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MAYOR

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HB 215

January 28, 2020

TO: Members of the Judiciary Committee

FROM: Nicholas Blendy, Deputy Director of Government Relations

RE: House Bill 215 - Criminal Law - Crimes Involving Computers - Ransomware

POSITION: SUPPORT WITH AMENDMENT

Chair Clippinger, Vice Chair Atterbeary, and Members of the Committee, please be advised that the Baltimore City Administration (BCA) **supports with amendment** House Bill (SB) 215.

HB 215 creates a new criminal offense related to the use of ransomware, while excepting the use of ransomware for research purposes. If enacted, HB 215 would prohibit a person from knowingly possessing ransomware with the intent to use the ransomware for the purpose of introduction into the computer, computer network, or computer system of another person without the authorization of the other person. Violators would be guilty of a misdemeanor, punishable by imprisonment for up to 10 years and/or a \$10,000 maximum fine.

In May of 2019, approximately 7,000 Baltimore City employees could not access their information technology as a result of a ransomware attack that seized operation of these devices. The ransomware attackers demanded approximately \$100,000 in Bitcoin from the City before they would relinquish control. The City went weeks without major services—many of which are public facing, which impacted the ability to access and pay water and sewer bills, access important City information necessary to real property and other industry, as well as numerous internal business functions due to the inability to access critical systems involved in the attack. The City's Office of Finance estimated that this attack cost approximately \$18 million (\$10 million for restoring and repairing computer networks and \$8 million in potential lost or delayed revenues).

The BCA observes that the monetary penalties proposed in HB 215 are relatively low in comparison to cost of system restoration—at least based on the City’s experience with May’s ransomware attack, as noted above. As a result of our experience, the City has contracted for a cyberinsurance policy and updated certain policies relating to backups, which should help offset any costs of any future system restoration, should need arise. However, given the significant costs to the City based on our experience from the summer, the BCA wished to highlight the relatively small size of the monetary penalty to the bill sponsor and the committee.

Lastly, the amendment the BCA is respectfully requesting is relating to the potential reach of the statute, if enacted. While Section (f) of the last page of the bill captures people who performed the act in Maryland or accessed the computer in Maryland, it appears to capture those whose acts are targeted in Maryland or if they got on a computer in Maryland and targeted anywhere in the world such as, for example, China. So the BCA reads this to mean it would apply to a ransomware attack against the City if the person made the attack from inside of Maryland, or if the person lived in Maryland and tried to attack anywhere else. The BCA believes this to be extremely sensible as it parallels basic long-arm jurisdiction theory.

However, the practicality of enforcement will be governed by things like Section 1-205 of the Criminal Procedure Article of the Maryland Code: Process across county lines and Section 4-201 Criminal court Venue. Put another way, there is already a framework for how to bring a criminal into a Maryland Court when he or she commits an act that has effect in Maryland but the criminal himself may not be living in MD. If the person can be arrested here, then the person is brought here to be arrested. Alternatively, the person can be charged with the crime of a ransomware attack against the City, but we may never find this person to arrest them because they are in, for example, Russia. Then it would become a question of extradition—would Russia (under our scenario) extradite this person to Maryland to face charges? In order to provide some clarity on this complicated questions, the BCA respectfully suggests that the sponsor and the committee consider adding additional language borrowed from a related section of the Criminal Law Article of the Maryland Code, as noted below.

SUGGESTED AMENDMENT LANGUAGE:

Section 7-317(b) of the Criminal Law Article of the Maryland Code for possessing an unlawful telecom device says: “It is not a defense to a violation of this part that some of the acts constituting the violation occurred out of the State.”

We respectfully request a **favorable with amendment** report on House Bill 215.