

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Mary Ellen Barbera
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: House Judiciary Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: House Bill 438
Crimes - Malicious Destruction of Historically Significant
Monument
DATE: January 27, 2021
(3/9)
POSITION: Oppose

The Maryland Judiciary opposes House Bill 438. House Bill 438 would add a new § 6-301.1 to the Criminal Law Article. The new section does not appear to criminalize behavior that would not already be illegal under § 6-301, but it establishes greater potential penalties if a person willfully and maliciously damages a monument, memorial, or statue that the defendant does not own and that a State or local government has dedicated or maintains. A court may not suspend any part of the mandatory minimum sentence and the person is not eligible for parole during the mandatory minimum sentence.

The Judiciary traditionally opposes legislation that includes mandatory penalties. The Judiciary believes it is important for judges to weigh the facts and circumstances for each individual case when imposing a sentence. Provisions that place restrictions on the judge prevent the judge from factors unique to the case. Recognizing that lawmakers are responsible for enacting penalties for crimes, judges are mindful of various mitigating factors in crafting a sentence that most appropriately fits the individual defendant and the crime.

In addition, the Judiciary is concerned with the bill's statement that the "value of damage is not a substantive element of a crime under this section and need not be stated in the charging document." Since the bill distinguishes between a felony and a misdemeanor charge solely by the value of the "historically significant monument" that is damaged, the value of the property appears necessary in the charging document to give the defendant notice of whether the felony or misdemeanor is being charged.

cc. Hon. Nino Mangione
Judicial Council
Legislative Committee

Kelley O'Connor