

SB421 - Senate.pdf

Uploaded by: Mike McKay

Position: FAV

MIKE MCKAY
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Judicial Proceedings Committee
Executive Nominations Committee

THE SENATE OF MARYLAND
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Joint Committees
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Williamsport, Maryland

**Senate Bill 421 – Criminal Law – Destroying Funerary Objects and Cemetery Elements – Statute of
Limitations and Prohibitions**

January 22, 2025

Dear Chairman Smith, Vice Chairman Waldstreicher, and Members of the Committee,

I am writing to strongly endorse the passage of Senate Bill 421. This bill will extend the statute of limitations for prosecutions from 1 to 3 years for prosecutions relating to destroying funerary objects and other elements of or at a cemetery. The bill will also prohibit a person from willfully destroying, damaging, defacing, or removing landscaping or part of the grounds of a cemetery.

I thank you for your time and I urge a favorable report.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mike McKay'.

Senator Mike McKay
Representing the Appalachia Region of Maryland
Serving Garrett, Allegany, and Washington Counties

SB 421 - MSAA Favorable.pdf

Uploaded by: Patrick Gilbert

Position: FAV



Maryland State's Attorneys' Association

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Rich Gibson
President

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DATE: **January 29, 2025**

BILL NUMBER: **SB 421**

POSITION: **Favorable**

The Maryland State's Attorneys' Association (MSAA) supports Senate Bill 421 and urges this Committee to issue a favorable report.

In Maryland, prosecution for most misdemeanor offenses must be instituted within one year from the date the offense was committed. Some crimes, though, like destruction of funerary objects in violation of MD. CODE ANN., CRIM. LAW § 10-404, frequently go undiscovered until long after this time period has expired. Family members visiting a cemetery where a loved one is interred are victimized twice, in a sense – first, upon discovering that their loved one's final resting place has been damaged or defaced, and then again, by the fact that the criminal legal system cannot provide redress or bring the perpetrator to justice.

SB 421 increases the statute of limitations for this offense to three years, and provides that the clock starts to run only once local officials knew or reasonably should have known of the offense. Extending the statute of limitations enhances the ability of Maryland's prosecutors to seek justice for victims and hold offenders accountable, and is necessary given the unique nature of this offense.

David Zinner testimony on SB421.pdf

Uploaded by: David Zinner

Position: UNF

I'm David Zinner, Coordinator for the Maryland Cemetery Legislative Advocates (MCLA). Our group has extensive experience with cemetery issues.

I am also a consumer representative on Maryland's Advisory Council on Cemetery Operations, but I am not representing the Council or the Office of Cemetery Oversight.

MCLA believes a much stronger bill is needed to address cemetery desecration, We will be introducing such a bill in the House and look forward to bringing it to this committee.

1. We believe that the current law 10-404 regarding cemetery desecration is inadequate because it addresses only two cemetery crimes
 - a. Damaging funerary objects or structures
 - b. Disorderly conduct
2. What does HB616/SB421 do?
 - a. Amends 5-106 to increase the statute of limitations from one to three years
 - b. Adds "landscaping" violations
3. We believe that the proposed amendments in HB616/SB421 are inadequate because
 - a. They don't address real world cemetery desecration issues
 - b. We don't think it will address most constituent's issues
4. Our bill addresses real world issues that cemeteries face - here are eight examples:
 - a. In 2017, more than 20 headstones in the St. Thomas Episcopal Parish Cemetery in Prince George's County, were pushed over or damaged, devastating families who have loved ones buried there.
 - b. In 2021 thirteen gravesites in a Dundalk, Baltimore County Jewish cemetery were vandalized with swastikas
 - c. In 2021 a man took plastic wreaths from three or more burial plots, placing them on an access road and lighting them on fire at the Cedar Lawn Memorial Park cemetery in Hagerstown, Washington County.
 - d. In 2021 in Somerset County, Md., the Princess Anne Police Department is investigating a case of gravesite vandalism at St. Andrew's Episcopal Church
 - e. In 2021 at All Hallows Episcopal Chapel in Davidsonville, Anne Arundel County, experienced the destruction of over 160 gravestones ... a defacement both unsightly and physically damaging to the century-old stones.
 - f. In 2023 antisemitic vandalism was discovered at Lubawitz Nusach Ari/Ner Tamid Cemetery in Rosedale in Baltimore County.

- g. In 2024, families were saddened to find the headstones of 59 loved ones pushed over at North East Cemetery in Cecil County.
- h. In 2024 a dozen human burials were dug up in the Rosa Bonheur Cemetery in Howard County.

5. Our bill

- a. Adds a general statement that “A person may not engage in malicious, abusive or disorderly activities in a cemetery.”
- b. Divides violations into three categories as opposed to the current single category
 - i. Vegetation
 - ii. Objects
 - iii. Burials
- c. Goes beyond “landscaping” to include “a tree, plant, or shrub or damage landscaping”.
- d. Proposes that any violation is a felony, not a misdemeanor
 - i. This removes the need to amend 5-106 because felonies have no statute of limitations. *Smallwood v. State*, 51 Md. App. 463 (1986).
 - ii. Felonies are investigated by police more thoroughly than misdemeanors
 - iii. This does not impact the size of the penalty
- e. And then states that penalties escalate based on the seriousness of the violation and for repeated violations.

6. We ask that the committee hold off action on this bill until our bill is presented,

7. Thank you

SB421 The Attorney General of Md

Uploaded by: Samuel Lawrence

Position: INFO

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THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

June 28, 2023

The Honorable Thomas S. Hutchinson
Maryland House of Delegates
308 Lowe House Office Building
Annapolis, Maryland 21401
Via email

Dear Delegate Hutchinson:

You have asked whether a violation of § 10-404 of the Criminal Law Article (“CR”), involving the alleged destruction of gravestones and burial vault covers, is a misdemeanor offense that is subject to a one-year statute of limitations, or whether it constitutes a misdemeanor subject to imprisonment in the penitentiary, which carries no limitation period for commencing a prosecution. As a violation under CR § 10-404 is a misdemeanor that is subject to imprisonment, but which is not expressly subject to imprisonment in the “penitentiary” or otherwise expressly subject to the statute of limitations exception in § 5-106(b) of the Courts and Judicial Proceedings Article (“CJP”), such a violation is subject to the one-year statute of limitations in prosecuting the offense under CJP § 5-106(a).

Maryland law distinguishes between misdemeanor offenses and “penitentiary misdemeanor” offenses for the purpose of the application of a statute of limitations for commencing a prosecution. As the Maryland Supreme Court has explained, “[a]t common law, there is no general period of limitations applicable to criminal proceedings[,]” but “many criminal offenses are subject to specific limitations periods by statute.” *Massey v. State*, 320 Md. 605, 610-11 (1990). For example, “[i]n the absence of a specific statutory limitations period for a particular offense, the State may institute a prosecution for a felony at any time.” *Id.* (quoting *Greco v. State*, 307 Md. 470, 478 (1986)). As the Supreme Court also explained:

As to misdemeanors, the General Assembly over one hundred years ago mandated: “No prosecution ... shall be commenced for ... any misdemeanor except those punished by confinement in the penitentiary, unless within one year from the time of the offen[s]e committed.” Code (1860), Art. 57, § 10. At that time, and for many years thereafter, it was common for criminal statutes to designate not only

HABONAS

The Honorable Thomas S. Hutchinson
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the length of the incarceration for a criminal conviction but also the place where the defendant would serve the sentence. Trial judges would sentence convicted defendants to the particular institutions in accordance with the statutory authorization. Presumably, what the Legislature considered to be the most serious misdemeanors were made punishable by confinement in the state penitentiary. Sentences for misdemeanors apparently deemed less serious were by statute to be served in the county jails or state institutions such as the house of correction.

Id.

Existing CJP § 5-106 reflects this continuing exemption from a period of limitations for those misdemeanor offenses that expressly provide within their statutes for imprisonment in the “penitentiary”¹ or that the violation is subject to the statute of limitations exemption contained in CJP § 5-106(b).² As an exception to the requirement under CJP § 5-106(a) that “a prosecution for a misdemeanor shall be instituted within 1 year after the offense was committed[.]” § 5-106(b) provides, in pertinent part, that “if a statute provides that a misdemeanor is punishable by imprisonment in the penitentiary or that a person is subject to this subsection[.]” the State “may institute a prosecution for the misdemeanor at any time[.]”

In the case of a violation of CR § 10-404(a) for willfully destroying, damaging, defacing, or removing an associated funerary object, including a gravestone or tomb, or other structure placed in a cemetery, the offense is a misdemeanor subject to imprisonment not exceeding 5 years or a fine not exceeding \$10,000 or both. CR § 10-404(d). There is no reference within the statute for that offense to imprisonment in the “penitentiary” or that a violation of that offense is subject to CJP § 5-106(b).³ Therefore, under CJP § 5-106(a), the statute of limitations for commencing a prosecution for a violation of CR § 10-404(a) is one year following the commission of the offense.

¹ Although the actual locations to which an individual convicted of a “penitentiary” misdemeanor may be sentenced by the court appear to have largely lost their historical distinctions, inasmuch as an individual sentenced to imprisonment for more than 12 months would be within the custody of the Division of Correction (as opposed to a local correctional facility for a shorter sentence), regardless of the particular facility to which the individual is sentenced or assigned, the statutory distinction between misdemeanors and penitentiary misdemeanors remains for purposes of the application of the statute of limitations in the State for such offenses. See *discussion in State v. Stowe*, 376 Md. 436, 438-53 (2003).

² CJP § 5-106(c) through (ff) also contain a number of specific misdemeanor offenses that are subject to limitations periods other than one year, but a violation of CR § 10-404 is not among that list of offenses.

³ This is in contrast to CR § 10-402(a) and (h), which prohibits the removal or attempted removal of human remains from a burial site and is a misdemeanor that is expressly “subject to § 5-106(b) of the Courts Article,” and thus is exempt from the one-year statute of limitations under CR § 5-106(a).

The Honorable Thomas S. Hutchinson
June 28, 2023
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I hope this is responsive to your request. If you have any questions or need any additional information, please feel free to contact me.

Sincerely,



Jeremy M. McCoy
Assistant Attorney General