

Department of Legislative Services  
Maryland General Assembly  
2022 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

Senate Bill 328

(Senator Waldstreicher, *et al.*)

Judicial Proceedings

Judiciary

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Criminal Law - Stalking - Definition

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This bill alters the definition of stalking to include conduct currently defined in statute as stalking that occurs (1) in person; (2) by electronic communication, as defined in § 3-805 of the Criminal Law Article; or (3) through the use of a device that can pinpoint or track the location of another without the person's knowledge or consent.

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Fiscal Summary

**State Effect:** Potential minimal increase in general fund revenues and expenditures due to the bill's expanded application of existing penalties.

**Local Effect:** Potential minimal increase in local revenues and expenditures due to the bill's expanded application of existing penalties.

**Small Business Effect:** None.

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Analysis

**Current Law:** A person may not engage in "stalking." "Stalking" means a malicious course of conduct that includes approaching or pursuing another where:

- the person intends to place or knows or reasonably should have known the conduct would place another in reasonable fear of serious bodily injury or death; of an assault in any degree; of rape or sexual offense as defined by §§ 3-303 through 3-308 of the Criminal Law Article or attempted rape or sexual offense in any degree; of false imprisonment; or that a third person likely will suffer any of these acts; or

- the person intends to cause or knows or reasonably should have known that the conduct would cause serious emotional distress to another.

The prohibition against stalking does not apply to conduct that is performed to ensure compliance with a court order; performed to carry out a specific lawful commercial purpose; or authorized, required, or protected by local, State, or federal law.

Stalking is a misdemeanor, punishable by imprisonment for up to five years and/or a \$5,000 maximum fine. A sentence imposed for stalking may be separate from and consecutive to or concurrent with a sentence for any other crime based on the acts establishing the stalking violation.

*Misuse of Electronic Communication or Interactive Computer Service – § 3-805 of the Criminal Law Article*

Section 3-805 of the Criminal Law Article defines “electronic communication” as the act of transmitting any information, data, writing, image, or communication by the use of a computer or any other electronic means, including a communication that involves the use of email, an instant messaging service, an Internet website, a social media application, a network call, a facsimile machine, or any other Internet-based communication tool.

Among other things, § 3-805 prohibits a person from maliciously engaging in a course of conduct, through the use of electronic communication, 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 specified peaceable activities. Violators are guilty of a misdemeanor, punishable by imprisonment for up to three years and/or a \$10,000 maximum fine.

**Additional Comments:** According to the Maryland Sentencing Guidelines Database, four individuals were sentenced for four total counts of stalking in the State’s circuit courts during fiscal 2021. According to the Department of Public Safety and Correctional Services, during fiscal 2021, the Division of Correction received two inmates and the Division of Parole and Probation had 29 probation intakes for stalking.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** HB 148 (Delegate Bartlett) - Judiciary.

**Information Source(s):** Harford, Montgomery, and Talbot counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State’s Attorneys’ Association; Department of Public Safety and Correctional Services; Department of Legislative Services

**Fiscal Note History:** First Reader - January 25, 2022  
km/aad Third Reader - March 23, 2022  
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