

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 314
Judiciary

(Delegate Atterbeary, *et al.*)

Judicial Proceedings

Peace Orders - Grounds for Relief

This bill adds specified offenses to the list of offenses for which an individual may seek relief under provisions of law regarding peace orders. The offenses added are (1) “misuse of telephone facilities and equipment”; (2) “misuse of electronic communication or interactive computer service”; (3) “revenge porn”; and (4) “visual surveillance.”

Fiscal Summary

State Effect: General fund expenditures for the Judiciary increase by \$65,600 in FY 2017 only for programming changes. Otherwise, the bill can be implemented and enforced using existing resources. General fund revenues increase minimally from additional peace order filings.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
GF Revenue	-	-	-	-	-
GF Expenditure	\$65,600	\$0	\$0	\$0	\$0
Net Effect	(\$65,600)	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: It is anticipated that local law enforcement agencies can serve and enforce additional peace orders using existing resources.

Small Business Effect: None.

Analysis

Current Law:

Peace Orders

A person who does not meet specified relationship standards under the Family Law Article, which governs protective orders, may file a petition for a peace order. A petition for a peace order must allege that specified acts occurred against the petitioner by the respondent within 30 days before the filing of the petition. Specified acts include (1) an act that causes serious bodily harm; (2) an act that places the petitioner in fear of imminent serious bodily harm; (3) assault in any degree; (4) rape or sexual offense, as specified or attempted rape or sexual offense in any degree; (5) false imprisonment; (6) harassment; (7) stalking; (8) trespassing; or (9) malicious destruction of property.

A petition for an interim peace order may be filed with a District Court Commissioner if the clerk of the District Court is not open for business. If the commissioner finds there are reasonable grounds to believe that the respondent has committed, and is likely to commit in the future, one of the acts specified above, the commissioner may issue an interim peace order. A temporary peace order hearing must be held on the first or second day on which a District Court judge is sitting after issuance of the interim protective order, unless the judge continues the hearing for good cause.

If after a hearing on a petition, a judge finds that there are reasonable grounds to believe that the respondent has committed, and is likely to commit in the future, one of the specified acts against the petitioner, the judge may issue a temporary peace order to protect the petitioner. The order must contain only the relief that is minimally necessary to protect the petitioner, as specified. Temporary peace orders are effective for not more than 7 days after service of the order but may be extended for up to 30 days.

After a final peace order hearing, if a judge finds by a preponderance of the evidence that the respondent has committed, and is likely to commit in the future, one of the specified acts against the petitioner, or if the respondent consents to the entry of a peace order, the court may issue a final peace order to protect the petitioner. The order must contain only the relief that is minimally necessary to protect the petitioner. A final peace order can order the respondent to (1) refrain from committing or threatening to commit specified acts; (2) refrain from contacting, attempting to contact, or harassing the petitioner; (3) refrain from entering the residence of the petitioner; or (4) remain away from the place of employment, school, or temporary residence of the petitioner. Final peace orders can also direct the respondent or petitioner to participate in counseling or mediation and order either party to pay filing fees and costs. Relief granted in a final peace order is effective for the

period stated in the order but may not exceed six months. For good cause shown, a peace order may be extended for six months, as specified.

An individual who fails to comply with specified provisions of an interim, temporary, or final peace order is guilty of a misdemeanor and subject to maximum penalties of a \$1,000 fine and/or 90 days imprisonment for a first offense and a \$2,500 fine and/or one year imprisonment for a second or subsequent offense.

Statutory provisions also establish a process by which a juvenile intake officer may file with the court a peace order request that alleges the commission of any of the acts specified above against a victim by a child.

Misuse of Telephone Facilities and Equipment

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.

Misuse of Electronic Communication or Interactive Computer Service

A person may not use an interactive computer service, as specified, to maliciously engage in a course of conduct that inflicts serious emotional distress on a minor or places a minor in reasonable fear of death or serious bodily injury with the intent to (1) kill, injure, harass, or cause serious emotional distress to the minor or (2) place the minor in reasonable fear of death or serious bodily injury.

A person also may not maliciously engage in a course of conduct, through the use of electronic communication, as specified, that alarms or seriously annoys another (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 prohibition does not apply to a peaceable activity intended to express a political view or provide information to others, and there are additional exceptions related to court orders for electronic surveillance.

Revenge Porn

A person is prohibited from intentionally causing serious emotional distress to another by intentionally placing on the Internet a photograph, film, videotape, recording, or any other reproduction of the image of the other person that reveals the identity of the other person with his or her intimate parts exposed or while engaged in an act of sexual contact

(1) knowing that the other person did not consent to the placement of the image on the Internet and (2) under circumstances in which the other person had a reasonable expectation that the image would be kept private. For purposes of the prohibition, the statute provides specific definitions for “intimate parts” and “sexual contact.” The prohibition does not apply to (1) lawful and common practices of law enforcement, the reporting of unlawful conduct, or legal proceedings or (2) situations involving voluntary exposure in public or commercial settings.

Visual Surveillance

A person may not conduct or procure another to conduct visual surveillance of an individual in a private place without the consent of the individual. Visual surveillance means surveillance by direct sight, the use of mirrors, the use of cameras, or the use of an electronic device that can be used surreptitiously to observe an individual. A private place is a dressing room or restroom in a retail store.

A person may not with prurient intent conduct or procure another to conduct visual surveillance of (1) an individual in a private place without the consent of that individual or (2) the private area, as specified, of an individual by use of a camera without the consent of the individual under circumstances in which a reasonable person would believe that the private area of the individual would not be visible to the public, regardless of whether the individual is in a public or private place. Visual surveillance is the deliberate, surreptitious observation of an individual by any means, including surveillance by direct sight, the use of mirrors, or the use of cameras. A private place is a room in which a person can reasonably be expected to fully or partially disrobe and has a reasonable expectation of privacy, as specified.

A person may not place or procure another to place a camera on real property where a private residence is located to conduct deliberate surreptitious observation of an individual inside the private residence, as specified.

Background: In fiscal 2015, the District Court granted 7,400 interim peace orders, 15,961 temporary peace orders, and 6,237 final peace orders.

According to District Court statistics, in fiscal 2015 there were (1) 1,514 violations for misuse of telephone facilities and equipment; (2) 499 violations for misuse of electronic communication or interactive computer service; (3) 58 violations for revenge porn; and (4) 94 violations for visual surveillance.

Additional Information

Prior Introductions: None.

Cross File: SB 346 (Senator Ramirez, *et al.*) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), State's Attorneys' Association, Department of State Police, Department of Legislative Services

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