

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 175

(Senator Raskin, *et al.*)

Judicial Proceedings

Judiciary

Crimes - Electronic Communication - Harassment

This bill alters the current prohibition against the use of electronic mail with the intent to harass to prohibit a person from maliciously engaging in a course of conduct through the use of electronic communication (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 bill defines “electronic communication” as the transmission of information, data, or a communication by the use of computer or any other electronic means that is sent to a person and that is received by the person. The bill substitutes references to “electronic communication” for former references to “electronic mail,” eliminates the requirement that the recipient of the transmission be identified by a unique address, and includes the transmission of data as a form of electronic communication.

The bill retains the current statutory penalty of imprisonment for up to one year and/or a maximum fine of \$500.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues from fines imposed in District Court cases. Potential minimal increase in general fund expenditures due to increased District Court caseloads resulting from the expanded application of the offense.

Local Effect: Potential minimal increase in expenditures due to the bill’s application of the current incarceration penalty. Revenues are not affected.

Small Business Effect: None.

Analysis

Current Law: A person may not use electronic mail with the intent to harass (1) one or more persons; or (2) by sending lewd, lascivious, or obscene material. “Electronic mail” means the transmission of information or a communication by the use of a computer or other electronic means that is sent to a person identified by a unique address 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. Violators are guilty of a misdemeanor and subject to maximum penalties of one year imprisonment and/or a \$500 fine.

In addition to the exception for certain peaceable activities, the following persons are authorized to provide information, facilities, or technical assistance to another person who is authorized by federal or State law to intercept or provide electronic mail or to conduct surveillance of electronic mail, if a court order directs the person to provide the information, facilities, or technical assistance: (1) a provider of electronic mail; (2) an officer, employee, agent, landlord, or custodian of a provider of electronic mail; or (3) a person specified in a court order directing the provision of information, facilities, or technical assistance to another who is authorized by federal or State law to intercept or provide electronic mail or to conduct surveillance of electronic mail.

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. Violators are guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a \$500 fine.

Background: The District Court handled 86 cases of electronic harassment in fiscal 2009, 207 cases in fiscal 2010, and 413 cases in fiscal 2011.

According to the Office of the Attorney General, the bill would apply to Facebook messages and instant messaging; however, because of the requirement that the communication be sent “to a person” and “received by the person,” the bill would not include communications on web pages, blogs, Twitter, bulletin boards, or the Facebook or Myspace pages of the poster or of a person other than the person the poster intends to harass.

Additional Information

Prior Introductions: None.

Cross File: HB 8 (Delegate Washington) - Judiciary.

Information Source(s): Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), State's Attorneys' Association, Department of Legislative Services

Fiscal Note History: First Reader - January 31, 2012
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