

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 278

(Senator Lee, *et al.*)

Judicial Proceedings

Criminal Law - Stalking and Harassment

This bill repeals the requirement that certain conduct be malicious in order for the conduct to be prohibited under the State’s stalking, harassment, and misuse of electronic communication or interactive computer service statutes. The bill also expands the definition of “stalking” under that statute to include a course of conduct that includes approaching or pursuing another person where the person intends to cause or knows or reasonably should have known that the conduct would cause serious emotional distress to another person.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill’s expanded application of existing penalty provisions.

Local Effect: Minimal increase in local revenues and expenditures due to the bill’s expanded application of existing penalty provisions.

Small Business Effect: None.

Analysis

Current Law:

Stalking: A person may not engage in stalking. Violators are guilty of a misdemeanor, punishable by imprisonment for up to five years and/or a \$5,000 maximum fine. A sentence imposed for stalking may be separate from and consecutive to or concurrent with a sentence for any other crime based on the acts establishing a violation of the prohibition.

“Stalking” means a malicious course of conduct that includes approaching or pursuing another person where the person intends to place or knows or reasonably should have known the conduct would place another in reasonable fear (1) of serious bodily injury, assault in any degree, rape or sexual offense, attempted rape or sexual offense, false imprisonment, or death or (2) that a third person likely will suffer any of these acts.

“Course of conduct” means a persistent pattern of conduct, composed of a series of acts over time that shows a continuity of purpose.

The prohibition does not apply to conduct that is (1) performed to ensure compliance with a court order; (2) performed to carry out a specific lawful commercial purpose; or (3) authorized, required, or protected by local, State, or federal law.

Harassment: A person may not follow another person in or about a public place or maliciously engage in a course of conduct that alarms or seriously annoys the other person (1) with the intent to harass, alarm, or annoy the other person; (2) after receiving a reasonable warning or request to stop by or on behalf of the other person; 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. Harassment is a misdemeanor, with first-time offenders subject to imprisonment for up to 90 days and/or a maximum fine of \$500. The maximum penalty for a second or subsequent offense is imprisonment for up to 180 days and/or a maximum fine of \$1,000.

Misuse of Electronic Communication or Interactive Computer Service: A person is prohibited from engaging in a malicious course of conduct, through the use of “electronic communication” 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.

A person may not use an “interactive computer service” 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 (1) to kill, injure, harass, or cause serious emotional distress to the minor or (2) to place the minor in reasonable fear of death or serious bodily injury.

The prohibition does not apply to a peaceable activity intended to express a political view or provide information to others. Also exempt are specified actions made at the direction of a court order.

Violators are guilty of a misdemeanor, punishable by imprisonment for up to one year and/or a \$500 maximum fine.

An “interactive computer service” means an information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including a system that provides access to the Internet and cellular phones.

“Electronic communication” means the transmission of information, data, or a communication by the use of a computer or other electronic means that is sent to a person and that is received by the person.

Background: According to the Maryland Sentencing Guidelines Database, for sentencing guidelines-eligible cases sentenced in the circuit courts during fiscal 2015, five people were sentenced for six counts of violating the statutory prohibitions affected by the bill. **Exhibit 1** contains information on the number of violations and convictions in the District Court during fiscal 2015 for the offenses affected by this bill.

Exhibit 1
Violations of and Convictions for the Offenses Affected by the Bill
District Court
Fiscal 2015

<u>Offense</u>	<u>District Court</u> <u>Violations</u>	<u>District Court</u> <u>Convictions</u>
Stalking	215	7
Harassment	3,130	79
Misuse of Electronic Communication or Interactive Computer Device (Electronic Communication)	490	10
Misuse of Electronic Communication or Interactive Computer Service (Interactive Computer Service)	26	0

Source: Maryland Judiciary

During fiscal 2015, the Department of Public Safety and Correctional Services conducted 67 probation intakes for individuals found guilty of harassment and 12 probation intakes for individuals found guilty of stalking.

State Revenues: General fund revenues increase minimally as a result of the bill’s expanded application of existing monetary penalty provisions from cases heard in the District Court.

State Expenditures: General fund expenditures increase minimally as a result of the bill's expanded application of existing incarceration penalties due to more people being committed to State correctional facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,300 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new State inmate (including variable health care costs) is about \$770 per month. Excluding all health care, the average variable costs total \$200 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person had served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues increase minimally as a result of the bill's expanded application of existing monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's expanded application of existing incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: HB 155 (Delegate Dumais, *et al.*) - Judiciary.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, Office of the Public Defender, Department of Public Safety and Correctional Services, Department of State Police, Department of Legislative Services

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md/kdm

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