

Department of Legislative Services  
Maryland General Assembly  
2004 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 316

(Delegate Hennessy, *et al.*)

Judiciary

Judicial Proceedings

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**Criminal Law - Resisting or Interfering with Arrest**

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This bill codifies the common law offense of resisting arrest by prohibiting a person from intentionally: (1) resisting a lawful arrest; or (2) interfering with an individual who the person has reason to know is a police officer making or attempting to make an arrest or detention of another person. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a fine of \$5,000. The unit of prosecution for a violation is based on the arrest or detention regardless of the number of police officers involved.

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**Fiscal Summary**

**State Effect:** General fund revenues could increase minimally as a result of the bill's new statutory monetary penalty provision from cases heard in the District Court. General fund expenditures for correctional costs could also be minimally affected by the bill's new statutory imprisonment penalty, but only if incarceration sentencing patterns affecting State facilities change as a result of these provisions.

**Local Effect:** Revenues could increase minimally as a result of the bill's new statutory monetary penalty provision from cases heard in the circuit courts. Expenditures for correctional costs could also be minimally affected by the bill's new statutory maximum imprisonment penalty, but only if incarceration sentencing patterns affecting local detention facilities change as a result of these provisions.

**Small Business Effect:** None.

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## Analysis

**Current Law:** Resisting arrest is a common law offense involving a person's refusal to submit to a lawful arrest by a peace officer acting in the performance of the officer's duties.

The elements of common law prohibitions in Maryland are derived from court decisions. A number of common law offenses currently have no statutory penalty. The only limitation on punishments for common law offenses without statutory penalties is, ordinarily, the prohibition against cruel and unusual punishment contained in the Eighth Amendment to the U.S. Constitution and Articles 16 and 25 of the Declaration of Rights, Constitution of Maryland (as cited in *Simms v. State*, 288 Md. 712 (1980), and *State v. Huebner*, 305 Md. 601 (1986)).

Additional case law indicates that the courts may look to other statutory offenses charged along with the common law offense as guidance to a maximum sentence for a common law offense. In *Gerald v. State*, 299 Md. 138 (1984), the court placed a limit on the maximum penalty for common law assault based on related robbery charges that carried a statutory maximum penalty. The court stated that "the prosecution indicated its acquiescence to a possible maximum sentence" in the charging of the statutory offenses along with the common law offense.

Under provisions of the Transportation Article, the prohibition against "Fleeing or Eluding Police" provides that an individual may not flee and attempt to elude or attempt to flee and elude by foot, car, or other means, a police officer who has signaled for the individual to stop. It is not required that the police officer be in uniform or prominently displaying the police officer's badge when the police officer signals for the individual to stop, if the police officer is in a vehicle appropriately marked as an official police vehicle.

Maximum penalties for the misdemeanor of fleeing or eluding police are as follows: (1) for a first offense, a fine of \$1,000 and/or imprisonment for one year; (2) for a second or subsequent offense, a fine of \$1,000 and/or imprisonment for two years; (3) for committing the offense by willfully failing to stop a vehicle, and as a result of these actions cause bodily injury to another person, a fine of \$5,000 and/or imprisonment for three years; and (4) for committing the offense by willfully failing to stop a vehicle, and as a result of these actions causes the death of another person, a fine of \$5,000 and/or imprisonment for 10 years.

**Background:** The New Issues Subcommittee of the Committee to Revise Article 27 has recommended the codification of the common law offense of resisting arrest, partially in response to a recent decision by the Court of Appeals in *Purnell v. State*, 375 Md. 678

(2003). In *Purnell*, the court clarified the elements of the common law offense of resisting arrest to include “refusal to submit to lawful arrest and resistance to an officer of the law in the performance of his duties” Id. at 695. The court also determined that absent statutory direction, the unit of prosecution “is determined by the act of resisting arrest, regardless of the number of officers attempting to make the arrest” Id. at 704.

The subcommittee also reviewed resisting arrest statutes from other states, and loosely based their recommendation on Delaware’s codification, which also included fleeing from an officer who is effecting an arrest as part of the resisting arrest offense.

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### **Additional Information**

**Prior Introductions:** In 2002, HB 667 and SB 760, which would have added and altered penalties for specified crimes and established penalties for specified common law crimes, received unfavorable reports from the House Judiciary Committee and Senate Judicial Proceedings Committee, respectively. A codification of resisting arrest was contained therein. In 2003, similar bills, HB 297 and SB 230, received unfavorable reports from the House Judiciary Committee and Senate Judicial Proceedings Committee, respectively.

**Cross File:** None.

**Information Source(s):** Department of Public Safety and Correctional Services, Department of Legislative Services

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