

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING \$500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 555C.

In subsections (b) and (c) of this section, the former references to "a communication" and "communications" are deleted as included in the definition of "electronic mail".

In the introductory language of subsection (c) of this section, the phrase "a court order directs the person to provide" is substituted for the former phrase "the provider ... has been provided with a court order signed by the authorizing judge directing the provision of", for clarity.

In subsection (c)(2) of this section, the phrase "agent ... of a provider of electronic mail" is patterned after nearly identical language in the second sentence of CJ § 10-402(c)(1)(ii)2, which provides a comparable exception to the general prohibition against intercepting wire, oral, or electronic communications for a provider of wire or electronic communication service, or its officers, employees, or agents, or landlords, custodians, or other persons specified in a court order directing the provision of information, facilities, or technical assistance to federal or State law enforcement officers.

In subsection (c)(3) of this section, the phrase "in a court order directing the provision of information, facilities, or technical assistance to another who is authorized by federal or State law to intercept or provide electronic mail" is added for clarity.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that subsection (b) of this section seems to present a dilemma. Since item (1) prohibits the use of electronic mail with the intent to harass regardless of the content of the electronic mail, then item (2), which prohibits sending lewd, lascivious, or obscene material, seems to be surplusage. On the other hand, item (2) imposes a particular limit and prohibits the use of electronic mail with the intent to harass by sending lewd, lascivious, or obscene material. Moreover, item (1) seems to be surplusage in any event because the definition of "electronic mail" is "the transmission of information or a communication by the use of a computer or other electronic means *that is sent to a person identified by a unique address and that is received by the person*" (emphasis added). It is unclear whether the intention of this subsection is to prohibit the use of electronic mail with the intent to harass in general, or to prohibit the use of electronic mail with the intent to harass only in a certain manner, *i.e.*, by sending lewd, lascivious, or obscene material. The General Assembly may wish to consider substantive legislation to clarify this provision.

Defined term: "Person" § 1-101