

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1119
Judiciary

(Delegates Kramer and Glenn)

Hate Crimes - Civil Remedy

This bill authorizes a person who is aggrieved by an act that would constitute a violation of the State's hate crime laws to bring a civil action against the person or persons who committed the act and authorizes a court to award a variety of specified remedies. The bill applies prospectively to causes of action arising on or after the bill's October 1, 2018 effective date.

Fiscal Summary

State Effect: Any increase in District Court proceedings as a result of the bill can be handled with existing resources. Revenues are not affected.

Local Effect: Any increase in circuit court proceedings as a result of the bill can be handled with existing resources. Revenues are not affected.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The court may issue an injunction to prevent or restrain an act that would constitute a violation of the State's hate crime laws and award the following: (1) economic damages and any other pecuniary loss sustained by the plaintiff that was proximately caused by the hate crimes violation; (2) noneconomic damages, including pain and suffering; emotional distress; mental anguish; loss of enjoyment; loss of companionship, services, and consortium; and other nonpecuniary loss sustained by the plaintiff that was proximately caused by the act that would constitute a hate crimes violation; (3) punitive damages; and (4) reasonable attorney's fees to the prevailing party. Economic and

noneconomic damages awarded by a court must be equal to three times the amount of actual damages. The availability of a civil remedy does not affect any legal or equitable right or remedy otherwise provided by law.

Current Law: The State's hate crime statutes are contained in Title 10, Subtitle 3 of the Criminal Law Article, specifically §§ 10-302 (damaging property of a religious entity), 10-303 (obstructing exercise of religious beliefs), 10-304 (harassment or destruction of property), and 10-305 (damage to an associated building).

Section 10-302 (Damaging Property of a Religious Entity)

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.

Section 10-303 (Obstructing Exercise of Religious Beliefs)

A person may not, by force or the threat of force, obstruct or attempt to obstruct the free exercise of religious beliefs.

Section 10-304 (Harassment or Destruction of Property)

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.

Section 10-305 (Damage to an Associated Building)

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.

Penalties

In general, an individual who violates these provisions is guilty of a misdemeanor, punishable by imprisonment for up to 3 years and/or a maximum fine of \$5,000. However, if a violation of § 10-304 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 of § 10-304 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.

First Amendment Rights

Nothing in the hate crimes statutes may be construed to infringe on the speech of a religious leader or other individual during peaceable activity intended to express the leader's or individual's religious beliefs or convictions.

Background: According to statistics published by the Federal Bureau of Investigation (FBI) in November 2017, jurisdictions in Maryland reported 37 hate crime incidents in 2016. However, in subsequent news reports, the Department of State Police (DSP) clarified that the number reported by the FBI did not include late submissions by 9 of the 19 reporting agencies. Including those statistics, there were 93 hate crime incidents reported in Maryland during 2016. According to DSP, the 2016 figures represent a 116% increase from 2015.

The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) advises that a review of the Maryland State Sentencing Guidelines Database indicates that MSCCSP did not receive information for any individuals being sentenced for violations of the hate crimes statutes in the State's circuit courts during fiscal 2017. MSCCSP receives its information through sentencing guidelines worksheets submitted by the courts. MSCCSP advises that it received sentencing worksheets for 89% of guidelines-eligible cases during fiscal 2017.

Additional Information

Prior Introductions: Similar bills have been introduced during previous sessions. HB 540 of 2017 received an unfavorable report from the House Judiciary Committee. Its cross file, SB 947, received a hearing in the Senate Judicial Proceedings Committee but was later withdrawn. HB 562 of 2009 received a hearing in the House Judiciary

Committee, but no further action was taken. Its cross file, SB 731, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Federal Bureau of Investigation; *Baltimore Sun*; Department of Legislative Services

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