

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 194 (Senator Kelley, *et al.*)
Judicial Proceedings

Criminal Law - Electronic Harassment of a Minor

This bill prohibits a person from making an electronic communication with the intent to terrify, intimidate, or harass a minor, or threaten to inflict injury or physical harm to a minor or property of the minor. A violator is guilty of a misdemeanor and subject to maximum penalties of three years imprisonment and/or a \$5,000 fine.

The prohibition does not apply to a peaceable activity intended to express a political view or provide information to others and may not be construed to have an effect on the lawfulness of specified policies of electronic mail service providers that relate to the handling of electronic communications.

Fiscal Summary

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

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

Small Business Effect: None.

Analysis

Current Law: A person may not use electronic mail with the intent to harass one or more persons, or by sending lewd, lascivious, or obscene material. A violator is subject to maximum misdemeanor penalties of imprisonment for one year and/or a fine of \$500.

The prohibition does not apply to a peaceable activity intended to express a political view or provide information to others. (*See* Criminal Law, § 3-805.)

Chapter 470 of 2004 established the Maryland Spam Deterrence Act, which prohibits a person from sending multiple commercial electronic mail (e-mail) messages under specified circumstances from a protected computer. Violators are subject to criminal and civil liability. Under the Act, the term “electronic mail service provider” means any person, including an Internet service provider, that is an intermediary in sending and receiving electronic mail and that provides to the public the ability to send or receive electronic mail to or from an electronic mail account or on-line user account. (*See* Criminal Law, § 3-805.1.)

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

State Expenditures: General fund expenditures may increase minimally as a result of the bill’s incarceration penalty due to more people being committed to Division of Correction (DOC) 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 DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,600 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 DOC inmate (including variable medical care and variable operating costs) is \$342 per month. Excluding all medical care, the average variable costs total \$164 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 DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2010 are estimated to range from \$23 to \$71 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

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

Local Expenditures: Expenditures may increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$46 to \$141 per inmate in fiscal 2010.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Commission on Criminal Sentencing Policy, Judiciary (Maryland District Court), Department of Public Safety and Correctional Services, Department of Legislative Services

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