

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 240
Judiciary

(Delegate Rosenberg, *et al.*)

Judicial Proceedings

Hate Crimes – Threats

This bill prohibits a person from *threatening* to commit a violation of specified hate crimes and repeals a duplicative provision of law under § 10-304 of the Criminal Law Article.

Fiscal Summary

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

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

Small Business Effect: None.

Analysis

Bill Summary: The bill prohibits a person from threatening to commit a violation of the hate crime prohibitions under §§ 10-302, 10-303, 10-304, or 10-305 of the Criminal Law Article.

The bill applies the existing misdemeanor penalty for committing a hate crime (*i.e.*, a maximum of imprisonment for three years and/or a \$5,000 fine) to an attempt or threat to commit a hate crime. The bill retains the increased penalties applicable under existing statute for a violation of § 10-304 involving a separate felony or resulting in the death of the victim.

Current Law: The State’s hate crimes 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)

A person may not engage in the following acts because another person or group is homeless or because of another person’s or group’s race, color, religious beliefs, sexual orientation, gender, or national origin:

- commit a crime or attempt to commit a crime against another person or group;
- damage the real or personal property of another person or group;
- deface, damage, or destroy, or attempt to deface, damage, or destroy the real or personal property of another person or group;
- burn or attempt to burn an object on the real or personal property of another person or group; or
- commit a hate crime that involves a separate crime that is a felony or that results in the death of a 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 a November 2018 publication by the Federal Bureau of Investigation (FBI), law enforcement agencies reported 7,175 bias-motivated criminal incidents nationwide, a 17% increase compared to the 6,121 incidents reported in 2016. The FBI received information on 48 criminal incidents from 18 participating agencies (cities, counties, colleges, police departments, etc.) in Maryland. The remaining 136 participating agencies indicated no incidents of hate crime for the quarters for which they submitted reports during 2017. According to news reports following an October 2018 shooting in which 11 people were killed inside a Pittsburgh synagogue, the U.S. Department of Justice is studying how hate crimes are reported.

In September 2018, the Department of State Police (DSP) published the *State of Maryland 2017 Hate/Bias Report*. According to the report, 398 hate/bias incidents were reported to law enforcement agencies in the State during calendar 2017, representing a 34.9% increase from the 295 incidents reported in calendar 2016. Of the 398 incidents in 2017, 183 were verified to have been motivated by bias, 208 were inconclusive regarding motivation, and 7 were determined to be unfounded. The data in DSP's report includes incidents that may or may not be considered criminal activity; the FBI data is limited to hate/bias-based crimes.

The Department of Public Safety and Correctional Services advises that it conducted intake on one inmate sentenced to a State correctional facility for a conviction under § 10-304 of the Criminal Law Article and no intakes for the other hate crimes offenses under §§ 10-303 and 10-305 during fiscal 2018. The Division of Parole and Probation advises that it did not conduct any intakes under the hate crimes statutes during fiscal 2018.

The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) advises that based on a review of the Maryland Sentencing Guidelines Database, MSCCSP received

information for three individuals sentenced under §§ 10-302 through 10-306 of the Criminal Law Article in the State's circuit courts during fiscal 2018.

State Revenues: General fund revenues increase minimally from fines imposed in District Court cases.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalties due to more people being committed to State correctional facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of the proposed crimes is expected to be minimal. This analysis assumes that a prosecution for threatening to commit a hate crime under the bill consists of more than a mere utterance with little factual basis.

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 \$3,800 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. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or 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.

Local Revenues: Local revenues increase minimally from fines imposed in circuit court cases.

Local Expenditures: Expenditures 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 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: SB 232 (Senator Zirkin) - Judicial Proceedings.

Information Source(s): Charles County; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of State Police; Federal Bureau of Investigation; *Baltimore Sun*; Department of Legislative Services

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