

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 151

(Senator Mooney, *et al.*)

Judicial Proceedings

Judiciary

Hate Crimes - Prohibitions and Protected Classes - Expansion to Homeless
Persons and Groups and Gender

This bill adds homeless persons and groups and gender to the protected classes under State hate crime statutes. The bill also adds the attempt to commit a crime motivated by bias as a prohibited offense.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures if the bill results in additional prosecutions.

Local Effect: Potential increase in revenues and expenditures if additional people are prosecuted under the provisions of this bill.

Small Business Effect: None.

Analysis

Bill Summary: The bill specifies that “homeless” means:

- lacking a fixed, regular, and adequate nighttime residence; or
- having a primary nighttime residence that is a supervised shelter designed for temporary living or a place not designed for or ordinarily used by humans as a regular sleeping accommodation.

It establishes that because another is homeless or because of another's gender, a person may not:

- commit a crime or attempt to commit a crime against that person;
- deface, damage, or destroy the real or personal property of another;
- attempt to deface, damage, or destroy real or personal property;
- burn or attempt to burn an object on real or personal property of another; or
- commit a hate crime that involves a separate crime that is a felony, or that results in the death of the victim.

The prohibition against property defacement, damage, or destruction is expanded to include damage to real or personal property connected to public or private buildings because of a person's gender or because a homeless person or group is associated with the building or if there is evidence that exhibits animosity against a person or group because of that person's gender or because that person or group is homeless.

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, sexual orientation, or national origin, a person may not:

- 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;
- burn or attempt to burn an object on the real or personal property of another person; or
- commit a hate crime that involves a separate crime that is a felony or that results in the death of the victim.

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, sexual orientation, or national origin is associated with the building or if there is evidence that exhibits animosity against a person or group due to the race, color, religious beliefs, sexual orientation, or national origin of that person or group.

If a violation of these provisions 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 for up to three years, and/or a maximum fine of \$5,000.

Background:

Hate Crimes Against the Homeless

In January 2006, hate crimes against the homeless gained national attention when two teenagers brutally beat three homeless men in Fort Lauderdale, Florida with baseball bats, killing one and seriously injuring the others. In calendar 2007 (the latest year for which information is available) the National Coalition for the Homeless (NCH) and the National Law Center on Homelessness and Poverty (NLCHP) documented 160 violent crimes against homeless persons across the United States, including 28 deaths and 132 nonlethal attacks. The nonlethal attacks included two rapes and nine instances of setting people on fire. According to NCH and NCHLP, a majority of the attacks against homeless persons are perpetrated by teens. Of known attackers, over 60% were between ages 13 and 19. Over 80% of those accused and convicted of attacks on homeless persons were under age 25. Young attackers cited boredom and thrill-seeking as motives.

NCH and NCHLP report that from 1999 through 2007 there were 774 acts of violence against homeless men, women, and children, in 45 states and Puerto Rico, resulting in 217 deaths and 557 victims of nonlethal violence. According to NCH and NCHLP, one incident against a homeless person occurred in Maryland in 2007. Local news reports covering the incident and subsequent trials, however, have indicated that homelessness was not a motivating factor in the attack. NCH reports that in addition to Maryland, expansion of hate crimes legislation to include homeless attacks has been considered in Alaska, California, Florida, Massachusetts, Nevada, Ohio, and Texas.

In 2005, Maine enacted legislation allowing courts to take into account, for sentencing purposes, a defendant's selection of a target or property based on the homeless status of the victim or owner/occupant of the property. According to the National Coalition for the Homeless, no state or federal hate crimes legislation has been expanded to include homeless status as a protected class.

According to the *Uniform Crime Reports* for calendar 2007, (the latest year for which statistics are available) the FBI reports that 9,006 hate-based offenses occurred nationwide and 8,999 resulted from a single bias against race, religion, sexual orientation, ethnicity, nationality, or disability.

The FBI does not track the occurrences of crimes against homeless persons that are motivated by animus because of the person's homeless status. Bills introduced in Congress in 2007 would have expanded federal hate crime data collection requirements to include crimes involving prejudice based on homeless status and would have made a defendant who intentionally targeted a victim based on the victim's actual or perceived homeless status subject to federal sentence enhancement provisions.

Hate Crimes Based on Gender

According to the Anti-Defamation League, as of August 2008, 26 states and the District of Columbia had hate crime laws regarding gender. The states with the relevant legislation are listed below.

States with Hate Crimes Provisions Pertaining to Gender

Alaska, Arizona, California, Connecticut, District of Columbia, Hawaii, Illinois, Iowa, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Rhode Island, Tennessee, Texas, Vermont, Washington, West Virginia

Source: Anti-Defamation League, August 2008

According to the Federal Bureau of Investigation's *Uniform Crime Reports* for calendar 2007 (the latest year for which statistics are available), 150 hate-based incidents were reported in Maryland. The report did not address incidents motivated by gender.

According to the Maryland Sentencing Guidelines database, there was only one conviction in circuit courts for any of the three hate crime penalty classifications in fiscal 2007 and 2008.

Additional Information

Prior Introductions: Similar legislation, SB 111 of 2008, passed the Senate and was heard in the House Judiciary Committee, where it received no further action. Its cross file, HB 528 of 2008, was heard in the House Judiciary Committee but received no further action. In 2007, SB 160, as amended passed the Senate and was heard by the House Judiciary Committee. In 2006, SB 539 passed second reading in the Senate but failed on third reading.

Cross File: None.

Information Source(s): Commission on Criminal Sentencing Policy, Human Relations Commission, Judiciary (Administrative Office of the Courts), Department of State Police, Department of Public Safety and Correctional Services, Anti-Defamation League, Department of Legislative Services

Fiscal Note History: First Reader - February 2, 2009
mcp/kdm Revised - Enrolled Bill - May 18, 2009

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510