivated by ethnic or nationality bias. Of the 7,489 offenses nationally, 36.0% or 2,695 were property crimes, the vast majority of which involved destruction, damage, or vandalism of real or personal property.

Maryland law enforcement agencies reported 248 incidents comprising 260 hate crime offenses to the FBI in 2003 (an incident may involve multiple offenses and multiple victims). Of the 248 incidents, 8.0% or 20 were motivated by sexual orientation bias. During 2003, Maryland law enforcement agencies reported 65 hate-based crimes against persons. Of these, 29 were aggravated assaults and 36 were simple assaults.

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

State Expenditures: General fund expenditures could increase minimally as a result of the bill's incarceration penalty 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 who could be convicted of this proposed crime is expected to be minimal. The DOC advises that no persons are incarcerated at this time due to conviction for a hate crime.

Persons serving a sentence longer than 18 months 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 \$310 per month. Excluding medical care, the average variable costs total \$120 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 DOC. 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 2006 are estimated to range from \$17 to \$65 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 \$33 to \$119 per inmate in fiscal 2006.

Additional Information

Prior Introductions: This is a reintroduction of HB 365 of 2004, as amended. HB 365 as amended passed the House, received a favorable report from the Judicial Proceedings Committee, and was debated on the Senate floor before being special ordered.

Cross File: SB 578 (Senator Giannetti, *et al.*) – Judicial Proceedings.

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

Fiscal Note History: First Reader - March 14, 2005
ncs/jr Revised - Enrolled Bill - April 20, 2005

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