

Department of Legislative Services  
Maryland General Assembly  
2024 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 758  
Judiciary

(Delegate Hutchinson, *et al.*)

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**Criminal Law – Crime of Violence – Second Degree Assault of a School Employee or Subcontractor (School Assault Reduction and Prevention Act)**

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This bill expands the definition of a “crime of violence” under § 14-101 of the Criminal Law Article to include assault in the second degree of an employee or a subcontractor of a public or private elementary or secondary school.

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**Fiscal Summary**

**State Effect:** Minimal increase in general fund expenditures, principally in the out-years, due to expanded application of existing sentencing and incarceration-related provisions, as discussed below. Revenues are not affected.

**Local Effect:** The bill does not materially affect local government operations or finances.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** A person may not commit an assault. However, the penalties for an assault vary depending on the assailant’s conduct and the circumstances involved.

*Misdemeanor Second-degree Assault*

In general, a person who commits an assault is guilty of misdemeanor second-degree assault and on conviction 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.

### *Felony Second-degree Assault*

A person commits a felony second-degree assault if the person intentionally causes physical injury to another person and has reason to know that the other person is (1) a law enforcement officer or a parole or probation agent engaged in the performance of their 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. A violator is subject to imprisonment for up to 10 years and/or a maximum fine of \$5,000.

### *First-degree Assault*

A person commits a first-degree assault if the person (1) intentionally causes or attempts to cause serious physical injury to another person; (2) commits an assault with a firearm, as specified; or (3) intentionally strangles another. A violator is guilty of a felony and subject to imprisonment for up to 25 years.

“Serious physical injury” means physical injury that (1) creates a substantial risk of death or (2) causes permanent or protracted serious disfigurement, loss of the function of any bodily member or organ, or impairment of the function of any bodily member or organ. “Strangling” is defined as impeding the normal breathing or blood circulation of another person by applying pressure to the other person’s throat or neck.

### *Crimes of Violence*

Section 14-101(a) of the Criminal Law Article defines a “crime of violence” as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a firearm in the commission of a felony or other crime of violence, except possession with intent to distribute a controlled dangerous substance; (13) child abuse in the first degree; (14) sexual abuse of a minor under specified circumstances; (15) home invasion; (16) felony sex trafficking and forced marriage; (17) an attempt to commit crimes (1) through (16); (18) continuing course of certain sexual conduct with a child; (19) assault in the first degree; and (20) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

### *Mandatory Sentences for Crimes of Violence*

Subsequent offenders sentenced for a crime of violence under § 14-101 of the Criminal Law Article are generally subject to mandatory sentences. For a second conviction of a

crime of violence committed on or after October 1, 2018, a person must be sentenced to a mandatory minimum, nonsuspendable and nonparolable term of 10 years, if the person has been convicted on a prior occasion of a crime of violence (including a conviction for a crime committed before October 1, 2018) and served a term of confinement in a correctional facility for that conviction. For a third conviction, a person must be sentenced to a mandatory minimum, nonsuspendable and nonparolable term of 25 years, if the person has been convicted on two prior separate occasions of a crime of violence, in which the second or succeeding crime is committed after there has been a charging document filed for the preceding occasion and for which the convictions do not arise from a single incident, and has served at least one term of confinement in a correctional facility as a result of a conviction of a crime of violence.

For a fourth conviction, a person who has served three separate terms of confinement in a correctional facility as a result of three separate convictions of any crime of violence must be sentenced to life imprisonment without the possibility of parole.

### *Diminution Credits*

Generally, incarcerated individuals sentenced to a State correctional facility are entitled to earn diminution of confinement credits to reduce the lengths of their incarcerations. Individuals sentenced for a “crime of violence” earn diminution credits at a lower rate than other incarcerated individuals. The following types of incarcerated individuals may not earn diminution credits:

- an incarcerated individual who is serving a sentence for first- or second-degree rape against a victim younger than 16;
- an incarcerated individual who is serving a sentence for first- or second-degree sexual offense, as the offenses existed before October 1, 2017, against a victim younger than 16;
- an incarcerated individual who is serving a sentence for a subsequent conviction of third-degree sexual offense against a victim younger than 16; and
- an incarcerated individual imprisoned for a lifetime sexual offender supervision violation.

Diminution credits are deducted from an incarcerated individual’s “term of confinement,” which is defined as (1) the length of the sentence, for a single sentence or (2) the period from the first day of the sentence that begins first through the last day of the sentence that ends last, for concurrent sentences, partially concurrent sentences, consecutive sentences, or a combination of concurrent and consecutive sentences.

Diminution credits are made for good conduct, work tasks, education, and special projects

or programs. For additional information on diminution credits, see the [Maryland Diminution Credit System](#) report published by the Department of Legislative Services in December 2020.

### *Parole and Mandatory Supervision*

In general, a State incarcerated individual who is serving a sentence of six months or more is not eligible for parole until the incarcerated individual has served one-quarter of their sentence. A sentence for a violent crime does not become parole-eligible until the incarcerated individual has served one-half of the sentence. An incarcerated individual serving a term of incarceration that includes a mandatory minimum sentence that is not subject to parole by statute is not eligible for parole until the incarcerated individual has served that mandatory minimum sentence.

As previously noted, a person convicted for the fourth time of a crime of violence must be sentenced to life imprisonment without the possibility of parole. In general, a sentence for a third crime of violence or a second crime of violence committed on or after October 1, 2018, is not eligible for parole. With the exception of a person registered as or eligible to register as a sexual offender, offenders who are age 60 or older who have served at least 15 years of a sentence for a subsequent crime of violence may apply for and be granted geriatric parole.

Generally, a person convicted of a violent crime committed on or after October 1, 2009, is not eligible for release on mandatory supervision until after the person becomes eligible for parole.

### *Substance Abuse Evaluation and Commitment*

A court may not order a person serving a sentence for a crime of violence under § 14-101 of the Criminal Law Article to be evaluated for or committed to alcohol or drug abuse treatment with the Maryland Department of Health (MDH) under §§ 8-505 and 8-507 of the Health-General Article, respectively, until the person is eligible for parole. However, these eligibility restrictions do not prohibit such a defendant from participating in any other treatment program or receiving treatment under MDH supervision under any other statutory provision.

## **State Expenditures:**

### *Department of Public Safety and Correctional Services*

General fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) increase minimally, mainly in the out-years, due to the impact on sentencing and

incarceration of designating an offense as a crime of violence. The number of people convicted of this offense or subject to sentencing as a violent crime subsequent offender as a result of the bill is expected to be minimal. However, it should be noted that the bill does not specify that the assault must occur while the school employee or subcontractor is engaged in the performance of their official duties or in activities that would alert the perpetrator of their professional status.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per incarcerated individual, including overhead, is estimated at \$5,110 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 incarcerated individuals and for (1) incarcerated individuals who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced incarcerated individuals confined in a local detention center between 12 and 18 months; and (3) incarcerated individuals 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.

DPSCS advises that, during fiscal 2023, the Division of Corrections (DOC) received 705 individuals with one or more convictions for second-degree assault and the Division of Parole and Probation conducted 4,192 intakes for individuals convicted of this offense. According to DPSCS, the average length of sentence for the 705 individuals received by DOC was 3.1 years. DOC does not have information on how many of these intakes involved a victim who was an elementary or secondary school employee or subcontractor. Nevertheless, DPSCS advises that the bill is expected to impact its operations and finances only minimally.

According to the Maryland Sentencing Guidelines Database, the Maryland State Commission on Criminal Sentencing Policy (MSCCP) received information for 1,944 individuals sentenced to 2,096 total counts for second-degree assault in the State's circuit courts during fiscal 2023. MSCCP's data does not identify if the second-degree assault was committed against an elementary or secondary school employee or subcontractor.

#### *Office of the Public Defender*

The Office of the Public Defender (OPD) advises that, although the bill will not increase the office's caseload, it may require OPD staff to devote additional time and effort to second-degree assault cases that qualify as crimes of violence. OPD did not provide information on the scope of the additional effort involved or additional resources that may

be needed. The Department of Legislative Services advises that the bill likely applies in a limited number of cases and, thus, does not warrant the provision of further resources to OPD. Should OPD workloads under the bill increase to the point that further resources are needed, OPD can request those resources through the annual budget process.

### *Judiciary*

The Judiciary advises that any impact on its operations from the bill's implementation should be minimal and can be absorbed with existing budgeted resources.

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## **Additional Information**

**Recent Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** SB 927 (Senator Mautz) - Judicial Proceedings.

**Information Source(s):** 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 Legislative Services

**Fiscal Note History:** First Reader - February 18, 2024  
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