

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1154 (Senator Oaks)
Judicial Proceedings

Criminal Law - Assault by Strangulation or Suffocation - Penalties

This bill expands the crime of felony first-degree assault to include the commission of an assault through the intentional strangling, suffocating, or impeding of the normal breathing or circulation of blood of another by applying pressure to the other person's throat or neck or by blocking the other person's nose or mouth. A violator is subject to the existing statutory penalties for felony first-degree assault.

Fiscal Summary

State Effect: Minimal decrease in general fund revenues from fines imposed in District Court cases. Minimal increase in general fund expenditures as a result of the bill's expanded application of existing incarceration penalties.

Local Effect: Minimal decrease in local revenues from fines imposed in circuit court cases. Minimal decrease in local expenditures if the bill results in more defendants being incarcerated in State correctional facilities instead of local correctional facilities.

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 (1) a law enforcement officer or parole or probation agent engaged in the performance of the officer/agent’s official duties or (2) a firefighter, an emergency medical technician, a rescue squad member, or any other first responder engaged in providing emergency medical care or rescue services. “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 degree. 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 various studies, 23% to 68% of female victims of domestic violence have experienced at least one strangulation assault by a male partner during their lifetimes. Domestic violence experts note that strangulation assaults pose a challenge to law enforcement and prosecutors, since they often leave no marks or external evidence on the skin.

The Department of Public Safety and Correctional Services (DPSCS) advises that it conducted intake at its correctional facilities for 963 individuals convicted of second-degree assault (felony or misdemeanor) in fiscal 2016. For 836 individuals in this group, second-degree assault (felony or misdemeanor) was their most serious offense. The average sentence for these individuals was 44.1 months. During fiscal 2016, DPSCS conducted intakes on 350 individuals for felony first-degree assault. For 266 of these individuals, first-degree assault was their most serious offense. The average sentence for these individuals was 106.7 months.

Chapter 651 of 2016 (HB 1371 of 2016) required the Maryland Police Training and Standards Commission (MPTSC), after conducting a review of the experience and best practices of other states, to develop a lethality screening protocol and training for law enforcement officers to employ when investigating complaints of domestic violence and assault by strangulation. The commission was required to report to the General Assembly the result of the review, the protocol, and the training developed in accordance with the legislation by January 1, 2017. As a result, the [*Lethality Assessment Program Report*](#) was

submitted in December 2016 and a [lesson plan on domestic violence-related nonfatal strangulation](#) was issued in early 2017.

State Revenues: General fund revenues decrease if misdemeanor second-degree assault cases (which are subject to a monetary penalty) in the District Court are prosecuted as felony first-degree assault cases (which do not carry a monetary penalty) in the circuit courts.

State Expenditures: General fund expenditures for DPSCS increase minimally if cases subject to misdemeanor second-degree assault incarceration penalties are prosecuted as felony first-degree assault cases.

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. Since the bill reclassifies activity currently prohibited under criminal statutes, the bill is not expected to affect the overall caseloads of the Judiciary or the Office of the Public Defender.

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 \$3,600 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new State inmate (including variable health care costs) is about \$800 per month. Excluding all health care, the average variable costs total \$210 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. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person had served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility; beginning October 1, 2017, counties may receive the additional \$45 per day grant for inmates sentenced to the custody of the

State 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 Revenues: Local revenues decrease minimally as a result of fewer monetary penalties from circuit court misdemeanor second-degree assault cases.

Local Expenditures: Expenditures decrease minimally if more individuals are incarcerated in State correctional facilities under the bill. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility; beginning October 1, 2017, counties may receive the additional \$45 per day grant for inmates sentenced to the custody of the State who receive reentry or other prerelease programming and services from a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: HB 1371 of 2016, as introduced, contained provisions identical to the ones in the bill as well as provisions requiring MPTSC to develop a lethality screening protocol and training for domestic violence cases and assaults by strangulation. The provisions contained in the bill were stricken from HB 1371 prior to its enactment as Chapter 651.

Cross File: None.

Information Source(s): Montgomery and Prince George's counties; City of Bowie; 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; Department of Legislative Services

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