

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 705

(Senator Montgomery, *et al.*)

Judicial Proceedings

Judiciary

Criminal Law - Assault - First Responders

This bill expands provisions prohibiting felony second-degree assault to include the intentional causing of physical injury to another person by a person who knows or has reason to know that the victim is a firefighter, an emergency medical technician, a rescue squad member, or any other first responder engaged in providing emergency medical care or rescue services.

Fiscal Summary

State Effect: The bill does not materially affect State finances, as discussed below.

Local Effect: Potential minimal increase in local revenues from fines imposed in circuit court cases. Expenditures are not affected.

Small Business Effect: None.

Analysis

Current Law: A person may not commit an assault. However, the consequences of an assault vary depending on the circumstances involved.

First-degree Assault: A person commits a first-degree assault if he/she (1) intentionally causes or attempts to cause serious physical injury to another person or (2) commits an assault with a firearm, including a handgun, assault pistol, machine gun, or other specified firearms. A person who commits a first-degree assault is guilty of a felony and subject to imprisonment for up to 25 years.

Felony Second-degree Assault: A person commits a felony second-degree assault if he/she intentionally causes physical injury to another if the person knows or has reason to know that the other person is a law enforcement officer or parole or probation agent engaged in the performance of the officer/agent's official duties. "Physical injury" means any impairment of physical condition, excluding minor injuries. Violators are subject to imprisonment for up to 10 years and/or a maximum fine of \$5,000.

Misdemeanor Second-degree Assault: The misdemeanor second-degree assault statute applies to assaults that are not considered to be felony assaults in the first or second degrees. Under the misdemeanor second-degree assault statute, a person is prohibited from committing an assault. A violator is subject to imprisonment for up to 10 years and/or a maximum fine of \$2,500. Assault means the crimes of assault, battery, and assault and battery, which are defined through case law.

Background: According to the Maryland State Commission on Criminal Sentencing Policy, there were 20 convictions for felony second-degree assault in the State's circuit courts during fiscal 2013 and 15 convictions in fiscal 2014. One of the fiscal 2014 offenders represented two of the convictions.

The Department of Public Safety and Correctional Services conducted intake on 1,151 individuals for second-degree assault (felony or misdemeanor) in fiscal 2014. For 1,048 individuals in this group, second-degree assault (felony or misdemeanor) was their most serious offense. The average sentence for these individuals was 39.4 months.

State Fiscal Effect: Given that the maximum incarceration penalty for misdemeanor second-degree assault is the same as the maximum incarceration penalty for felony second-degree assault, this bill is not expected to materially affect State finances. This fiscal and policy note assumes that the acts affected by this bill would be prosecuted as misdemeanor second-degree assaults under the existing second-degree assault law and that the bill's specification of these acts as felony second-degree assaults based on the victim of the crime does not increase the likelihood of charges being filed and convictions being secured in these cases.

However, it should be noted that changing crimes from misdemeanors to felonies means that (1) such cases are likely to be filed in the circuit courts rather than the District Court and (2) some persons may eventually serve longer incarcerations due to enhanced penalty provisions applicable to some offenses for prior felony convictions. Accordingly, it is assumed that this bill shifts an unknown number of cases from the District Court to the circuit courts. It is not known whether such a prospective shift may spur more plea bargains and affect actual sentencing practices for this offense.

The Office of the Public Defender (OPD) advises that the bill has a fiscal impact because felonies require more preparation and casework than misdemeanor cases. OPD also advises that reclassifying this behavior from a misdemeanor to a felony makes it less likely that these cases will be disposed of before trial. However, given the number of cases likely to be affected by the bill and the seriousness of an assault against a first responder, it is unlikely that the bill has a significant impact on OPD workloads.

Local Fiscal Effect: Local revenues may increase minimally from fines imposed in circuit court cases. Because the incarceration penalty for felony and misdemeanor assault in the second degree is the same, local incarceration expenditures are not likely to be affected.

The Montgomery County Police Department and the Wicomico County Sheriff's Office advise that the bill does not result in increased expenditures for their agencies. Talbot County advises that the bill does not have a fiscal impact.

Baltimore City advises that the bill may increase expenditures for overtime/backfill costs if public safety officials have to testify in court. However, due to the small number of cases to which the bill applies, any such increase is minimal. The Department of Legislative Services advises that any increase in expenditures for public safety officials to testify in court only occurs to the extent that these costs exceed current expenditures for these officials to testify in *misdemeanor* second-degree assault cases involving first responders.

Additional Information

Prior Introductions: HB 1183 of 2014 received an unfavorable report from the House Judiciary Committee. Its cross file, SB 797, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: HB 236 (Delegate Jalisi, *et al.*) - Judiciary.

Information Source(s): Baltimore City; Montgomery, Talbot, and Wicomico counties; Maryland State Commission on Criminal Sentencing Policy; Maryland Institute for Emergency Medical Services Systems; Office of the Public Defender; Department of Public Safety and Correctional Services; Department of Legislative Services

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