



POSITION ON PROPOSED LEGISLATION

BILL: SB 400 – Criminal Law 9-01/ Criminal Law 10-306, 10-307 – Hate Crimes- False Statement to a Law Enforcement Officer

POSITION: OPPOSE

DATE: February 9, 2021

The Maryland Office of the Public Defender (OPD) respectfully requests that the Committee issue an unfavorable report on Senate Bill 400. The OPD opposes the bill.

Despite its best intentions, Senate Bill 400 furthers policies of mass incarceration and perpetuates an unequal justice system that disproportionately criminalizes people of color. Generally, the way to make our justice system more fair and equitable isn't by creating new crimes, which Senate Bill 400 does. As they are, the laws of the State of Maryland provide plenty of prison time for judges to order defendants to serve upon convictions. SB 400 targets conduct for which there are already existing laws with sufficient punishments in place. The OPD understands that the rationale for SB 400 goes towards the protection of vulnerable populations including Blacks and LGBTQ+ individuals along with other marginalized minority communities. However, in our broken justice system, the very groups of people that the bill aims to protect will inevitably become targets of its enforcement. These vulnerable populations comprise OPD's client base, so we carefully consider our position and recognize the unique circumstance of the good and the bad of SB 400. Ultimately, we oppose the bill because of the detrimental impacts it will have.

As of July 2018, over 70% of Maryland's prison population was Black while the percentage of Black people living in the State is 31%. Maryland's percentage of Black prison inmates is three times the national average. In regards to policing, a 2016 Department of Justice report on policing in Baltimore City, detailed that the Baltimore Police Department was three times as likely to stop a Black person as they were a white resident. The OPD recognizes ongoing instances of biased and prejudiced policing, prosecution and sentencing all across the state that specifically effects our clients. The entire system is flawed from beginning to end. So, any new criminal law, no matter its intent, when enacted in our justice system in its current state, can't be expected to have equal application in the community.

We realize that SB 400 seeks to prevent to undue targeting of individuals based on their race, gender, sexual orientation, religion, disability, national origin or whether a person is homeless, which is commendable. However, just as neither the death penalty nor mandatory sentencing deter the crimes for which they cover, the main results of legislation like SB 400 will simply be increased prison sentences. Meanwhile, hate will continue in society. The bill offers increased punishment for crimes already prohibited by laws like MD Criminal Law 5-901, which prohibits *all* false statements to police officers. SB 400 adds an extra measure for false police reports based on hate crime premises to Criminal Law 10-304 and in doing so increases the penalty six fold. That seems excessive. Instead of an arbitrary increase in potential jail time for offenders, we should direct

resources to root out the ideas and beliefs permeating society that cause hate crimes in the first place.

Another important point is the inherent difficulty imbued in hate crime legislation- proving intent behind actions. Similar to theories of conspiracy and other inchoate offense in criminal law, hate crime laws seek to get inside the minds of the accused as to their motives even when those motives are often not clear. It seems draconian to not only create new offenses that focus on intent with these difficult issues of prejudice, but to also severely increase the penalties.

The OPD certainly appreciates the struggles of and prejudices towards classes of groups of individuals named in hate laws. Nearly all of our clients go through the same. However, with such an unequal, unpredictable justice system, we cannot take the chance that these new laws won't be turned around and used on our clients or applied in a disproportionate way.

For these reasons, the Maryland Office of the Public Defender respectfully urges a unfavorable report on Senate Bill 400.

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