

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 726

(Senator Zirkin, *et al.*)

Judicial Proceedings

Judiciary

Criminal Law - Electronic Harassment and Bullying (Grace's Law 2.0)

This bill makes several changes to the prohibition on misuse of electronic communication or interactive computer service under § 3-805 of the Criminal Law Article. A person may not violate the prohibitions under § 3-805, as amended by the bill, with the intent to induce a minor to commit suicide. A person who violates § 3-805 with the intent to induce a minor to commit suicide is guilty of a misdemeanor, punishable by imprisonment for up to 10 years and/or a \$10,000 maximum fine. All other violations of § 3-805 are misdemeanors, punishable by imprisonment for up to 3 years and/or a \$10,000 maximum fine. The bill includes a severability clause establishing that if any of the bill's provisions are held invalid by a court, the invalidity of those provisions does not affect the validity of the other provisions and application of those provisions.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

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

Small Business Effect: None.

Analysis

Bill Summary: The bill repeals the definition of "interactive computer service" and redefines "electronic communication" to mean the transmission of any information, data, sign, signal, writing, image, sound, intelligence, 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.

The bill repeals the existing prohibition on misusing an interactive computer service and instead prohibits a person from:

- maliciously engaging in an electronic communication (1) if the content, manner, time, or place, or the context of the electronic communication as part of a series of communications, intimidates, torments, or harasses a minor and (2) with the intent to intimidate, torment, or harass the minor;
- using an electronic communication to maliciously engage in behavior, that, when considered in its entirety, results in specified effects, including intimidation of or substantial emotional distress to a minor and damage to a minor's property;
- using a computer or computer network to engage in the following acts with the intent to intimidate, torment, or harass a minor: build a fake social media profile; pose as another in an electronic communication; follow a minor online or using an instant messaging service; or disseminate or encourage others to disseminate sexual information about the minor; and
- using a computer or computer network to engage in specified acts with the intent to intimidate, torment, or harass a minor or the minor's parent or guardian, including disseminating images of the minor and subscribing the minor to a pornographic website.

Current Law: Pursuant to Chapter 369 of 2013, 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 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. Violators are guilty of a misdemeanor, punishable by imprisonment for up to one year and/or a \$500 maximum fine.

An “interactive computer service” is defined as 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.

A person also 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 a legal purpose. “Electronic communication” means the transmission of information, data, or a communication by the use of a computer or other electronic means that is sent to a person 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, and there are additional exceptions related to court orders for electronic surveillance. Violators are guilty of a misdemeanor and subject to maximum penalties of one year imprisonment and/or a \$500 fine.

Background: According to the Centers for Disease Control and Prevention’s *2016 Bullying Fact Sheet*, approximately 16% of high school students reported in 2015 that they were bullied electronically during the 12 months preceding the survey.

The bill is named in honor of Grace McComas, a 15-year-old from Howard County who, after repeated and vicious harassment online by a neighbor, committed suicide in April 2012.

The Judiciary advises that there were 576 violations of § 3-805 of the Criminal Law Article filed in the District Court during fiscal 2017. A violation is a charge filed in the court, it is not a conviction, and one person may be associated with multiple violations.

The Division of Corrections advises that it conducted intake on two inmates sentenced to one year each under § 3-805 during fiscal 2017. The Division of Parole and Probation conducted intake on eight individuals sentenced to probation under § 3-805 during fiscal 2017. The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) advises that based on a review of the Maryland Sentencing Guidelines Database, MSCCSP received information on one inmate sentenced in the State’s circuit courts for a violation of § 3-805.

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

State Expenditures: General fund expenditures increase minimally as a result of the bill’s incarceration penalties due to more people being committed to State correctional facilities and due to people being committed for longer periods of time 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 \$3,800 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. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or 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.

While there appears to be a sizeable number of violations filed under the statute, the statistics from the Division of Correction, the Division of Parole and Probation, and MSCCSP appear to indicate that these violations are, for the most part, subject to dispositions other than guilty verdicts, sentences, and probation. Though the bill incorporates additional behavior than what is covered under § 3-805 of the Criminal Law Article and increases the penalties for violations of the statute, it is entirely likely that the same types of dispositions will occur under the bill as under the existing statute.

Local Revenues: Revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

Baltimore, Dorchester, and Garrett counties all advise that they expect minimal or no fiscal impact from the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Dorchester, Garrett, and Montgomery 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 State Police; Centers for Disease Control and Prevention; Department of Legislative Services

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