

Department of Legislative Services  
Maryland General Assembly  
2018 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

Senate Bill 725

(Senator Zirkin, *et al.*)

Judicial Proceedings and Education, Health,  
and Environmental Affairs

Judiciary

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**Bullying, Cyberbullying, Harassment, and Intimidation - Civil Relief and School Response**

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This bill authorizes a victim of cyberbullying or the victim's parent or guardian to bring a private cause of action for injunctive relief against an adult alleged to have committed an act of cyberbullying against the victim or against the parent or guardian of a child alleged to have committed an act of cyberbullying against the victim. The bill also modifies school policies on and mandatory reporting of incidents of bullying, harassment, and intimidation.

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**Fiscal Summary**

**State Effect:** The bill can be implemented with existing budgeted resources.

**Local Effect:** Depending on case volume and existing resources, local school system expenditures may increase, as discussed below. Revenues are not affected.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** The bill authorizes a court to grant appropriate injunctive relief to prevent further cyberbullying of the victim, including a temporary restraining order, a preliminary injunction, or a final injunction. The court may enjoin the alleged cyberbully from engaging in cyberbullying and may compel the parent or guardian of the alleged cyberbully to take reasonable steps to cause the individual to cease cyberbullying. The bill defines "cyberbullying" as behavior directed at a child that constitutes an offense under § 3-805

(misuse of electronic communication or interactive computer service) or § 3-809 (revenge porn) of the Criminal Law Article.

A plaintiff in an action for injunctive relief is entitled to a temporary restraining order on a showing that the plaintiff is likely to succeed in establishing that the defendant engaged in cyberbullying of the victim or is the parent or guardian of the victim's cyberbully. The plaintiff is not required to plead or prove that immediate, substantial, and irreparable harm will result to the victim before a full adversary hearing can be held on the propriety of a preliminary or final injunction. A court that grants a temporary restraining order may also order the preservation of any relevant electronic communication.

A plaintiff in an action for injunctive relief is entitled to a preliminary injunction or final injunction on a showing that the defendant engaged in cyberbullying the victim or is the parent or guardian of the victim's cyberbully.

### *School Reporting and Policies*

A school principal may make a report to any relevant law enforcement agency if, after an investigation is completed, the school principal has reason to believe that a student has engaged in conduct that constitutes an offense under the criminal statutes for first-degree assault, second-degree assault, misuse of electronic communication or interactive computer service, or revenge porn.

A school principal who in good faith makes a report or participates in a resulting investigation and any employee of the school who in good faith participates in a resulting investigation or judicial proceeding is immune from any civil liability or criminal penalty that might otherwise result from making the report or participating in the resulting investigation or judicial proceeding. The reporting provisions in the bill may not be interpreted to create (1) a civil, criminal, or administrative cause of action based on any act or omission related to the reporting/investigation or (2) an obligation, duty, or standard of care that would provide a basis for any civil, criminal, or administrative cause of action.

A student may be expelled or placed in a special program for disruptive students under § 7-304 of the Education Article if the student engages in bullying, harassment, or intimidation that (1) encourages a student to commit or attempt to commit suicide; (2) incites violence against a student through group bullying, harassment, or intimidation; or (3) releases or threatens to release intimate visual material of a student without the student's consent.

The bill also (1) alters the requirements for mandatory reporting of harassment or intimidation against public school students to include behavior that is sexual in nature and (2) alters the Model Policy to Address Bullying, Harassment, or Intimidation to include

model procedures for providing notice of an act of bullying, harassment, or intimidation to a parent or guardian of the alleged victim within three business days and the parent of the alleged perpetrator within five business days after the date the act is reported. The bill makes similar changes to the policy for nonpublic schools.

**Current Law:** The Maryland State Department of Education (MSDE) must require each local board of education to report incidents of harassment or intimidation against public school students that occur on public school property, at school activities or events, or on school buses. An incident of harassment or intimidation may be reported by a student or the parent, guardian, or close adult relative of a student. Chapter 197 of 2017 authorizes a local board of education to establish a two-way electronic tip program for the anonymous reporting of bullying, harassment, or intimidation.

MSDE was required to develop a standard Victim of Harassment or Intimidation Report Form that includes specific information about an incident, and local boards of education must distribute copies of the forms to each public school. Local boards must submit completed forms to the State Board of Education, and MSDE must report annually on the forms received.

Chapter 489 of 2008 required the State Board of Education to develop a model policy that prohibits bullying, harassment, and intimidation in schools. Using the model policy, local boards of education were required to develop policies for the public schools under their jurisdiction.

In addition to a definition of bullying, harassment, or intimidation and a rule prohibiting bullying and retaliation against individuals who report acts of bullying, the model policy developed by the State Board of Education was required to include procedures for reporting bullying, investigating reports of bullying, and disciplining students who have violated school bullying policies. The model policy also includes information about the support services available to students involved in or witnessing bullying and information about the availability and use of the standard bullying report forms developed by MSDE.

Policies established by local boards of education were required to be developed in consultation with students, the parents and guardians of students, school personnel, school volunteers, and members of the community. A chain of command in the bullying reporting process has to be included in each local policy, along with the name and contact information for someone at MSDE who is familiar with bullying reporting and investigation procedures in the applicable school system. Copies of local policies must be included in student handbooks and posted on school system websites. A school employee who reports an act of bullying, harassment, or intimidation in accordance with the local board's policy is not civilly liable for any act or omission in reporting or failing to report

an act of bullying, harassment, or intimidation. Similar provisions exist for nonpublic schools.

In addition, local boards of education were required to develop educational programs for students, staff, volunteers, and parents as well as professional development programs that train teachers and administrators to implement the local policies. Nonpublic schools are encouraged to develop such programs.

Each local school board must establish special programs for public school students who exhibit disruptive classroom behavior. Two or more local boards may establish joint programs.

### *Suspension and Expulsion*

In accordance with rules developed by each local school board, a principal may suspend a student for cause for up to 10 school days; specified exemptions exist for students in public prekindergarten, kindergarten, or first or second grades. The principal must provide the suspended student and the student's parents with a conference during the suspension period and a list of community resources. Upon request by a principal, a local superintendent may suspend a student for more than 10 days or expel a student, subject to investigation, conferencing, and appeal procedures in statute. A student may not be suspended or expelled only for attendance-related offenses but may be subject to in-school suspension for those offenses.

A student who has been suspended or expelled may not return to the classroom until the principal confers with (1) the teacher or teachers who referred the student (if appropriate); (2) other appropriate school personnel; (3) the student; and (4) the student's parents or guardians.

If disruptive behavior results in action less than suspension, the principal or designee must confer with the teacher who referred the student prior to the student returning to the teacher's classroom.

### *Misuse of Electronic Communication or Interactive Computer Service*

"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.

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.

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

A person also may not maliciously engage in a 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. 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. Violators are guilty of a misdemeanor, punishable by imprisonment for up to one year and/or a \$500 maximum fine.

*Revenge Porn (§ 3-809 of the Criminal Law Article)*

A person may not intentionally cause 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 bill provides specific definitions for “intimate parts” and “sexual contact.”

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

**Background:** The American Psychological Association (APA) defines bullying as “aggressive behavior in which someone intentionally and repeatedly causes another person injury or discomfort. Bullying can take the form of physical contact, words or more subtle actions.” APA notes that individuals engaging in bullying behavior are generally more likely to exhibit other antisocial behaviors and that the victims of bullying often suffer from loneliness, insecurity, and thoughts of suicide. Various sources indicate that bullying incidents typically peak during middle school years.

To address and prevent bullying, Maryland adopted the Safe Schools Reporting Act of 2005 (Chapter 547), which requires a uniform reporting form to be available in public schools to victims of bullying and requires annual reports from MSDE on the incidence of

harassment and intimidation. As shown in **Exhibit 1**, the rate of reported incidents per 1,000 students ranged from 3.0 in Queen Anne’s County to 16.3 in Kent County in the 2015-2016 school year. The report theorizes that the variation in reported incidents may be a result of greater levels of bullying awareness in some school systems. In addition, the local school systems with the highest reported incident rates of bullying tend to have a lower overall enrollment.

Twelve-year-olds were the most frequent victims and alleged perpetrators of bullying, harassment, or intimidation according to the data collected by MSDE, which corroborates national data showing that bullying peaks in middle school.

The National Parent-Teacher Association and APA report that the most effective bullying prevention strategies involve the entire school community. Both also recommend the integration of bullying-related content into school curricula and close adult supervision of students throughout the school day to monitor and prevent bullying behavior before it escalates.

**Exhibit 1**  
**Number of Reported Incidents of Harassment and Intimidation**  
**2015-16 School Year**

<u>Local School System</u>	<u>Incidents per 1,000 Students</u>	<u>Local School System</u>	<u>Incidents per 1,000 Students</u>
Allegany	5.2	Harford	5.5
Anne Arundel	4.1	Howard	6.7
Baltimore City	4.4	Kent	16.3
Baltimore	9.0	Montgomery	3.2
Calvert	8.2	Prince George’s	3.4
Caroline	9.6	Queen Anne’s	3.0
Carroll	5.4	St. Mary’s	3.4
Cecil	7.8	Somerset	13.4
Charles	7.7	Talbot	13.4
Dorchester	15.0	Washington	8.5
Frederick	4.9	Wicomico	14.4
Garrett	3.9	Worcester	4.8

Source: Maryland State Department of Education

In 2017, Texas enacted David's Law (SB 179 of 2017), which, among other things, incorporates cyberbullying into existing statutes, authorizes the alternative placement or expulsion of a student who engages in specified types of bullying-related behavior, authorizes a school principal or the principal's designee to report to law enforcement conduct that rises to the level of specified criminal offenses, and authorizes victims of cyberbullying to pursue injunctive relief.

**State Expenditures:** MSDE advises that it can update the existing Model Policy to Address Bullying, Harassment, or Intimidation to reflect the bill's requirements with existing budgeted resources. Under statute, the policy must be updated every five years.

The Judiciary advises that it cannot predict the number of civil cases that might be filed as a result of the bill and any associated increase in expenditures. The Department of Legislative Services advises that it is unlikely that the bill significantly increases court caseloads. According to the *Maryland Judiciary Statistical Abstract – Fiscal Year 2016*, the latest information available, an estimated 69,383 civil cases were filed in the circuit courts and 300,152 civil cases were filed in the District Court (including 19,069 peace orders) during fiscal 2016.

**Local Expenditures:** Local school system expenditures may increase to comply with the bill's provisions. The extent of the increase varies by jurisdiction, depending on case volume and existing resources.

MSDE advises that local school systems can update their policies with existing resources. Harford County advises that it does not anticipate a fiscal impact from the bill. However, Baltimore City advises that the bill may increase the number of suspensions and expulsions and that it requires an additional staff person, at a cost of approximately \$100,000 annually, to manage bullying cases that require court action and work with schools to ensure that injunctions are implemented appropriately.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore City; Harford County; City of College Park; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Maryland State Department of Education; Department of State Police; American Psychological Association; National Parent-Teacher Association; Department of Legislative Services

**Fiscal Note History:** First Reader - February 19, 2018  
mag/kdm Third Reader - March 26, 2018  
Revised - Amendment(s) - March 26, 2018

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