



Maryland Association for Justice, Inc.

2022 Position Paper

SB 71 - HATE CRIMES - CIVIL REMEDY

FAVORABLE REPORT

The Maryland Association for Justice (MAJ) writes to provide information to the Senate Judicial Proceedings Committee with respect to pending legislation, Senate Bill 71 (Hate Crimes - Civil Remedy).

SB 71 authorizes any person aggrieved by a “hate crime” to bring a civil action against the person or persons who committed the act, regardless of whether the wrongful conduct resulted in a criminal conviction. SB 71 permits the recovery of injunctive relief, and further authorizes the recovery of economic and non-economic damages proximately caused by the wrongful conduct at issue, as well as punitive damages.

Under current law, an action for economic damages may be brought against a tortfeasor who maliciously, or even negligently, defaces or otherwise damages property. However, SB 71 greatly expands current law by explicitly authorizing the recovery of non-economic damages in cases involving damage to property only. *E.g.*, Md. Cts. & Jud. Procs. Code Ann. § 10-302 (hate crime” includes damage to real or personal property owned, leased or used by a religious entity).

Maryland law does not allow the recovery of non-economic damages in the absence of a personal physical injury. The leading case, Green v. T.A. Shoemaker & Co., 111 Md. 69 (1909), established that rule, and the Court of Appeals recently applied the same rule in 2013, holding that homeowners were not entitled to recover non-economic damages despite their actual fear over the health effects of having ingested toxic chemicals allegedly spilled into their local drinking water. Exxon Mobil Corp. v. Albright, 433 Md. 303, 350 (2013) (“recovery cannot be obtained for mental distress without physical impact,” unless “the emotional distress due to the tortious conduct is manifested objectively”). In this regard, SB 71 represents a significant change in the law.

SB 71 further instructs the trial court to award three times the plaintiff’s actual economic and non-economic damages, and *also* explicitly authorizes the recovery of punitive damages. This also represents a change from current law of punitive damages in tort cases, which requires actual malice”; § 10-302 provides an example of a “hate crime” that does not include any element of “intent” in its definition.

A House Workgroup on Punitive Damages found dozens of statutes in the Maryland Code, permitting the recovery of punitive damages for conduct with no discernible common theme. In addition, SB 71 is silent with respect to the standards applicable to a punitive damages award, including what evidence would be required. The Maryland Association for Justice urges the Senate Judicial Proceedings Committee to consider a global approach to punitive damages reform.

MAJ URGES A FAVORABLE REPORT