

Robert Dean_FAV_SB606

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Position: FAV

IN SUPPORT OF HB-917/SB-606

To: Judiciary Committee (House) and Judicial Proceedings Committee (Senate)
From: Robert Dean - Assistant State's Attorney for Prince George's County
Date: February 10, 2020
Re: Written Testimony in support of House Bill 917 and Senate Bill 606

Honorable members of the House Judiciary Committee and the Senate Judicial Proceedings Committee,

I write in support of the proposed amendment to Maryland's Hate Crime law, ***Criminal Law Article 10-304***. The proposed amendment to Maryland's existing law simply replaces the first two words (Because of) of the law's current lead-in causation language which introduces the hate crime law as follows: "Because of another person's or group's race, color, religious beliefs, sexual orientation, gender, disability, or national origin....." Those two introductory words would be replaced by these words: "Motivated either in whole or part by....." As explained below, changing the introductory language as proposed would clarify and assure uniform and consistent interpretation of the law as it was intended.

I am currently an assistant state's attorney for Prince George's County assigned to focus on cold case homicides. I have been a prosecutor in Maryland since 1977 serving in both Montgomery and Prince George's Counties as a line prosecutor as well as deputy states attorney in both counties. Since 2005 I have also accepted periodic deployments with the United Nations and European Union (investigation and prosecution of war crimes and ethnic violence in Kosovo), a State Department-funded rule of law project, (West Bank, Palestine training police and prosecutors of the Palestinian Authority), and USAID-funded rule of law projects in Jordan and Myanmar (training prosecutors). I am unable to attend the February 11 hearings on the above proposed legislation as I will be out of country on a USAID-funded assignment.

I have a particular interest in the amendment proposed by House Bill 917 and Senate Bill 606. As an assistant state's attorney, I have prosecuted several cases under Maryland's original Hate Crime Law, at the time designated as **Article 27 Section 470A**. Most significantly, I prosecuted the case of ***State of Maryland v. Ayres*** in 1992. Upon conviction, the Maryland Court of Appeals immediately took the case and affirmed the convictions and upheld the constitutionality of the law in this landmark decision. ***Ayres v. State, 335 Md. 602 (Md. 1994)***. Since then the statute has been re-codified and the "protected" classes of victims have been expanded by the legislature.

The amendment now before the legislature will clarify what surely was the legislative intent during the original enactment of our Hate Crime Law. The "core message" of the law is to make it clear that crime inspired or influenced by the perpetrator's bias or prejudice towards one's race, color, religion, or other legislatively protected class or group will not be tolerated in this State. As the law has existed for decades, the causation phrase "because of" has at times been given a judicial interpretation which weakens the impact of the statute. As the recent case of ***State v. Urbanski*** demonstrates, a restrictive judicial reading of the "because of" language has become the "Achilles Heel" of the statute. Motive is rarely a required element of the *mens rea* of a crime. When proven, motive can be helpful to a prosecution to establish motive, but it is not usually required to be proven. In Hate Crimes, motive is a required element. Human experience and common sense tells us there can be mixed motives leading one to commit a crime. What the legislature clearly intended by the words "because of" was the

recognition that committing a crime with *racial animus* (or animus towards a legislatively protected group or class) as a contributing factor in moving the perpetrator towards the criminal act had a magnified increased negative impact on the community that the actions deserved enhanced punishment.

Words spoken by President Clinton in 1997 are as pertinent now as they were when spoken:

*[H]ate crimes...leave deep scars not only on the victims, but on our larger community. They weaken the sense that we are one people with common values and a common future. They tear us apart when we should be moving closer together. They are acts of violence against America itself.... As part of our preparation for the new century, it is time for us to mount an all-out assault on hate crimes, to punish them swiftly and severely, and to do more to prevent them from happening in the first place. We must begin with a deeper understanding of the problem itself. **

The proposed legislation before you today makes it clear that the public policy of Maryland will not be thwarted by a restrictive reading of the two words "because of." Replacing the two words with "motivated either in whole or part by" will reaffirm and emphasize that hate crimes as designed by the legislature will not be tolerated in this state. In conclusion, I urge a favorable report out of committee of this bill. The proposed amendment, a minor adjustment of the introductory words, will have a significant impact in future cases.

Respectfully Submitted,



Robert L. Dean

Assistant State's Attorney for Prince George's County, Md.

**Presidential Radio Address, C-Span (June 7, 1997)*

JCRC_FAV_SB606

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Position: FAV

Testimony in SUPPORT of SB 606
Criminal Law – Hate Crimes – Basis (2nd Lieutenant Richard Collins, III Law)
Judicial Proceedings Committee
February 11, 2020

The Jewish Community Relations Council of Greater Washington (JCRC) is the public affairs and community relations arm of the Jewish community, representing over 100 Jewish organizations and synagogues throughout Maryland, Virginia, and the District of Columbia.

SB606 seeks to take make clear that hate crimes charges may be brought in cases like the murder of Lt. Collins where the perpetrator is motivated by racial or religious hatred but may also have other motivations. Wisconsin already has a similar statute.

SB 606 would strengthen Maryland’s existing hate crimes law by making it clear that to qualify as a hate crime, hate (discriminatory motive based on religious, racial, sexual orientation animus) does not have to be the exclusive motivating factor behind the commission of a crime. Under existing law, a crime becomes a hate crime if it was committed “because of” discriminatory animus. Several courts have interpreted this language to mean that a hate crime occurs when hate is the only factor motivating the conduct. The impetus for the proposed change was to ensure that crimes could be punished as hate crimes even where the perpetrator had mixed motives (e.g., hate and greed). Therefore, the bill replaces “Because of [hate]” in the existing law with “Motivated either in whole or in part by [hate].”

We recommend supporting the bill but suggest that the sponsors change “in part” to “in substantial part.” That clarifying language would be consistent with our understanding that, in practice, prosecutors in mixed motive cases will look to invoke the law when discriminatory animus is a substantial motivating factor. Prosecutors take that approach to ensure that the effect of the law will not be to punish discriminatory thoughts, but criminal conduct substantially motivated by discriminatory animus.

Thank you for the opportunity to testify today.,

Senator Benson_FAV_SB606

Uploaded by: benson, Senator joanne

Position: FAV

JOANNE C. BENSON
Legislative District 24
Prince George's County

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Chair, Rules Committee

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Ending Homelessness
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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Testimony of Senator Joanne C. Benson

SB 606- Criminal Law- Hate Crimes- Basis (2nd Lieutenant Richard Collins, III's Law)

Good afternoon Chairman Smith and Members of the Judicial Proceedings Committee. It with a saddened heart that I stand before you today on behalf of SB 606- Criminal Law- Hate Crimes- Basis (2nd Lieutenant Richard Collins, III's Law. We are grieving for the lost of such a promising young man who was taken from us all too soon. In 2017, Lt. Richard Collins III was tragically killed. A newly commissioned second lieutenant in the U.S. Army and a graduating senior from Bowie State University, his life was ended at the hands of Mr. Sean Urbanski.

Our wonderful State's Attorney, Ms. Aisha Braveboy and her team were incredible in prosecuting Mr. Urbanski. He was convicted of first degree murder and faces a maximum sentence of life in prison without the possibility of parole. However, the hate crime charge against Mr. Urbanski was unfortunately thrown out since Maryland's current statute requires one to definitely prove that one committed the act against another due to one's race, color, religious beliefs, sexual orientation, gender, disability, or national origin as the sole motivation of the crime.

In this day and age, hate rhetoric surrounds us. It infiltrates our homes when we watch the news and it permeates our social lives as it passes through on our social media. According to the State of Maryland 2018 Hate Bias Report, 375 hate bias incidents were reported by Maryland law enforcement agencies in 2018 and in 2019 7,175 bias motivated crimes were reported to the FBI nationwide.

As we march forward in history ushering in the dream that Martin Luther King Jr. envisioned, we have forgotten that the fight to end hatred within our nation, is a fight that we can never abandon. This bill seeks to rectify this. SB 606 seeks to hold people accountable when they are motivated either in whole or in part by another person's race, color, religious beliefs, sexual orientation, gender, disability, or national origin in the commission of a crime.

We are seeking to move forward on the right side of history. Away from the hatred that fueled the 1963 Birmingham church bombing that killed those four young girls, away from the poison of hatred that filled so many hearts during the Holocaust, away from the bigotry that charged the gunman during the Orlando massacre at the Pulse Nightclub that killed so many, and away

from the hatred that took away Lt. Richard Collins III's life all too soon. It is time that we take a stand and call these acts what they are- hate crimes.

We need to send a message that will resound across the world that hate has **no place** in Maryland and these hate crimes will not be tolerated under any circumstance. Thus, I urge the committee to be **bold** and fight on the right side of history and urge a favorable report for SB 606.

Congressman Anthony Brown_FAV_SB606

Uploaded by: brown, CONGRESSMAN anthony

Position: FAV

ANTHONY G. BROWN
4TH DISTRICT, MARYLAND

HOUSE ARMED SERVICES COMMITTEE
VICE CHAIR
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February 11, 2020

The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee
Miller Senate Office Building, 2 East Wing
11 Bladen Street
Annapolis, MD 21401

Re: Support - Senate Bill 606 - 2nd Lieutenant Richard Collins, III's Law

Dear Chairman Smith:

I am writing to express my support for Senate Bill 606 - "2nd Lieutenant Richard Collins, III's Law."

As you know, on May 20, 2017, 2nd Lt. Richard Collins, III's bright future was stolen when he was attacked while visiting the University of Maryland. The investigation revealed that Richard was targeted, and that his assailant was a member and participant in racist Facebook groups. While his murderer was charged with a hate crime, the court dismissed the charge. In the dismissal the judge ruled that the current statute requires prosecutors to prove that bias was the sole motivation for the crime – a standard that is difficult to prove and could chill the enforcement of the hate crimes law.

SB 606 will clarify that hate can be one of the factors for the crime, but does not have the sole factor to secure a conviction under the hate crime statute. Closing this loophole will ensure the integrity of our judicial system, send a strong signal that Maryland is committed to protecting vulnerable populations, and hold people accountable to their crimes in totality.

I am gravely concerned that perpetrators of hatred are emboldened by these crimes and the difficulty in prosecuting them. As of 2018, the Southern Poverty Law Center tracked 21 hate groups in Maryland alone. Hate crimes, or attacks motivated by bias or prejudice also reached a 16-year high in 2018. If this escalation of hate is going to end in Maryland and across the country, it will be because we all say enough is enough.

I respectfully request favorable consideration of this important bill.

Sincerely,



Anthony G. Brown

CC: Members of the Judicial Proceedings Committee

AGB/bmw

MLLC_FAV_SB606

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Position: FAV



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TO: Senator William C. Smith, Jr., Chair
Senator Jeff Waldstreicher, Vice Chair
Judicial Proceedings Committee Members

FROM: Maryland Legislative Latino Caucus

RE: SB606 Criminal Law - Hate Crimes - Basis (2nd Lieutenant Richard Collins, III's Law)

The MLLC supports HB606 Criminal Law - Hate Crimes - Basis (2nd Lieutenant Richard Collins, III's Law)

The MLLC is a bipartisan group of Senators and Delegates committed to supporting legislation which improves the lives of Latinos throughout our state. The MLLC is a voice in the development of public policy affecting the Latino community and the state of Maryland. Thank you for allowing us the opportunity to express our support of SB606.

In a state that is considered “progressive,” hate crimes continue to plague its communities. Maryland has experienced a minor decrease in the number of hate crimes and hate biased incidents reported to local authorities in recent years. However, it is well known how often these types of incidents go unreported. Victims of hate crimes retreat from the idea of speaking up because they assume nothing will be accomplished from going to law enforcement. Moreover, the decision to drop the hate crime count against 2nd Lieutenant Richard Collins, III’s killer due to language technicalities in the law, further supports victims’ notions that they will not see results nor justice.

SB606 provides additional provisions for protected classes. A person may not commit a crime against another person or group motivated either in whole or in part by their race, color, religious beliefs, sexual orientation, gender, disability, national origin, or whether they are experiencing homelessness. Those who are criminally responsible for acting on their hate, must be held accountable. No one should have to go through these types of crimes and it’s disheartening that someone’s life had to be taken for our state to take action. The legislature has the opportunity to protect Marylanders from this hate that has no place in our state and communities.

The MLLC supports this bill and seeks your favorable report on SB606.

BJC_FAV_SB606

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Position: FAV

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Religious Zionists of America
Shaarei Tfiloh Congregation
Shomrei Eemunah Congregation
Simon E. Sobeloff Jewish Law Society
Suburban Orthodox Congregation
Temple Beth Shalom
Temple Isaiah
Temple Oheb Shalom
Winands Road Synagogue Center
Zionist Organization of America
Baltimore District



WRITTEN TESTIMONY

Senate Bill 606 Criminal Law - Hate Crimes - Basis (2nd Lieutenant Richard Collins, III's Law)

Judicial Proceedings – February 11, 2020

SUPPORT

Background: Senate Bill 606 (SB606) would ensure that if the race, color, religious beliefs, sexual orientation, gender, disability, or national origin of a victim is only partially a motivating factor for the commission of a crime, that the perpetrator can still be charged with a hate crime.

Written Comments: Hate crimes targeted at an individual are often accompanied by another more violent offence. We need to ensure that prosecutors are able to charge these crimes as incidents of hate in addition to whatever heinous crimes were also committed. Rarely does a week go by where we are not alerted of a report of a hate incident in our community. While they range in severity, each incident is disturbing and unacceptable. As incidents of hate continue to rise, this change to the law will unfortunately only continue to be more necessary.

According to the FBI's most recent report on hate crimes, law enforcement agencies from across the nation reported that there were 8,819 victims of hate crimes in 2018. The Bureau found that attacks on Jews accounted for 56.9 % of all religion-based hate crimes, by far the highest of any targeted religious group. 59.6% of all hate crimes victims were targeted because of the offenders' bias against race, ethnicity, or ancestry, in other words simply because of who the victim is. According to the 2018 State of Maryland Hate/Bias Report authored by the Maryland State Police, we have seen a sharp increase in hate/bias incidents over the past decade. This sharp rise affected a geographically and demographically diverse array of Marylanders, with increases seen in Anne Arundel, Baltimore, Dorchester, Frederick, Harford, Howard, Montgomery, and Somerset counties, and Baltimore City. These reported incidents targeted both individual people and some of our most vital arenas for community engagement, including schools, community centers, and places of worship.

With this in mind, the Baltimore Jewish Council urges a favorable report on SB606.

The Baltimore Jewish Council, a coalition of central Maryland Jewish organizations and congregations, advocates at all levels of government, on a variety of social welfare, economic and religious concerns, to protect and promote the interests of The Associated Jewish Community Federation of Baltimore, its agencies and the Greater Baltimore Jewish community.

MD NARAL FINAL_FAV_SB606

Uploaded by: philip, diana

Position: FAV



SB0606 Criminal Law - Hate Crimes - Basis (2nd Lieutenant Richard Collins, III's Law)
Presented to the Hon. Will Smith and Members of the Senate Judicial Proceedings Committee
February 11, 2020 12:00 p.m.

POSITION: SUPPORT

NARAL Pro-Choice Maryland urges the Senate Judicial Proceedings Committee **a favorable report on SB0606 Criminal Law - Hate Crimes – Basis**, sponsored by Senators Joanne Benson and Charles Sydnor.

Our organization is an advocate for reproductive health, rights, and justice. We seek to protect every person’s freedom to decide if, when, and how to build their families. This includes the right to raise a family in an environment free from violence, regardless of gender, race, religion, or any other aspect of one’s identity. It also includes the right to freely express one’s sexual orientation and gender identity. Accordingly, we support strengthening Maryland’s hate crime laws as proposed by SB0606.

Hate crimes are illegal acts committed on account of a perceived aspect of the victim’s identity and are generally violent crimes or threats to commit violent crimes.ⁱ Federal hate crime laws cover crimes “committed because of the actual or perceived race, color, religion, national origin, [...] gender, sexual orientation, gender identity, or disability” of the victim.ⁱⁱ Maryland criminal law identifies race, color, religious beliefs, sexual orientation, gender, disability, national origin, and homelessness as potential grounds for hate crimes. According to the Department of Justice’s National Crime Victimization Survey, an estimated 250,000 hate crimes are committed each year in the United States, less than half of which are reported to police.ⁱⁱⁱ In Maryland, 50 hate crimes, about half motivated by race, were reported in 2018, an increase from 48 in 2017.^{iv} This is counter to the national trend, which saw a decrease in reported hate crimes over that period.^v

Hate crimes have varied and significant impacts. They are more likely than other types of violent crime to cause psychological distress, including post-traumatic stress disorder and depression.^{vi} Hate crimes increase feelings of vulnerability, anxiety, and suspicion in victims and reduce their social engagement.^{vii} Beyond their immediate negative impact on victims, hate crimes also damage targeted groups’ feelings of belonging and safety in their communities and can encourage further acts of hatred.^{viii} Perpetrators intend hate crimes to reach beyond the victim to communicate a threat to all members of the targeted group, spreading a sense of vulnerability among the group and leading to heightened community tensions and group isolation.^{ix}

Hate crime laws both provide actual protection for vulnerable people and signal that hate has no place in our communities. SB0606 establishes stronger protections against hate crimes for vulnerable Marylanders by clarifying that when hate is at least a component of the motivation behind a crime, that crime is a hate crime. Hate crimes can be complex, and perpetrators may claim multiple motivations for their attacks. In 25 percent of hate crimes, perpetrators attempt to justify their violence as defensive; in 8 percent of hate crimes, perpetrators claim to act in retaliation to some crime against themselves or their country.^x SB0606 seeks to clarify existing law about these types of cases, enabling better enforcement and reinforcing the unacceptability of hateful, illegal acts in Maryland. This legislation would also bring Maryland law into compliance with federal policy. The Federal Bureau of Investigation defines a hate crime as a “criminal offense committed against a person, property, or society that is motivated, in whole or in part, by the offender’s bias against a race, religion, disability, sexual orientation, or ethnicity/national origin.”^{xi} Passage of SB0606 would adopt similar language, allowing Maryland law to better hold offenders accountable for hate crimes.

Every person has the right to live and build a family free from violence, especially that motivated by prejudice. In the spirit of reproductive justice, NARAL Pro-Choice Maryland **urges a favorable committee report on SB0606**. Thank you for your time and consideration.

ⁱ The United States Department of Justice. “Learn About Hate Crimes,” September 5, 2019. <https://www.justice.gov/hatecrimes/learn-about-hate-crimes>.

ⁱⁱ The Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009, 18 U.S.C. § 249

ⁱⁱⁱ Masucci, Madeline, and Lynn Langton. “Hate Crime Victimization, 2004-2015.” U.S. Department of Justice, Bureau of Justice Statistics, June 2017. <https://www.bjs.gov/content/pub/pdf/hcv0415.pdf>.

^{iv} FBI Criminal Justice Information Services Division. “Maryland Hate Crime Incidents per Bias Motivation and Quarter by Agency, 2018.” FBI: UCR, 2019. <https://ucr.fbi.gov/hate-crime/2018/tables/table-13-state-cuts/maryland.xls>.

^v FBI Criminal Justice Information Services Division. “2018 Hate Crime Statistics: Incidents and Offenses.” FBI: UCR, 2019. <https://ucr.fbi.gov/hate-crime/2018/topic-pages/incidents-and-offenses>.

^{vi} American Psychological Association. “The Psychology of Hate Crimes,” 2020. <https://www.apa.org/advocacy/interpersonal-violence/hate-crimes>.

^{vii} Paterson, Jenny, Mark A Walters, Rupert Brown, and Harriet Fearn. “The Sussex Hate Crime Project: Final Report,” 17. University of Sussex, January 2018. <https://www.sussex.ac.uk/webteam/gateway/file.php?name=sussex-hate-crime-project-report.pdf&site=430>.

^{viii} American Psychological Association. “The Psychology of Hate Crimes,” 2020. <https://www.apa.org/advocacy/interpersonal-violence/hate-crimes>.

^{ix} Paterson, Jenny, Mark A Walters, Rupert Brown, and Harriet Fearn. “The Sussex Hate Crime Project: Final Report,” 7. University of Sussex, January 2018. <https://www.sussex.ac.uk/webteam/gateway/file.php?name=sussex-hate-crime-project-report.pdf&site=430>.

^x Shanmugasundaram, Swathi. “Hate Crimes, Explained.” Southern Poverty Law Center, April 15, 2018. <https://www.splcenter.org/20180415/hate-crimes-explained>.

^{xi} Federal Bureau of Investigation. “Hate Crimes.” Folder. Accessed February 9, 2020. <https://www.fbi.gov/investigate/civil-rights/hate-crimes>.

(ADL) Doron F Ezickson Meredith R Weisel_FAV_SB606

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Position: FAV



Maryland General Assembly
Senate Judicial Proceedings Committee
House Judiciary Committee
February 11, 2020
SUPPORT HB917/SB606

Testimony of Doron F. Ezickson and Meredith R. Weisel
ADL Vice President, Mid-Atlantic/Midwest Division
ADL Washington D.C. Senior Associate Regional Director

ADL (the Anti-Defamation League) is pleased to submit this testimony in support of *Criminal Law – Hate Crimes – Basis (2nd Lieutenant Richard Collins, III’s Law)*, S.B. 606 (Sen. Benson); H.B. 917 (Del. Wilson).¹ This legislation clarifies the causation standard under Maryland’s hate crime statute, giving law enforcement, prosecutors, and our state courts the legal certainty they need to bring the perpetrators of mixed motive hate crimes to justice.

ADL (the Anti-Defamation League)

Since 1913, the mission of ADL has been to “stop the defamation of the Jewish people and to secure justice and fair treatment for all.” Dedicated to combating anti-Semitism, prejudice, and bigotry of all kinds, as well as defending democratic ideals and promoting civil rights, ADL has been recognized as a leading resource on effective responses to violent bigotry, conducting an annual *Audit of Anti-Semitic Incidents* and drafting model hate crime statutes for state legislatures. We were also privileged to lead a broad coalition of civil rights, religious, educational, professional, law enforcement, and civic organizations for more than a decade in support of the 2009 Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act (HCPA).²

As one of the nation’s top non-governmental law enforcement training organizations, ADL also works directly with police at the federal, state, and local levels, providing resources and expertise to address the challenges of 21st century policing. In 2018, for example, our Washington, D.C. Regional Office partnered with the Maryland Coordination and Analysis Center to bring together dozens of law enforcement agencies to discuss best practices for addressing and responding to hate crimes and bias incidents when they occur.

¹ ADL also supports a bill identical to *Lt. Collins III’s Law*, S.B. 335 (Sen. Peters), which has also been assigned to this committee.

² ADL continues to coordinate with a broad array of civil rights, education, and community organizations across the country to advocate for more comprehensive approaches to addressing the threat and impact of hate crimes. https://www.adl.org/sites/default/files/documents/final-post-Charlottesville-DoJ-hate-crime-summit-coalition-recommendations.docx.pdf?_ga=2.235037057.1865847360.1551104355-388726761.1533317285.

Impact of Hate Violence

All Maryland residents have a stake in effective responses to violent bigotry. These crimes demand priority attention because of their special impact. Bias crimes are intended to intimidate not only the individual victim, but also the victim's entire community, leaving members feeling fearful, isolated, and vulnerable. Failure to address this unique type of crime can therefore cause an isolated incident to explode into widespread community tension. By making targeted communities fearful, angry, and suspicious of other groups (and of the power structure that is supposed to protect them) these incidents can damage the fabric of our society and fragment communities.

Hate Crimes Causation Standard

One of the most challenging aspects of a hate crime prosecution is proving "causation"—i.e., did the hate crime offender intentional target the victim "because of" a belief or perception regarding a protected characteristic? In some cases, causation is difficult to prove because there is not enough evidence of bias. In other cases, however, there is overwhelming evidence of bias, but bias was not the only factor that motivated the perpetrator to act. If, for example, a suspect vandalizes a synagogue because of a deep hatred towards Jews, *but also* because he is angered by the amount of traffic that the synagogue brings to his neighborhood, can the suspect still be charged with a hate crime under state law?

Not all states treat these mixed motive hate crimes in the same way. Some states, like California, Tennessee, and Wisconsin, have hate crime laws that explicitly contemplate hate crimes motivated "in whole or in part" by bias. In other words, these states contain causation language that is *identical* to the language proposed in Maryland S.B. 606 / H.B. 907 and would be broad enough to encompass cases where there is more than one motive:³

- California: defines a hate crime as "a criminal act committed, **in whole or in part, because of** one or more of the following actual or perceived characteristics of the victim: (1) disability, (2) gender, (3) nationality, (4) race or ethnicity, (5) religion, (6) sexual orientation, (7) association with a person or group with one or more of these actual or perceived characteristics." *See* Cal. Penal Code § 422.55.

³ There are at least two state hate crime statutes that explicitly require bias to be a "substantial motivating factor" underlying the crime. *See* N.H. Stat. § 651:6(I)(f) (requiring that the perpetrator be "**substantially motivated** to commit the crime" because of hostility towards the victim's protected characteristic); N.Y. Penal Law § 485.05 (requiring intentional selection of person or property "**in whole or in substantial part** because of a belief or perception regarding the" protected characteristic of a person).

- Tennessee: defines a hate crime as the “intention[al] select[ion of] the person against whom the crime was committed or ... the property that was damaged or otherwise affected by the crime ... **in whole or in part, because of** the defendant’s belief or perception regarding the race, religion, color, disability, sexual orientation, national origin, ancestry, or gender of that person or the owner or occupant of that property.” See Tenn. Stat. § 40-35-114(17).
- Wisconsin: defines a hate crime as the “intention[al] select[ion of] the person against whom the crime ... is committed or ... the property that is damaged or otherwise affected by the crime ... **in whole or in part because of** the actor’s belief or perception regarding the race, religion, color, disability, sexual orientation, national origin or ancestry of that person or the owner or occupant of that property, whether or not the actor’s belief or perception was correct.” See Wis. Stat. Ann. § 939.645.⁴
- Maryland S.B. 606 / H.B. 907: defines a hate crime as a crime “**MOTIVATED EITHER IN WHOLE OR IN PART BY** another person’s or group’s race, color, religious beliefs, sexual orientation, gender, disability, or national origin, or because another person or group is homeless.”⁵

Other states, like Maryland, currently do not have a modifier akin to “in whole or in part” before the phrase “because of” in their hate crime statutes. While some courts in these states have interpreted “because of” to require that the defendant’s bias or prejudice be a “but for” cause of the harm—i.e., that the defendant would not have acted absent the defendant’s prejudice (e.g., Iowa⁶)—other states have interpreted “because of” to simply mean that bias played a role in the defendant’s criminal conduct (e.g., Massachusetts⁷).

Unfortunately, at least one state court in Maryland appears to have recently endorsed a narrow causation standard under our state’s hate crime statute, suggesting that a hate crime prosecution

⁴ Wisconsin’s hate crime statute has been upheld as constitutional by the U.S. Supreme Court in *Wisconsin v. Mitchell*, 508 U.S. 476 (1993).

⁵ Kansas’s hate crime statute also includes causation language that is identical in meaning to S.B. 606 / H.B. 907. See Kansas Stat. § 21-6815(c)(2)(C) (requiring a hate crime offense to be “**motivated entirely or in part**” by the protected characteristic of the victim)

⁶ *State v. Hennings*, 791 N.W.2d 828, 835 (Iowa 2010) (reasoning that to find a defendant guilty of a hate crime, the jury must determine beyond a reasonable doubt that the defendant would not have acted absent the defendant’s prejudice; if a defendant is partially motivated by bias, but would still have committed the acts regardless of the bias, the defendant usually cannot be guilty of a hate crime).

⁷ *Commonwealth v. Kelley*, 470 Mass. 682, 689-92 (Mass. 2015) (declining to interpret “because of” to mean that hostility towards a protected characteristic must be the “sole” reason or a “substantial” reason for defendant’s unlawful conduct, and instead concluding that bias must “play a role” in the perpetration of the crime).

cannot succeed unless it can be shown beyond a reasonable doubt that the crime was solely motivated by hate.⁸

From ADL’s perspective, this is a devastating result that necessarily runs counter to the legislative intent underlying hate crime laws. Requiring prosecutors to prove that hate or bias was the *sole* motivating factor underlying a crime is an extremely high standard that gives hate crime offenders an easy defense—by pointing to any other factor that may have motivated their desire to commit the crime, hate crime offenders can potentially escape liability for conduct that otherwise rises to the level of a hate crime. But, just because a hate crime offender had multiple reasons for committing a crime, does not mean that the bias motivation was any less substantial, or had any less impact on the victims targeted.

Unfortunately, a similar tension also now exists with respect to the causation standard under the HCPA. In 2014, in a ruling that surprised many, the Sixth Circuit Court of Appeals held that, instead of demonstrating that the crime was substantially motivated by hate, prosecutors must now prove an even higher standard under the HCPA—that the crime would not have occurred “but for” the prohibited discriminatory motive.⁹

There is no question that since 2014, the Department of Justice has failed to bring several hate crimes cases due to this higher, judicially imposed standard. In order to correct this injustice, and clarify the legislative intent underlying the HCPA, Senators Klobuchar and Murkowski have recently introduced a bill entitled the *Justice for Victims of Hate Crimes Act* (S.3228),¹⁰ which makes clear that prosecutors must only prove that bias against a protected characteristic was a substantial motivating factor for the crime, rather than the sole motivating factor, under federal law.¹¹ This degree of legal certainty is absolutely essential to bringing perpetrators of hate crimes to justice, and the same clarity is needed in Maryland.

At a time when hatred and bigotry are on the rise, we must ensure that law enforcement, prosecutors and judges in Maryland have the legal authority they need to hold hate crime offenders accountable to the fullest extent of the law.

We therefore urge the Senate Judicial Proceedings Committee and the House Judiciary Committee to release S.B. 606 / H.B. 917 with a favorable report.

⁸ <https://baltimore.cbslocal.com/2019/12/17/sean-urbanski-hate-crime-charge-dropped-richard-collins-iii-latest/>.

⁹ *United States v. Miller*, 767 F.3d 585, 591-93 (6th Cir. 2014).

¹⁰ <https://www.congress.gov/116/bills/s3228/BILLS-116s3228is.pdf>.

¹¹ <https://www.klobuchar.senate.gov/public/index.cfm/2020/1/klobuchar-murkowski-introduce-legislation-to-promote-enforcement-of-the-federal-hate-crimes-law>.

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Maryland Crime Victims' Resource Center, Inc.



Continuing the Missions of the Stephanie Roper Committee and Foundation, I

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TESTIMONY OF KURT WOLFGANG, EXECUTIVE DIRECTOR, REGARDING HB917 and SB 606

It is an honor to represent the Maryland Crime Victims' Resource Center in providing testimony on these bills.

Simply put, a crime legislation is the most essential kind of criminal legislation. It addresses an evil of our society that must be assigned the highest priority for punishment: that evil is decided to harm someone in some way based on their race, religion, sex, sexual orientation, homeless status, gender, or disability. Our Lord society has chosen to especially punish these crimes due to the pernicious motivation, and it is right to do so.

Unfortunately, the law as written needs revision, and there is no more painful and poignant case than that of the murder of Lieutenant Richard Collins III to illustrate.

Lieutenant Collins was murdered on the street by someone who we know was crazed with race hatred, and with no apparent motivation other than race hatred to end the promising life of a young man starting the third generation of service to the country he loved. Due to the weak language in the law, the judge felt compelled to dismiss the hate crime charge against the murderer. I choose not to speak his name.

It is imperative that the legislature ensure that hate crimes are treated with a higher order of priority and punishment than other offenses. By their very nature they tear at the fabric of our society and must not be tolerated.

The State's Attorney Aisha Braveboy, and the lead assistant on this case Jonathan Church and his colleagues, prosecuted this matter impeccably. Mr. Church and others have taken the time to dissect the issues, and provide language to amend this bill that they believe will make the difference in the next case of a hate crime that comes before them. There is no doubt that there will be another case. Despite the efforts of good people to move society forward, there is never a shortage of hatred nor crime. Neither with this legislation put an end to either. But it will provide a more

just outcome, and ensure that a most offensive crime is treated with the proper societal contempt and priority.

About our organization:

The Maryland Crime Victims' Resource Center, Inc., formally known as the Stephanie Roper Committee and Foundation, was formed in 1982 to champion the cause of justice for crime victims. Every year since that time, the organization has appeared before this committee seeking just solutions for victims of crime. We have championed and authored more than one hundred laws to date. Through the tireless efforts of our founders, the late Captain Vince and Roberta Roper, and a dedicated cadre of others, the organization is internationally recognized as a leader in assisting crime victims.

Mr. Wolfgang was one of the original founders of the organization, and lobbied for the original bills sought on behalf of the Stephanie Roper Committee in Annapolis. He served as an Assistant State's Attorney in Prince George's County, as Director of Intergovernmental Affairs to the National District Attorney's Association, and served on the Board of Directors of MCVRC for many years.

A handwritten signature in black ink that reads "Kurt Wolfgang". The signature is written in a cursive, flowing style with a large initial "K" and a distinct "W".

Kurt W. Wolfgang, Executive Director

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Position: UNF



POSITION ON PROPOSED LEGISLATION

BILL: SB 606 – Hate Crimes - Basis (2nd Lieutenant Richard Collins, III's Law)

POSITION: OPPOSE UNLESS AMENDED

DATE: February 11, 2020

Our current hate crimes statute prohibits the commission of a crime undertaken “*because of*” hatred towards a victim based on one or more of eight protected characteristics. Our penalties in light of the current prohibition include a general penalty of 3 years, 10 years if the crime associated with the hate is classified as a felony, and up to 20 years if the hateful offense results in death.

This bill seeks to lessen the threshold of the causal connection between the hate and the commission of the crime, to allow for punishment for crimes done *partially* in hate, as opposed to *because of* or *in whole*.

If done at all, we believe this goal should be codified through the creation of a lesser included offense within our current framework. But to the degree that such an offense is to be created, we would ask that the penalties be correspondingly lowered, with the current higher penalties only applicable to the current “*because of*” offense which has a higher causal threshold.

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Testimony for the Senate Judicial Proceedings Committee

February 11, 2020

SB 606 Criminal Law - Hate Crimes - Basis (2nd Lieutenant Richard Collins, III's Law)

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The ACLU of Maryland recognizes that heightened protections are warranted to protect historically marginalized communities against hateful violence and acts of intimidation. We are also well aware that prosecution of criminal behavior is itself also rife with bias. We therefore suggest language to guard against politically-motivated or biased prosecution of hate crimes.

As this Committee knows, there were multiple reports of nooses and swastikas being placed across the state in 2018.¹ It is an undeniable fact of our history that marginalized persons and groups continue to be targets of violence, threats, and acts of intimidation.

As drafted, SB 606 could allow for someone to be criminalized if the person is hateful and has committed a crime, even if the crime was not the product of the person's hatefulness. To address this issue, we would recommend the Committee consider amending SB 606 to include language such as the following, "Evidence of expression or association of the defendant may not be introduced as substantive evidence at trial, unless the evidence specifically relates to the offense the defendant is charged with."

¹ See for example, Baltimore Sun, [Noose found near Patterson Park Pagoda](#) (Dec. 3, 2018); CBS Baltimore, [Another Noose Found At Chesapeake Bay Middle School](#) (Dec. 19, 2018); Baltimore Sun, [University of Maryland Police investigating swastika, anti-LGBT messages found in dorms](#) (Sept. 5, 2018).