

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 336
Judiciary

(Chair, Charles County Delegation)

Criminal Law - Coercion to Provide Sexually Explicit Images - Penalties

This bill prohibits a person from intentionally extorting, threatening, coercing, or intimidating an individual, orally or in writing, into providing a sexually explicit or nude photograph, video footage, or other visual representation of the individual to the other person.

Violators are guilty of a felony, punishable by imprisonment for up to 10 years and/or a \$10,000 maximum fine.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures due to the bill's incarceration penalty. Revenues are not affected.

Local Effect: Minimal increase in local revenues from fines imposed in circuit court cases. Expenditures are not affected.

Small Business Effect: None.

Analysis

Current Law: The State's extortion by verbal threat statute prohibits a person from verbally threatening to commit the following acts with the intent to unlawfully extort money, property, labor, services, or anything of value from another:

- inflict emotional distress on a person;
- cause physical injury to a person;

- cause economic damage to a person;
- cause damage to the property of a person; or
- accuse any person of a crime or of anything that, if true, would bring the person into contempt or disrepute.

Violators are guilty of a felony and subject to imprisonment for up to 10 years and/or a maximum fine of \$10,000.

Under the State's extortion by written threat statute, a person with the intent to unlawfully extort any money, property, or anything of value from another, may not knowingly send or deliver a written threat to commit the following acts or make a writing containing a threat to commit the following acts with the intent to send or deliver and part with the possession of the writing:

- inflict emotional distress on a person;
- cause physical injury to a person;
- cause economic damage to a person;
- cause damage to the property of a person; or
- accuse any person of a crime or of anything that, if true, would bring the person into contempt or disrepute.

Violators are guilty of a felony and subject to imprisonment for up to 10 years and/or a maximum fine of \$10,000.

The extortion by written threat statute applies to any writing, whether or not the writing is signed, or if the writing is signed, whether or not it is signed with a fictitious name or any other mark or designation. The prohibition does not apply to a good faith reasonable notice of dishonor and warning of criminal prosecution under Title 8, Subtitle 1 of the Criminal Law Article (which pertains to bad checks) given by a holder of an instrument to the maker of the instrument.

Background: In September 2011, a California man was sentenced to six years imprisonment after pleading guilty in federal court to computer hacking and wiretapping. According to published reports, the defendant, Luis Mijangos, infected the computers of hundreds of victims with malicious software to gain access to their emails and watch his victims through their computer webcams without their knowledge. Mr. Mijangos targeted teenagers and young women and would search their computers for sexually explicit photographs or create explicit photographs of his own through the use of their webcams. He would then "sextort" his victims by threatening to publish explicit photographs of them on social media websites if they did not send him photographs or videos of sexual acts.

According to the Maryland State Sentencing Guidelines database, there were no convictions for the extortion offenses mentioned above in fiscal 2012 or 2013.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalty due to more people being committed to State correctional facilities. 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 \$3,100 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 \$735 per month. Excluding all health care, the average variable costs total \$185 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 City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

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

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, Department of State Police, Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, U.S. Department of Justice – Offices of the United States Attorneys, Federal Bureau of Investigation, Department of Legislative Services

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