

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1305
Judiciary

(Delegates Wilson and Malone)

Criminal Law - Assault in the Second Degree - Educators

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 an “educator,” as defined in § 2-608 of the Courts and Judicial Proceedings Article.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues. Expenditures are not materially affected, as discussed below.

Local Effect: Potential minimal increase in local revenues. Expenditures are not materially affected, as discussed below.

Small Business Effect: None.

Analysis

Current Law: Section 2-608 of the Courts and Judicial Proceedings Article defines an “educator” as a principal, vice principal, teacher, or teacher’s aide at a public or private preschool, elementary, or secondary school.

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:

- 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.

According to the Department of Public Safety and Correctional Services, during fiscal 2017, the department conducted intake at State correctional facilities on 989 inmates who had at least one second-degree assault offense, representing 1,180 counts total. 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 (34.3% of the 10-year maximum sentence).

The Division of Parole and Probation advises that in fiscal 2017, it conducted 4,874 intakes for individuals sentenced to probation with an underlying offense of second-degree assault.

State Fiscal Effect: General fund revenues may increase minimally from fines imposed in the District Court. The maximum fine for misdemeanor second-degree assault is \$2,500; the maximum fine for felony second-degree assault is \$5,000. 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 incarceration expenditures.

This estimate assumes that:

- the acts affected by this bill are prosecuted as misdemeanor second-degree assaults under the existing second-degree assault law;
- 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; and
- felony charges are likely to be filed in situations when the victim was assaulted during the performance of his/her official duties as an educator and not in situations where the defendant knew or had reason to know that the victim was an educator and assaulted the victim outside of the scope of the victim's official duties.

The District Court has concurrent jurisdiction with the circuit courts for felony violations under § 3-203(c) of the Criminal Law Article, to which the bill is drafted. However, it should be noted that changing crimes from misdemeanors to felonies means that (1) some of these 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 more stringent 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.

Furthermore, the bill may result in a shifting of cases from the juvenile courts to the adult courts. The juvenile court does not have jurisdiction over a child who previously has been convicted as an adult of a felony and is subsequently alleged to have committed an act that would be a felony if committed by an adult. However, the criminal court may transfer the case back to juvenile court if the court determines from a preponderance of the evidence that transfer is in the interest of the child or society and certain other conditions are met.

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.

Additional Information

Prior Introductions: HB 1258 of 2017, HB 933 of 2016, and HB 222 of 2016 received unfavorable reports from the House Judiciary Committee.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Maryland State Department of Education; Department of Public Safety and Correctional Services; Department of Legislative Services

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