

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 328 (Delegate Dumais, *et al.*)
 Judiciary

Family Law - Domestic Violence - Definition of Abuse

This bill expands the definition of “abuse” as it applies to petitions for domestic violence protective orders to include “misuse of telephone facilities and equipment,” “misuse of electronic communication or interactive computer service,” “revenge porn,” and “visual surveillance.”

Fiscal Summary

State Effect: General fund expenditures increase by \$108,700 in FY 2019 only for programming changes, as discussed below. Revenues are not affected.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	108,700	0	0	0	0
Net Effect	(\$108,700)	\$0	\$0	\$0	\$0

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill is not generally anticipated to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Current Law:

Definition of “Abuse” and Related Protective Orders

An individual may seek relief from “abuse” by filing a petition for a protective order with the court or, if the clerk’s office is closed, with a District Court commissioner.

“Abuse” is defined as:

- an act that causes serious bodily harm;
- an act that places a person eligible for relief in fear of imminent serious bodily harm;
- assault in any degree;
- rape or sexual offense or attempted rape or sexual offense in any degree;
- false imprisonment; or
- stalking.

If the person for whom relief is sought is a child, “abuse” may also include abuse of a child, as defined in statute. “Abuse” may also include abuse of a vulnerable adult, as defined in statute, if the person for whom relief is sought is a vulnerable adult.

Misuse of Telephone Facilities and Equipment

A person may not use telephone facilities or equipment to make (1) an anonymous call that is reasonably expected to annoy, abuse, torment, harass, or embarrass another; (2) repeated calls with the intent to annoy, abuse, torment, harass, or embarrass another; or (3) a comment, request, suggestion, or proposal that is obscene, lewd, lascivious, filthy, or indecent.

Misuse of Electronic Communication or Interactive Computer Service

A person may not use an interactive computer service, as specified, to maliciously engage in a course of conduct that inflicts serious emotional distress on a minor or places a minor in reasonable fear of death or serious bodily injury with the intent to (1) kill, injure, harass, or cause serious emotional distress to the minor or (2) place the minor in reasonable fear of death or serious bodily injury.

A person also may not maliciously engage in a course of conduct, through the use of electronic communication, as specified, that alarms or seriously annoys another (1) with the intent to harass, alarm, or annoy the other; (2) after receiving a reasonable warning or request to stop by or on behalf of the other; and (3) without a legal purpose. The prohibition does not apply to a peaceable activity intended to express a political view or provide information to others, and there are additional exceptions related to court orders for electronic surveillance.

Revenge Porn

A person is prohibited from intentionally causing serious emotional distress to another by intentionally placing on the Internet a photograph, film, videotape, recording, or any other

reproduction of the image of the other person that reveals the identity of the other person with his or her intimate parts exposed or while engaged in an act of sexual contact (1) knowing that the other person did not consent to the placement of the image on the Internet and (2) under circumstances in which the other person had a reasonable expectation that the image would be kept private. For purposes of the prohibition, the statute provides specific definitions for “intimate parts” and “sexual contact.” The prohibition does not apply to (1) lawful and common practices of law enforcement, the reporting of unlawful conduct, or legal proceedings or (2) situations involving voluntary exposure in public or commercial settings.

Visual Surveillance

A person may not conduct or procure another to conduct visual surveillance of an individual in a private place without the consent of the individual. Visual surveillance means surveillance by direct sight, the use of mirrors, the use of cameras, or the use of an electronic device that can be used surreptitiously to observe an individual. A private place is a dressing room or restroom in a retail store.

A person may not with prurient intent conduct or procure another to conduct visual surveillance of (1) an individual in a private place without the consent of that individual or (2) the private area, as specified, of an individual by use of a camera without the consent of the individual under circumstances in which a reasonable person would believe that the private area of the individual would not be visible to the public, regardless of whether the individual is in a public or private place. Visual surveillance is the deliberate, surreptitious observation of an individual by any means, including surveillance by direct sight, the use of mirrors, or the use of cameras. A private place is a room in which a person can reasonably be expected to fully or partially disrobe and has a reasonable expectation of privacy, as specified.

A person may not place or procure another to place a camera on real property where a private residence is located to conduct deliberate surreptitious observation of an individual inside the private residence, as specified.

Background: According to the 2015 *Uniform Crime Report* (the latest information readily available), 30,534 domestic violence crimes were reported in Maryland. Assault was by far the most frequently reported crime, with 25,996 incidents in calendar 2015. Of reported assaults, simple assaults comprised 21,054 incidents. There were 68 domestic violence homicides.

In fiscal 2016 (the latest information readily available), the circuit courts granted 1,784 temporary protective orders and 1,308 final protective orders. In fiscal 2017, the

District Court granted 15,257 interim protective orders, 19,688 temporary protective orders, and 8,933 final protective orders.

A person who does not meet specified relationship status under the Family Law Article, which governs protective orders, may file a petition for a peace order to protect the person from further harm. Chapters 550 and 551 of 2016 added the acts specified in this bill to the list of offenses for which an individual may seek a peace order.

State and Local Fiscal Effect: General fund expenditures increase by \$108,670 in fiscal 2019 only for the Judiciary to make necessary programming changes. Although the bill may result in increased petitions for domestic violence protective orders, any increase in expenditures for the District Court, which handles the majority of protective order petitions, is not anticipated to materially impact State operations or finances. It also does not materially impact the workload of the circuit courts.

Although Montgomery County advises that the bill may have a significant impact on the sheriff's office, it is anticipated that the majority of jurisdictions can handle the enforcement and service of additional protective orders using existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: SB 121 (Senator Zirkin) - Judicial Proceedings.

Information Source(s): Anne Arundel, Charles, and Montgomery counties; cities of Frederick and Havre de Grace; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

Fiscal Note History: First Reader - January 30, 2018
md/kdm

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