

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 405
(Senator Lee, *et al.*)
Judicial Proceedings

Criminal Law - Extortion - Unauthorized Software

This bill creates a criminal offense pertaining to extortion conducted through unauthorized software. Under the bill, a person who has the intent to unlawfully extort money, property, or anything of value from another may not knowingly create, place, or introduce without authorization software into a computer, computer system, or computer network (computer/system/network) if the software is designed to encrypt, lock, or otherwise restrict access or use by authorized users of the computer/system/network. Violators are guilty of a felony, punishable by imprisonment for up to 10 years and/or a \$10,000 maximum fine.

A person who has suffered a specific and direct injury as a result of the acts prohibited under the bill may bring a civil action in a court of competent jurisdiction. A court may award actual damages and reasonable attorney's fees and court costs in such an action. A conviction for the offense established by the bill is not a prerequisite for maintenance of this civil action.

Fiscal Summary

State Effect: Minimal increase in State expenditures due to the bill's incarceration penalty. Revenues are not affected.

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

Small Business Effect: Potential meaningful impact on small businesses if the bill deters computer attacks against small businesses or if businesses subject to the prohibited activities can recover damages.

Analysis

Current Law: Under the State's general extortion statute, a person may not obtain, attempt to obtain, or conspire to obtain money, property, labor, services, or anything of value from another person with the person's consent, if the consent is induced by wrongful use of actual or threatened (1) force or violence; (2) economic injury; (3) destruction, concealment, removal, confiscation, or possession of any immigration or government identification document with intent to harm the immigration status of another person; or (4) notification of law enforcement officials about another person's undocumented or illegal immigration status.

The prohibition does not apply to legitimate efforts by employees or their representatives to obtain certain wages, hours, or working conditions.

Classification of and penalties for violations of the statute vary based on the value of the property, labor, or services extorted, as noted in **Exhibit 1**. A prosecution for felony extortion must be instituted within five years after the crime was committed.

Exhibit 1

Classification of and Penalties for Violations of the General Extortion Statute

Value of Property, Labor, or Services Extorted	Classification and Penalty
Less than \$1,000	Misdemeanor Imprisonment for up to 18 months and/or a \$1,000 maximum fine
At least \$1,000 but less than \$10,000	Felony Imprisonment for up to 10 years and/or a \$10,000 maximum fine
At least \$10,000 but less than \$100,000	Felony Imprisonment for up to 15 years and/or a \$15,000 maximum fine
\$100,000 or more	Felony Imprisonment for up to 25 years and/or a \$25,000 maximum fine

Source: Department of Legislative Services

Background: Ransomware attacks are an increasingly popular crime in which individuals, who are often hackers based overseas, use software viruses to assume control of or encrypt computers, data stored in computers, or computer networks and refuse to release control of the computers or data unless a ransom is paid, often through the Internet currency Bitcoin. Unpaid ransoms can result in escalating demands or permanent loss of data. Victims of ransomware attacks include ordinary citizens, small businesses, public libraries, hospitals, local governments, and larger businesses/entities. Because the perpetrators are often based overseas, there is very little local and federal law enforcement can do, especially within the narrow window of time in which victims must pay a ransom.

In March 2016, computers at MedStar Health, a prominent health care system in the Maryland/Washington, DC area, were attacked by a virus that blocked some users from logging into its system. MedStar responded to the attack by shutting down extensive portions of its computer network. While there have been no official reports that the virus was ransomware, employees reported seeing pop-up screens on their computers demanding payment in Bitcoin.

The Federal Bureau of Investigation (FBI) estimates that ransomware payments in 2016 totaled \$1 billion, a significant increase from the \$24 million in estimated payments during 2015. In an attempt to understand the scope of ransomware attacks and develop solutions and approaches to attacks, the FBI is asking victims to file reports through its Internet Crime Complaint Center. The lucrative nature of the attacks has created a growth industry within criminal networks, with reports of ransomware applications and toolkits being available for purchase and “ransomware as a service,” through which individuals can purchase time on a criminal network designed to launch attacks in return for paying the network provider a percentage of the extorted funds.

In fiscal 2015, State correctional facilities received three offenders convicted of extortion. According to the Department of Public Safety and Correctional Services (DPSCS), extortion was not the most serious offense for any of the offenders. In fiscal 2015, DPSCS conducted 12 probation intakes under the database code for extortion.

State Expenditures: General fund expenditures increase minimally as a result of the bill’s incarceration penalty due to more people being committed to State correctional 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 State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,600 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 State

inmate (including variable health care costs) is about \$800 per month. Excluding all health care, the average variable costs total \$210 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 a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person had 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 State but are confined in a local facility; beginning October 1, 2017, counties may receive the additional \$45 per day grant for inmates sentenced to the custody of the State who receive reentry or other prerelease programming and services from 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 State correctional facilities. The Baltimore Pretrial Complex, 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 incarceration penalty. 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 State but are confined in a local facility; beginning October 1, 2017, counties may receive the additional \$45 per day grant for inmates sentenced to the custody of the State who receive reentry or other prerelease programming and services from 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: HB 340 (Delegate Barron, *et al.*) - Judiciary.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of State Police; *Los Angeles Times*; TIME.com; pcmag.com; wired.com; BBC News; NBC News; *USA Today*; Department of Legislative Services

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md/kdm

Analysis by: Amy A. Devadas

Direct Inquiries to:

(410) 946-5510

(301) 970-5510