

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 667
Judiciary

(Delegate Atterbeary, *et al.*)

Stalking - Violation of Conditions of Release and Disqualifying Crime

This bill adds the crime of stalking under § 3-802 of the Criminal Law Article to the list of charges for which a person is statutorily prohibited from violating a condition of pretrial or posttrial release that prohibits contact, harassment, or abuse of the alleged victim or going in or near the alleged victim’s residence or place of employment. The bill also adds the disposition of probation before judgment for stalking to the definition of “convicted of a disqualifying crime” under § 5-101 of the Public Safety Article.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures for incarcerations. The bill is not expected to materially affect State revenues.

Local Effect: Minimal increase in local expenditures for incarcerations. The bill is not expected to materially affect local revenues.

Small Business Effect: None.

Analysis

Current Law:

Section 5-213.1 of the Criminal Procedure Article: Chapter 187 of 2010 created § 5-213.1 of the Criminal Procedure Article and established that a person charged with committing a sexual crime against a minor is prohibited from violating a condition of pretrial or posttrial release that prohibits the person from contacting, harassing, or abusing the victim or going in or near the alleged victim’s residence or place of employment.

Violators are guilty of a misdemeanor, punishable by up to 90 days imprisonment. A police officer is authorized to make a warrantless arrest if the officer has probable cause to believe that the person has violated a condition of pretrial or posttrial release under these circumstances.

Chapters 427 and 428 of 2018 added a crime of violence under § 5-101 of the Public Safety Article and a crime against a victim who is a person eligible for relief under § 4-501 of the Family Law Article to the list of charges under § 5-213.1.

Pretrial Release and Contact with Alleged Victim: The court or a District Court commissioner must consider including reasonable protections for the safety of any alleged victim as a condition of pretrial release for a defendant. If the victim has requested reasonable protections for safety, the court or a District Court commissioner must consider including provisions that prohibit contact with the alleged victim or the alleged victim's premises or place of employment.

Under Maryland Rule 4-216.1, a judicial officer may impose additional conditions on pretrial release, but only if they are needed to ensure the defendant's appearance in court; to protect the community, victims, witnesses, or other persons; and to maintain the integrity of the judicial process, as demonstrated by the circumstance of the individual case. The Rule requires that preference be given to additional conditions without financial terms. The Rule also specifies several types of special conditions of release that may be imposed on a defendant, including any lawful condition that will help ensure the appearance of the defendant or the safety of each alleged victim, other persons, or the community. When making a pretrial release decision, a judicial officer must consider the danger the defendant poses to an alleged victim, another person, or the community.

A court may issue a bench warrant for the arrest of a defendant who violates a condition of pretrial release. Once the defendant is presented before a court, the court may revoke the defendant's pretrial release or continue the defendant's pretrial release with or without conditions.

Under Maryland Rule 4-349, after conviction, a trial judge may release the defendant pending sentencing or appellate review subject to conditions. The defendant has the burden of establishing that he/she will not flee or pose a danger to any other person or to the community. The court may consider the same factors that must be considered for pretrial release but may impose different or greater conditions for posttrial release. The court, on motion of any party, or on its own initiative, and after notice and opportunity for hearing, may revoke an order of release or amend it to impose additional or different conditions of release. If its decision results in the detention of the defendant, the court must state the reasons for its action in writing or on the record.

Stalking (§ 3-802 of the Criminal Law Article): 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.

“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.

Disqualifying Crime: State law contains several factors which prohibit a person from possessing a regulated firearm, a rifle, or a shotgun, including if the person has been convicted of a disqualifying crime. In general, a person who violates this prohibition is guilty of a misdemeanor and subject to maximum penalties of five years imprisonment and/or \$10,000 fine.

“Disqualifying crime” means a crime of violence under § 5-101 of the Public Safety Article, a felony, or a misdemeanor in the State that carries a statutory penalty of imprisonment of more than two years. “Convicted of a disqualifying crime” includes a case in which a person received probation before judgment for a crime of violence and a case in which a person received probation before judgment in a domestically related crime. “Convicted of a disqualifying crime” does not include a case in which a person received a probation before judgment for second-degree assault (unless the crime was a domestically related crime) or a crime which was expunged under Title 10, Subtitle 1 of the Criminal Procedure Article.

Section 5-101 of the Public Safety Article defines a “crime of violence” as (1) abduction; (2) arson in the first degree; (3) assault in the first or second degree; (4) burglary in the first, second, or third degree; (5) carjacking and armed carjacking; (6) escape in the first degree; (7) kidnapping; (8) voluntary manslaughter; (9) maiming; (10) mayhem; (11) murder in the first or second degree; (12) rape in the first or second degree;

(13) robbery; (14) robbery with a dangerous weapon; (15) sexual offense in the first, second, or third degree; (16) home invasion; (17) an attempt to commit offenses (1) through (16); or (18) assault with the intent to commit offenses (1) through (16) or a crime punishable by imprisonment for more than one year.

A “domestically related crime” (under § 6-233 of the Criminal Procedure Article) is a crime committed by a defendant against a victim who is a “person eligible for relief” (under § 4-501 of the Family Law Article), or is a person who had a sexual relationship with the defendant within 12 months before the commission of the crime. Under the applicable provisions of the Family Law Article, a “person eligible for relief” includes (1) the current or former spouse of the respondent; (2) a cohabitant of the respondent; (3) a person related to the respondent by blood, marriage, or adoption; (4) a parent, stepparent, child, or stepchild of the respondent or the person eligible for relief who resides or resided with the respondent or person eligible for relief for at least 90 days within one year before the filing of the petition; (5) a vulnerable adult; (6) an individual who has a child in common with the respondent; or (7) an individual who has had a sexual relationship with the respondent within one year before the filing of the petition.

Background: According to the Judiciary, in fiscal 2018, there were 197 stalking violations filed in the District Court, which resulted in 5 guilty dispositions. An additional 46 violations of criminal stalking were filed in the circuit courts, resulting in 9 guilty dispositions. There was one probation before judgment disposition under § 3-802 across both court systems during fiscal 2018. A violation is a charge filed with the court. It is not a conviction, and one person may be associated with multiple violations.

State Expenditures: General fund expenditures for the Department of Public Safety and Correctional Services increase minimally due to more people being committed to State correctional facilities and increased payments to counties for reimbursement of inmate costs. The bill expands the application of § 5-213.1 of the Criminal Procedure Article and the application of criminal prohibitions for individuals convicted of a disqualifying crime. The number of people incarcerated as a result of the bill is expected to be minimal.

A conviction for stalking is considered a conviction of a disqualifying crime under existing statute because stalking is a misdemeanor that carries a statutory penalty of imprisonment of more than two years. However, the bill qualifies a probation before judgment for stalking as a conviction of a disqualifying crime. As previously noted, there was one probation before judgment disposition under § 3-802 of the Criminal Law Article in the State’s courts during fiscal 2018.

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.

Local Expenditures: Local incarceration expenditures increase minimally due the bill's changes. 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.

Additional Information

Prior Introductions: None.

Cross File: SB 138 (Senator Lee, *et al.*) - Judicial Proceedings.

Information Source(s): 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 State Police; Department of Legislative Services

Fiscal Note History: First Reader - February 7, 2019
md/kdm

Analysis by: Amy A. Devadas

Direct Inquiries to:

(410) 946-5510

(301) 970-5510