

Department of Legislative Services  
Maryland General Assembly  
2010 Session

FISCAL AND POLICY NOTE

House Bill 762  
Judiciary

(Delegate Kipke, *et al.*)

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Crimes - Harassment - Prohibitions and Penalties

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This bill expands the crime of harassment to include following another in or about a public place or maliciously engaging in a course of conduct that alarms or seriously annoys the other with the intent to abuse, torment, or embarrass the other and increases the maximum imprisonment for the crime from 90 days to three years. The bill adds calls intended to alarm another to the offense of misuse of telephone facilities and equipment and exempts peaceable activities intended to express a political view or provide information to others. Finally, the bill amends the prohibition on the misuse of electronic mail to prohibit a person from using electronic mail or making an Internet transmission or posting with the intent to harass, alarm, annoy, abuse, torment, or embarrass one or more persons. The bill increases the maximum imprisonment penalty for this offense from one year to three years.

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Fiscal Summary

**State Effect:** Potential minimal increase in general fund expenditures due to the bill's incarceration penalties.

**Local Effect:** Potential minimal increase in local expenditures due to the bill's penalty provisions and increases in circuit court cases.

**Small Business Effect:** None.

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Analysis

**Current Law:** A person may not follow another in or about a public place or maliciously engage in a course of conduct that alarms or seriously annoys the other

(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. A violator is guilty of a misdemeanor and subject to maximum penalties of 90 days imprisonment and/or a \$500 fine. The prohibition does not apply to a peaceable activity intended to express a political view or provide information to others.

A person may not use telephone facilities or equipment to make (1) an anonymous call that is reasonably expected to annoy, abuse, torment, harass, or embarrass another; (2) repeated calls with the intent to annoy, abuse, torment, harass, or embarrass another; or (3) a comment, request, suggestion, or proposal that is obscene, lewd, lascivious, filthy, or indecent. A violator is guilty of a misdemeanor and subject to maximum penalties of three years imprisonment and/or a \$500 fine.

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 specific situations involving a court order and a peaceable activity intended to express a political view or provide information to others.

**Background:** According to the National Conference of State Legislatures, 47 states have statutes that specifically include electronic communications in stalking or harassment laws. Under the Violence Against Women Act, cyberstalking is included in the federal interstate stalking statute. According to a 2009 report by the U.S. Department of Justice, approximately 25% of stalking victims reported some form of cyberstalking. Eight-three percent of this group reported experiencing stalking via email, while 35% reported stalking through instant messaging.

**State Expenditures:** According to the Maryland State Commission on Criminal Sentencing Policy, there were four convictions in circuit courts for harassment in fiscal 2009 and no convictions for misuse of electronic mail during the same time period. Since the offenses included in this bill are misdemeanors, it is likely that the majority of these cases are heard in the District Court. This fiscal estimate assumes that the bill's changes will not result in a large increase in cases.

General fund expenditures increase minimally as a result of the bill's incarceration penalties 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 this proposed crime 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

\$2,750 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 \$409 per month. Excluding all medical care, the average variable costs total \$182 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. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has 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 Division of Correction 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 DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

**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 Division of Correction but are confined in a local facility. Per diem operating costs of local detention facilities are expected to range from \$57 to \$157 per inmate in fiscal 2011.

In general, the District Court handles all misdemeanor cases. However, the District Court has concurrent jurisdiction with the circuit courts in cases in which the penalty is confinement for three years or more or a fine of \$2,500 or more. A defendant is typically entitled to a jury trial if the defendant is charged with an offense that permits confinement for more than 90 days. Therefore, the bill's changes to penalties for harassment and misuse of electronic mail may result in an increase in circuit court cases.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 298 (Senator Simonaire, *et al.*) - Judicial Proceedings.

**Information Source(s):** Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), State's Attorneys' Association, National Conference of State Legislatures, National Center for Victims of Crime, U.S. Department of Justice, Department of Legislative Services

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Analysis by: Amy A. Devadas

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