

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1282
Judiciary

(Delegate Tomlinson)

**Criminal Law - Uploading Criminal Activity on Social Media Application -
Prohibition (MaKenzi's Law)**

This bill prohibits a person from uploading a video of an action that is a crime under State or federal law to a “social media application” with the intent to promote or condone the activity. Violators are guilty of a misdemeanor and on conviction subject to imprisonment for up to one year and/or a fine of up to \$2,500.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances or operations, as discussed below.

Local Effect: The bill is not expected to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: “Social media application” means any program, software, or website that allows a person to become a registered user for the purpose of establishing personal relationships with one or more other users through (1) direct or real-time communication or (2) the creation of websites or profiles capable of being viewed by the public or other users.

Current Law:

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

A person may not maliciously engage 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 legal purpose.

A person may not use an “interactive computer service” 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 (1) to kill, injure, harass, or cause serious emotional distress to the minor or (2) to place the minor in reasonable fear of death or serious bodily injury.

A person may not maliciously engage in an electronic communication if (1) the electronic communication is part of a series of communications and has the effect of intimidating or harassing a minor and causing physical injury or serious emotional distress to a minor and (2) the person engaging in the electronic communication intends to intimidate or harass the minor and cause physical injury or serious emotional distress to the minor.

A person may not maliciously engage in a single significant act or course of conduct using an electronic communication if:

- the person’s conduct, when considered in its entirety, has the effect of intimidating or harassing a minor and causing physical injury or serious emotional distress to a minor;
- the person intends to intimidate or harass the minor and cause physical injury or serious emotional distress to the minor; and
- in the case of a single significant act, the communication (1) is made after receiving a reasonable warning or request to stop; (2) is sent with a reasonable expectation that the recipient would share the communication with a third party; or (3) shocks the conscience.

A person may not maliciously engage in electronic conduct if (1) the act of electronic conduct has the effect of intimidating or harassing a minor and causing physical injury or serious emotional distress to a minor and (2) the person intends to intimidate or harass the minor and cause physical injury or serious emotional distress to the minor.

The above prohibitions do not apply to a peaceable activity intended to express a political view or provide information to others or conducted for a lawful purpose.

A person convicted of violating one of the aforementioned crimes is guilty of a misdemeanor and subject to imprisonment of up to three years and/or a maximum fine of \$10,000.

A person may not violate these provisions with the intent to induce a minor to commit suicide. Such violators are guilty of a misdemeanor and subject to maximum penalties of 10 years' imprisonment and/or a \$10,000 fine.

Under these provisions, “electronic communication” means 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. An “interactive computer service” means an information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including a system that provides access to the Internet and cellular phones.

First Amendment Protections and Social Media – Generally

In general, the First Amendment to the U.S. Constitution protects free speech from government interference, and that protection is extended to speech posted online. While private social media companies may impose terms of service agreements with users that regulate the speech allowed or disallowed on their respective platforms, in general, the government cannot further infringe or censor content unless an exception applies.

The U.S. Supreme Court has recognized several limited exceptions to First Amendment protections, including incitement. In *Brandenburg v. Ohio*, 395 U.S. 444 (1969) the U.S. Supreme Court determined that states may prohibit speech advocating violence if that “advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”

Searches and Seizures – No Expectation of Privacy on Social Media

In general, the Fourth Amendment protects against unreasonable searches and seizures, but it does not apply to information voluntarily shared with the public. In general, information that is publicly posted on social media is generally not considered private and can be accessed by police without a search warrant.

State Fiscal Effect: The bill is not anticipated to materially affect State finances or operations. The Judiciary advises that it does not anticipate a significant fiscal or operational impact from the bill on the District Court. The Department of Public Safety

and Correctional Services advises that it does not anticipate a fiscal or operational impact from the bill.

The Office of the Public Defender (OPD) advises that the bill likely increases its workload and may result in hundreds of new cases and matters statewide given the language of the bill, filming and posting about public protests and civil disobedience, and the prevalence of social media usage. To the extent that new cases under the bill are covered by an exception to First Amendment protections, increased litigation may be required. As a result, OPD estimates an increase in its workload equivalent to three additional assistant public defenders and one additional secretary, at a cost of \$332,687 in fiscal 2026 and increasing to \$449,182 by fiscal 2030. OPD bases its estimate on Maryland caseload standards, which also require one secretary for every three attorneys.

The Department of Legislative Services (DLS) advises that, while the bill is broad in nature, it is generally unclear how it will be enforced. This estimate assumes that absent additional potential crimes and charges or reports of violations from the public, law enforcement will not investigate, and State's Attorneys will not charge for the offense established under the bill. Thus, it is likely that OPD can handle additional workloads under the bill using existing budgeted resources. Should actual workloads under the bill necessitate additional positions, OPD can request those resources through the annual budget process.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

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

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