

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1570
Judiciary

(Delegate S. Howard, *et al.*)

Criminal Law - Assault on an Elder Adult - Penalties

This bill prohibits a person from committing a first-degree assault or misdemeanor second-degree assault against an individual who is at least age 65 (“elder adult”) and subjects a violator of these prohibitions to specified penalties. The bill applies prospectively to offenses occurring on or after the bill’s October 1, 2018 effective date.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures due to the bill’s incarceration penalties. Revenues are not affected.

Local Effect: Minimal increase in local expenditures due to the bill’s incarceration penalty for misdemeanor second-degree assault. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: A person who commits a first-degree assault against an elder adult is guilty of a felony, punishable by imprisonment for at least 5 years but not exceeding 25 years. The five-year mandatory minimum sentence is nonsuspendable and nonparolable.

A person who commits a second-degree assault against an elder adult is guilty of a misdemeanor, punishable by imprisonment for at least 1 year but not exceeding 10 years and/or a \$2,500 maximum fine. The one-year mandatory minimum sentence is nonsuspendable and nonparolable.

A person subject to a mandatory minimum sentence under the bill may be eligible for parole as provided under § 4-305 of the Correctional Services Article, which addresses parole eligibility for inmates at the Patuxent Institution.

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 (1) 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 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.

The District Court has concurrent jurisdiction with the circuit courts over felony second-degree assaults.

Background: According to the Judiciary, during fiscal 2017, there were:

- 9,295 violations in the District Court and 5,432 violations in the circuit courts of § 3-202 of the Criminal Law Article (first-degree assault);

- 521 violations in the District Court and 303 violations in the circuit courts of violations of § 3-203(c)(2) of the Criminal Law Article (felony second-degree assault against a law enforcement officer, parole agent, probation agent, firefighter, emergency medical technician, rescue squad member, or first responder); and
- 41,480 violations filed in the District Court and 14,275 violations filed in the circuit courts for misdemeanor second-degree assault.

A violation is a charge filed with the court. It is not a conviction, and one person may be associated with multiple violations. According to the Maryland State Sentencing Guidelines Database, 1,470 individuals were sentenced in the State's circuit courts for second-degree assault during fiscal 2017. Information is not available as to how many of these cases involved a victim who was an elder adult at the time the offense was committed.

According to the Department of Public Safety and Correctional Services (DPSCS), during fiscal 2017, the department conducted intake at State correctional facilities on 308 inmates who had at least one first-degree assault offense and 989 inmates who had at least one second-degree assault offense. The average sentence for the 247 inmates who entered State correctional facilities in fiscal 2017 for whom first-degree assault was their most serious offense was 99.1 months. The average sentence for the 847 inmates who entered State correctional facilities in fiscal 2017 for whom second-degree assault was their most serious offense was 41.2 months. DPSCS advises that its Offender Case Management System cannot determine what, if any, portion of a sentence is suspended.

The Division of Parole and Probation (DPP) advises that in fiscal 2017, it conducted 284 intakes for individuals sentenced to probation for first-degree assault and 4,874 intakes for individuals sentenced to probation with an underlying offense of second-degree assault. Information is not available on how many of these cases involved a victim who was an "elder adult" at the time the offense was committed.

State Expenditures: General fund expenditures for DPSCS increase minimally to the extent the bill's incarceration penalties increase the amount of time individuals spend in State correctional facilities. This estimate assumes that a small percentage of the assaults committed in the State involve a victim who qualifies under the bill as an "elder adult."

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.

DPP can handle the bill's requirements with existing budgeted resources.

Local Expenditures: Local expenditures increase minimally if the bill's nonsuspendable and nonparolable mandatory minimum sentence for misdemeanor second-degree assault against an elder adult victim increases the overall amount of time individuals convicted of second-degree assault spend in local detention facilities.

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: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Human Services; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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