

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 761
Judiciary

(Delegate Jalisi, *et al.*)

Criminal Law - Cyberstalking - Penalties

This bill establishes the offenses of cyberstalking and aggravated cyberstalking.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Minimal increase in local revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: None.

Analysis

Bill Summary:

This bill applies the "course of conduct" standard to this offense, meaning a persistent pattern of conduct, composed of a series of acts over time that shows a continuity of purpose.

Cyberstalking: The bill prohibits a person from engaging in a malicious course of conduct that includes installing or causing to be installed computer software on another person's electronic device or computer without that person's knowledge or consent for the purpose of (1) recording all or a majority of the keystrokes made on the device or computer; (2) altering web-browser settings, monitoring keystrokes, or disabling the other person's computer-security software; or (3) monitoring the location of the other person.

Violators are guilty of cyberstalking, a misdemeanor punishable by imprisonment for up to one year and/or a \$2,000 maximum fine.

Aggravated Cyberstalking: The bill also prohibits a person from engaging in the activities listed above with the intent to place the other person in reasonable fear (1) of serious bodily injury, an assault in any degree, specified sexual crimes, false imprisonment, or death or (2) that a third person likely will suffer any of these acts.

Violators are guilty of aggravated cyberstalking, a misdemeanor punishable by imprisonment for up to five years and/or a \$5,000 maximum fine.

A sentence imposed under the bill 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 bill.

Exceptions: The bill's prohibitions do 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.

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.

Cyberbullying

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. Also prohibited is a malicious 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 requisite intent.

“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. The prohibition does not apply to a peaceable activity intended to express a political view or provide information to others. Also exempt are specified communications related to the issuance of a court order. Violators are guilty of a misdemeanor and subject to maximum penalties of one year imprisonment and/or a \$500 fine.

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

State Expenditures: General fund expenditures increase minimally as a result of the bill’s 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 these proposed crimes 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 \$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 City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

The Office of the Public Defender (OPD) advises that the bill results in increased expenditures for trial preparation and technological resources to investigate cases. The Department of Legislative Services advises that it is unlikely that the bill generates a volume of cases that significantly impacts OPD's finances.

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

Local Expenditures: Expenditures increase minimally as a result of the bill's 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: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, Governor's Office of Crime Control and Prevention, Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, Department of Legislative Services

Fiscal Note History: First Reader - February 25, 2015
md/kdm

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510