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FISCAL AND POLICY NOTE
First Reader

Senate Bill 42

(Senator Simonaire, *et al.*)

Judicial Proceedings

Criminal Law - Hate Crimes - Law Enforcement Officers (Blue Lives Matter Act
of 2017)

This bill adds law enforcement officers to the protected classes under State hate crime statutes pertaining to harassment/destruction of property and damage to an associated building. The bill incorporates the definition of “law enforcement officer” contained in § 3-201 of the Criminal Law Article.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures from expanded application of existing penalties.

Local Effect: Minimal increase in local revenues and expenditures from expanded application of existing penalties.

Small Business Effect: None.

Analysis

Current Law: Because of another’s race, color, religious beliefs, sexual orientation, gender, or national origin, or because another person is homeless, a person may not:

- commit a crime or attempt to 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.

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 the victim, the violator is subject to imprisonment for up to 20 years and/or a fine of up to \$20,000. For violations that do not involve a separate felony or do not result in the death of the victim, the person is guilty of a misdemeanor and is subject to imprisonment for up to 3 years and/or a maximum fine of \$5,000.

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 (1) because a person of a particular race, color, religious belief, sexual orientation, gender, or national origin, or because a person or group that is homeless, has contacts or is associated with the building or (2) if there is evidence that exhibits animosity against a person or group due to the race, color, religious beliefs, sexual orientation, gender, or national origin of that group or because that person or group is homeless. Violators are guilty of a misdemeanor, punishable by imprisonment for up to three years and/or a maximum fine of \$5,000.

Section 3-201 of the Criminal Law Article defines a “law enforcement officer” as an individual who, in an official capacity, is authorized by law to make arrests and is a member of specified law enforcement units. “Law enforcement officer” includes a correctional officer at a correctional facility and an officer employed by the Washington Metropolitan Area Transit Authority Metro Transit Police who is subject to specified jurisdictional limitations.

Background:

National Developments

In January 2015, citing recent violence against law enforcement officers, the National President of the Fraternal Order of Police (FOP) called for federal hate crime laws to include law enforcement officers as a protected class. According to FOP’s press release, FOP has advocated for more than 10 years for increased federal penalties against individuals who engage in targeted attacks against police officers.

In March 2016, legislation was introduced in the U.S. House of Representatives to expand federal hate crime laws to include law enforcement officers.

In May 2016, Louisiana became the first state in the nation to enact legislation extending hate crimes protections to law enforcement officers, firefighters, and emergency medical service personnel. The law took effect on August 1, 2016.

Hate Crimes in Maryland

The Judiciary advises that there were 20 violations of hate crimes (harassment/destruction of property) and 1 violation of hate crimes (damage to an associated building) in the District Court during fiscal 2015 (the most recent complete fiscal year for which District Court statistics are available). There were 5 violations of hate crimes (harassment/destruction of property) and 2 violations of hate crimes (damage to an associated building) in the circuit courts during fiscal 2015.

The Maryland State Sentencing Guidelines Database contains data ascertained from sentencing guidelines worksheets submitted by circuit court judges to the Maryland State Commission on Criminal Sentencing Policy (MSCCSP). According to the database, MSCCSP received sentencing information on three individuals sentenced for violations of the aforementioned hate crimes in the State's circuit courts during fiscal 2016.

The Department of Public Safety and Correctional Services (DPSCS) advises that there are three Criminal Justice Information System codes for hate crimes in its database. DPSCS advises that State correctional facilities received one inmate under those codes during fiscal 2016. The Department of Parole and Probation did not conduct any intakes for hate crimes offenders during fiscal 2016.

State Revenues: General fund revenues increase minimally as a result of expanded application of existing monetary penalties from cases heard in the District Court.

State Expenditures:

Department of Public Safety and Correctional Services

General fund expenditures increase minimally as a result of the bill's expanded application of existing incarceration penalties due to people being committed to State correctional facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people convicted due to the proposed expansion of hate crime laws is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,600 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 State

inmate (including variable health care costs) is about \$800 per month. Excluding all health care, the average variable costs total \$210 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 a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person had served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility; beginning October 1, 2017, counties may receive the additional \$45 per day grant for inmates sentenced to the custody of the State who receive reentry or other prerelease programming and services from a local facility.

The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

Other Agencies

The Department of State Police can handle the bill's requirements with existing budgeted resources. Because individuals charged with hate crimes under the bill will likely be charged with additional crimes, many of which are serious offenses, the bill is not likely to materially affect the caseloads of the Office of the Public Defender.

Because law enforcement officers are not a protected class under the hate crimes statute currently, the number of additional cases and convictions anticipated as a result of the bill cannot be reliably estimated at this time. However, the statistics for individuals convicted of felony second-degree assault may provide some illustration of the universe of potential offenders that may be expected under the bill.

A person commits a felony second-degree assault if he/she intentionally causes physical injury to another and the person knows or has reason to know that the other person is a "law enforcement officer" or parole or probation agent engaged in the performance of the officer/agent's official duties. As of October 1, 2015, the statute also applies to a firefighter, an emergency medical technician, a rescue squad member, or any other first responder engaged in providing emergency medical care or rescue services. "Physical

injury” means any impairment of physical condition, excluding minor injuries. The bill uses the same definition of “law enforcement officer” as the second-degree assault statute.

MSCCSP advises that it received information on 12 individuals sentenced for violations of the felony second-degree assault statute in the State’s circuit courts during fiscal 2016. The District Court shares concurrent jurisdiction with the circuit courts over felony second-degree assault cases. Information is not readily available on the number of District Court cases or convictions involving felony second-degree assault. It should be noted that the hate crimes statute does not require that a sentence imposed for a hate crime be served consecutively to any sentence imposed for an underlying crime.

Local Revenues: Revenues increase minimally as a result of the bill’s expanded application of existing monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill’s expanded application of existing incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility; beginning October 1, 2017, counties may receive the additional \$45 per day grant for inmates sentenced to the custody of the State who receive reentry or other prerelease programming and services from a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: HB 25 (Delegate Simonaire, *et al.*) - Judiciary.

Information Source(s): Maryland Association of Counties; Maryland Municipal League; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State’s Attorneys’ Association; University System of Maryland; Department of General Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; National Public Radio; *Stateline* (Pew Charitable Trusts); National Fraternal Order of Police; United States Congress; *The Washington Post*; Department of Legislative Services

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