

Department of Legislative Services  
Maryland General Assembly  
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 309 (Senator McFadden)(By Request – Baltimore City Administration)  
Judicial Proceedings

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Crimes - Assault on Seniors - Penalties

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This bill establishes the felony of assault on a senior in the first degree by prohibiting a person from: (1) intentionally causing or attempting to cause serious physical injury to another person knowing or having reason to know that the other person is at least 65 years old; or (2) committing an assault with a firearm on another person knowing or having reason to know that the other person is at least 65 years old. A violator is subject to a maximum incarceration term of 35 years.

The bill also establishes the misdemeanor of assault on a senior in the second degree by prohibiting a person from assaulting another person knowing or having reason to know that the other person is at least 65 years old. A violator is subject to maximum penalties of imprisonment for 15 years and/or a fine of \$5,000.

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Fiscal Summary

**State Effect:** Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

**Local Effect:** Minimal increase in revenues and expenditures due to the bill's penalty provisions.

**Small Business Effect:** None.

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Analysis

**Current Law:** No provisions specifically address assault on persons 65 or older. Such assaults are prosecuted under nonvictim-specific assault provisions.

First degree assault is limited to intentionally causing or attempting to cause serious physical injury to another, or committing an assault with a firearm. Violators are guilty of a felony and subject to a maximum penalty of 25 years. An assault on any person that does not involve causing or attempting to cause serious physical injury or the use of a firearm is assault in the second degree. Violators are guilty of a misdemeanor and subject to maximum penalties of a fine of \$2,500 and/or imprisonment for 10 years.

A person may not use an antique firearm capable of being concealed on the person or any handgun in the commission of a crime of violence or any felony, whether the antique firearm or handgun is operable or inoperable at the time of the crime. A violator is guilty of a misdemeanor and, in addition to any other penalty imposed for the crime of violence or felony, must be sentenced to imprisonment for not less than 5 years and not exceeding 20 years. Except for provisions governing release from the Patuxent Institution, the person is not eligible for parole in less than five years.

A person who uses an assault pistol, or a magazine with a capacity of more than 20 rounds of ammunition, in the commission of a felony or a crime of violence is guilty of a misdemeanor and, in addition to any other sentence imposed for the felony or crime of violence, must be sentenced as follows:

- for a first violation, a maximum imprisonment term of 20 years, with a nonsuspendable, nonparolable mandatory minimum term of 5 years; and
- for each subsequent violation, a maximum imprisonment term of 20 years, with a mandatory minimum term of 10 years, which must be consecutive to, and not concurrent with, any other sentence imposed for the felony or crime of violence.

**Background:** Baltimore City reports that, from January 1, 2005 to March 8, 2005, 29 crimes against senior citizens would have qualified for charging under the bill's provisions.

**State Revenues:** General fund revenues could increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

**State Expenditures:** General fund expenditures could increase minimally as a result of the bill's incarceration penalties due to more people being committed to Division of Correction (DOC) facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850

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 DOC inmate (including medical care and variable costs) is \$310 per month. Excluding medical care, the average variable costs total \$120 per month. For illustrative purposes, under the bill's maximum incarceration penalty the average time served would be 120 months (those convicted of this crime would serve up to an additional 10 years imprisonment compared to a conviction for the existing crime of felonious assault). Assuming the variable inmate costs of \$120 per month, State costs could increase by \$14,400 for each person imprisoned under the felony penalty provision of this bill.

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 DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2006 are estimated to range from \$17 to \$65 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

**Local Revenues:** Revenues could increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

**Local Expenditures:** Baltimore City advises that this bill is not expected to have any impact on operations or finances. The city police may charge an individual with the crimes created under this bill, but the charges are reviewed for legal sufficiency by the State's Attorney. The charge created by this bill could be thrown out or the charge could be changed to a lesser offense.

Expenditures could increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$33 to \$119 per inmate in fiscal 2006.

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 868 (Delegate Marriott) (By Request – Baltimore City Administration) – Judiciary.

**Information Source(s):** State's Attorneys' Association, Baltimore City, Department of Public Safety and Correctional Services, Department of Legislative Services

**Fiscal Note History:** First Reader - March 14, 2005  
mam/jr

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