

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 107

(Senators Brochin and Peters)

Judicial Proceedings

Criminal Law - Electronic Harassment - Penalties

This bill expands the current prohibition on electronic harassment by prohibiting a person from making a communication transmitted through an “electronic device” with the intent to (1) terrify, intimidate, or harass another person; or (2) place another person in reasonable fear of injury or physical harm to that person or the property of that person. The prohibition does not apply to a peaceable activity intended to express a political view or provide information to others. The bill’s provisions also do not affect the lawfulness of specified policies adopted, implemented, or enforced by an electronic mail service provider. Under the bill, an “electronic device” includes a telephone, computer, personal digital assistant, pager, or fax machine.

A violator is guilty of a misdemeanor and is subject to maximum penalties of imprisonment for up to three years and/or a \$5,000 fine.

Fiscal Summary

State Effect: Minimal increase in general fund revenues from fines imposed in District Court cases. Minimal increase in general fund expenditures due to increased incarceration costs resulting from the expanded application of the offense and the bill’s penalty provisions.

Local Effect: Minimal increase in local revenues from fines imposed in circuit court cases. Minimal increase in 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 (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.

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

State Expenditures: General fund expenditures 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 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 \$2,900 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 about \$385 per month. Excluding all medical care, the average variable costs total \$170 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 DOC 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 Revenues: Revenues increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's expanded application of electronic harassment and the bill's penalty provisions. 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 DOC but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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mc/kdm

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