Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 867   (Senator Corderman, *et al.*)

Judicial Proceedings

Criminal Law – Hate Crimes – First Responders

This bill expands the State's hate crimes statutes by prohibiting a person, motivated either in whole or in substantial part by another person's actual or perceived employment as a "first responder," from willfully (1) intimidating, harassing, or terrorizing that person; (2) causing damage of at least $500 to any real or personal property of that person without permission; or (3) causing death or serious bodily harm to that person. Violators are guilty of a felony and subject to imprisonment for at least one year and up to five years and a fine of up to $5,000.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures due to the bill's penalty provisions. Revenues are not affected.

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

Small Business Effect: None.

Analysis

Bill Summary: A court must impose the minimum one-year sentence, which is nonsuspendable. Each violation is a separate offense and may not merge with any other crime. A sentence imposed for a violation of the bill's prohibition must be consecutive to and not concurrent with any other sentence imposed by the court for any crime based on the act establishing the violation. The bill incorporates the definition of "first responder" contained in § 18-213.2 of the Health-General Article.

Current Law:

First Responder Definition

Section 18-213.2 of the Health-General Article defines a "first responder" as a (1) firefighter; (2) emergency medical technician; (3) rescue squad member; (4) law enforcement officer; (5) correctional officer; or (6) sworn member of the State Fire Marshal's office.

Section 10-304 (Hate Crime – Harassment or Destruction of Property)

A person may not engage in the following acts motivated either in whole or in substantial part because another person or group is homeless or because of another person's or group's race, color, religious beliefs, sexual orientation, gender, disability, or national origin:

- commit a crime or attempt or threaten to commit a crime against another person or group;
- deface, damage, or destroy, or attempt or threaten to deface, damage, or destroy the real or personal property of another person or group;
- burn or attempt or threaten to burn an object on the real or personal property of another person or group; or
- commit any of these acts when the act 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 or threaten to deface, damage, or destroy; burn or attempt or threaten 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 or group of a particular race, color, religious belief, sexual orientation, gender, disability, 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, disability, or national origin of that group or because that person or group is homeless.

Penalties

In general, a person who violates these provisions is guilty of a misdemeanor, punishable by imprisonment for up to 3 years and/or a fine of up to $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 guilty of a felony and 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.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalty due to more people being committed to State correctional facilities and increased payments to counties for reimbursement of inmate costs.

In addition to creating a new offense punishable by incarceration for up to five years, the bill (1) requires a court to impose a one-year nonsuspendable minimum sentence; (2) requires imposition of a consecutive sentence; and (3) prohibits merger of the bill's offense with any other crime. However, the number of people convicted of this proposed crime is expected to be minimal. The Judiciary can implement the bill's provisions using existing budgeted resources.

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 $3,900 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.

The Office of the Public Defender (OPD) advises that the bill's creation of a new felony offense increases OPD caseloads and overall litigation and requires the hiring of additional staff. The Department of Legislative Services advises that given that individuals engaging in acts that would be subject to the bill's provisions are likely being charged with other offenses currently and will be charged with other offenses in addition to the one created by

the bill, the bill is unlikely to generate enough additional cases and litigation to warrant the hiring of additional OPD staff.

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

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.

Designated Cross File: None.

Information Source(s): Maryland Institute for Emergency Medical Services Systems; Baltimore, Charles, Frederick, and Montgomery counties; City of Havre de Grace; Maryland Municipal League; Comptroller's Office; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; University System of Maryland; St. Mary's College 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; Department of Legislative Services

Fiscal Note History: First Reader - March 8, 2021
rh/aad

Analysis by: Donavan A. Ham

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