

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 181
Judiciary

(Delegate Cardin, *et al.*)

Judicial Proceedings

Criminal Law - Electronic Harassment and Bullying (Grace's Law 2.0)

This bill makes several changes to the prohibition on misuse of an electronic communication or interactive computer service under § 3-805 of the Criminal Law Article. A person may not violate the prohibitions under § 3-805, as amended by the bill, with the intent to induce a minor to commit suicide. A person who violates § 3-805 with the intent to induce a minor to commit suicide is guilty of a misdemeanor, punishable by imprisonment for up to 10 years and/or a \$10,000 maximum fine. All other violations of § 3-805 are misdemeanors, punishable by imprisonment for up to three years and/or a \$10,000 maximum fine. The bill includes a severability clause establishing that if any of the bill's provisions are held invalid by a court, the invalidity of those provisions does not affect the validity of the other provisions and application of those provisions.

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: The bill redefines "electronic communication" to mean the act of transmitting any information, data, writing, image, or communication by the use of a computer or any other electronic means, including a communication that involves the use

of email, an instant messaging service, an Internet website, a social media application, a network call, a facsimile machine, or any other Internet-based communication tool.

The bill defines “electronic conduct” as the use of a computer or a computer network to (1) build a fake social media profile; (2) pose as another, including a fictitious person in an electronic communication; (3) disseminate or encourage others to disseminate information concerning the sexual activity, as defined in § 3-809 of the Criminal Law Article, of a minor; (4) disseminate a real or doctored image of a minor; (5) engage or encourage others to engage in the repeated, continuing, or sustained use of electronic communication to contact a minor; (6) make a statement to provoke a third party to stalk or harass a minor; or (7) subscribe a minor to a pornographic website.

The bill expands the existing statutory prohibitions in the State’s electronic harassment statute by prohibiting a person from:

- maliciously engaging in an electronic communication if (1) the electronic communication is part of a series of communications and has the effect of intimidating or harassing a minor and causing physical injury or serious emotional distress to a minor and (2) the person engaging in the electronic communication intends to intimidate or harass the minor and cause physical injury or serious emotional distress to the minor;
- maliciously engaging in a single significant act or course of conduct using an electronic communication if (1) the person’s conduct, when considered in its entirety, has the effect of intimidating or harassing a minor and causing physical injury or serious emotional distress to a minor; (2) the person intends to intimidate or harass the minor and cause physical injury or serious emotional distress to the minor; and (3) in the case of a single significant act, the communication is made after receiving a reasonable warning or request to stop, is sent with a reasonable expectation that the recipient would share the communication with a third party, or shocks the conscience; and
- maliciously engaging in electronic conduct if (1) the act of electronic conduct has the effect of intimidating or harassing a minor and causing physical injury or serious emotional distress to a minor and (2) the person intends to intimidate or harass the minor and cause physical injury or serious emotional distress to the minor.

With the exception of engaging in a prohibited activity with the intent to induce a minor to commit suicide, the prohibitions under § 3-805 do not apply to a peaceable activity (1) intended to express a political view or provide information to others or (2) conducted for a lawful purpose.

Current Law: Pursuant to Chapter 369 of 2013, 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 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. Violators are guilty of a misdemeanor, punishable by imprisonment for up to one year and/or a \$500 maximum fine.

An “interactive computer service” is defined as 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 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. “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, and there are additional exceptions related to court orders for electronic surveillance. Violators are guilty of a misdemeanor and subject to maximum penalties of one year imprisonment and/or a \$500 fine.

Background: According to the Centers for Disease Control and Prevention’s *2016 Bullying Fact Sheet*, approximately 16% of high school students reported in 2015 that they were bullied electronically during the 12 months preceding the survey. According to the center’s 2017 Youth Risk Behavior Surveillance System, approximately 14.9% of high school students were electronically bullied during the 12 months preceding the survey.

The bill is named in honor of Grace McComas, a 15-year-old from Howard County who, after repeated and vicious harassment online by a neighbor, committed suicide in April 2012.

The Judiciary advises that there were six violations of § 3-805(b)(2) of the Criminal Law Article (misuse of an interactive computer service against a minor) filed in the District Court during fiscal 2018. A violation is a charge filed in the court, it is not a conviction, and one person may be associated with multiple violations.

The Division of Corrections advises that it conducted intake on two inmates sentenced under § 3-805 during fiscal 2018. The sentences were for 27 days and 6 months and 8 days. The Division of Parole and Probation conducted intake on 16 individuals sentenced to

probation for an underlying offense coded as “e-mail misuse” under § 3-805 during fiscal 2018. The data does not account for the age of the victim.

The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) advises that a review of the Maryland Sentencing Guidelines Database indicates that MSCCSP received information that one individual was convicted of violating § 3-805(b)(1) and one individual was convicted of violating § 3-805(b)(2) in the State’s circuit courts during fiscal 2018. The individual convicted of violating § 3-805 (b)(1) received a sentence for one count and the individual convicted of violating § 3-805 (b)(2) received sentences for two counts. The sentences imposed for these counts ranged from probation to 3.95 months with an average of 2.63 months, excluding suspended sentences. Including suspended sentences, the average sentence imposed was 1.75 years and ranged from 1.25 to 2 years.

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 due to people being committed for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people convicted as a result of the bill 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 \$3,800 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. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from 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 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. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: SB 103 (Senator Zirkin, *et al.*) - Judicial Proceedings.

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

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