

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 488
Judiciary

(Delegate Palakovich Carr, *et al.*)

Judicial Proceedings

Crimes – Mitigation – Race, Color, National Origin, Sex, Gender Identity, or
Sexual Orientation

This bill prohibits the discovery or perception of, or belief about, another person’s race, color, national origin, sex, gender identity, or sexual orientation, whether accurate or not, as legally adequate provocation to mitigate murder to manslaughter or assault in the first degree to assault in the second degree or another lesser offense.

Fiscal Summary

State Effect: The bill is not expected to materially affect State operations or finances.

Local Effect: The bill is not expected to materially affect local government operations or finances.

Small Business Effect: None.

Analysis

Current Law/Background:

Mitigation of Criminal Offenses

To reduce a homicide to manslaughter, there must be not simply provocation in psychosocial fact, but one of certain fairly well-defined classes of provocation recognized as being adequate as a matter of law. *Tripp v. State*, 36 Md. App. 459 (1977). If the defense of mitigation prevails, the homicide is not malicious and the offense is reduced from murder to manslaughter. *Jones v. State*, 37 Md. App. 511 (1977).

A person charged with assault in the first or second degree, reckless endangerment, or causing a prison employee to come into contact with bodily fluid may assert any judicially recognized defense.

A person commits a first-degree assault if the individual (1) intentionally causes or attempts to cause serious physical injury to another person or (2) commits an assault with a firearm. First-degree assault may be reduced to a lesser offense if a defendant can successfully mitigate the necessary intent of first-degree assault.

Gay-trans Panic Defense

According to the LGBT Bar, the “gay/trans panic defense” is “a legal strategy that asks a jury to find that a victim’s sexual orientation or gender identity/expression is to blame for a defendant’s violent reaction, including murder.” Gay/trans panic defense has been banned in nine states.

Gay/trans panic defense is not an independent defense. Instead, it is used to support traditional criminal law defenses like provocation, diminished capacity, or self-defense to acquit or mitigate charges. Specifically, defendants assert that the discovery or perception of a victim’s sex, general identity, and/or sexual orientation (1) was a sufficiently provocative act that drove them to kill or assault another in the heat of passion; (2) caused them to have a temporary mental breakdown, driving them to act violently; or (3) was the basis of a reasonable belief of immediate danger of serious bodily harm.

The strategy can be compared to the use of the sudden discovery of one’s spouse engaged in intimate extramarital acts as mitigation to the defendant’s subsequent criminal actions. The State statutorily prohibits the use of spousal adultery as mitigation for murder to voluntary manslaughter, even though the killing was provoked by the discovery.

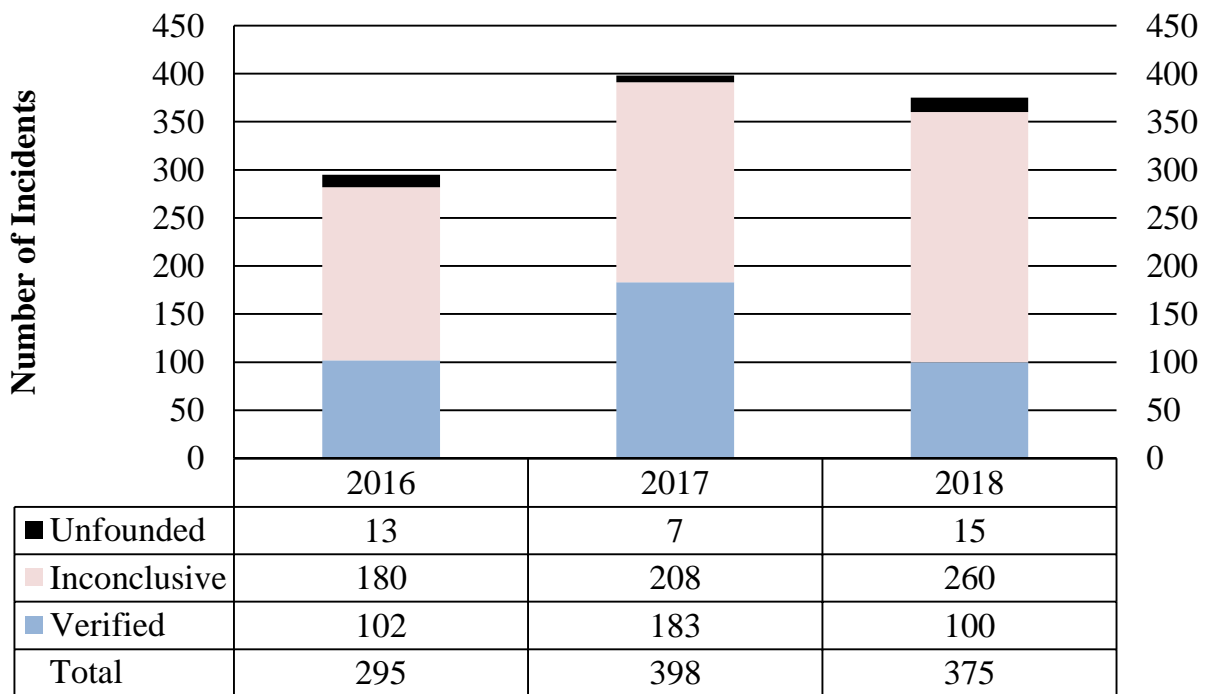
FBI Hate Crimes Statistics and State of Maryland 2018 Hate/Bias Report

According to a fall 2019 publication by the FBI, law enforcement agencies reported 7,120 bias-motivated criminal incidents nationwide, an approximate 1% decrease compared to the 7,175 incidents reported in 2018. The FBI received information on 49 criminal incidents from 20 participating agencies (cities, counties, colleges, police departments, *etc.*) in Maryland. The remaining 135 participating agencies indicated no incidents of hate crime for the quarters for which they submitted reports during 2018.

In September 2019, the Department of State Police (DSP) published the *State of Maryland 2018 Hate/Bias Report*. According to the report, 375 hate/bias incidents were reported by law enforcement agencies in the State to DSP during calendar 2018, representing a 6% decrease from the 398 incidents reported in calendar 2017. Of the 375 incidents

reported in 2018, 100 were verified to be motivated by bias, 260 were inconclusive regarding motivation, and 15 were determined to be unfounded. Of the verified incidents, 18 were motivated by sexual orientation, 5 were motivated by gender identity, and 62 were motivated by race, ethnicity, or ancestry. The data in DSP's report includes incidents that may or may not be considered criminal activity; FBI data is limited to hate/bias-based crimes. **Exhibit 1** contains DSP hate/bias incident data for 2016 through 2018.

Exhibit 1
Hate/Bias Incidents Reported by Law Enforcement Agencies to DSP
2016-2018



DSP: Department of State Police

Source: *State of Maryland 2018 Hate/Bias Report*

Additional Information

Prior Introductions: None.

Designated Cross File: SB 554 (Senator Lam, *et al.*) - Judicial Proceedings.

Information Source(s): Anne Arundel, Baltimore, Charles, Frederick, Montgomery, and Somerset counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland States Attorneys' Association; Department of Public Safety and Correctional Services; Department of State Police; LGBT Bar; American Bar Association; Williams Institute – UCLA School of Law; Federal Bureau of Investigation; Department of Legislative Services

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