

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)*