

Department of Legislative Services  
Maryland General Assembly  
2010 Session

FISCAL AND POLICY NOTE

House Bill 264  
Judiciary

(Delegate Mathias, *et al.*)

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Criminal Procedure - Warrantless Arrest - Second Degree Assault

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This bill adds second degree assault to the list of offenses for which a police officer is authorized to make a warrantless arrest. A police officer may make a warrantless arrest for this offense if there is evidence of physical injury and a report was made to the police within 48 hours of the incident.

If a police officer making a warrantless arrest for second degree assault has probable cause to believe that mutual battery occurred and that an immediate arrest is necessary to apprehend the person, prevent future physical injury or property damage to another, or prevent evidence tampering or destruction, the police officer must consider whether one of the persons acted in self-defense when determining whether to arrest the person believed by the police officer to be the primary aggressor.

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Fiscal Summary

**State Effect:** None. The bill is procedural in nature and does not directly affect governmental finances.

**Local Effect:** None. The bill is procedural in nature and does not directly affect governmental finances.

**Small Business Effect:** None.

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Analysis

**Current Law:** A police officer *may* arrest a person without a warrant if the officer has probable cause to believe that the person has committed 1 of 10 crimes specified in

statute and that unless the person is arrested immediately, the person may not be apprehended; may cause physical harm or property damage; or may tamper with, dispose of, or destroy evidence. The crimes specified in statute include vehicular manslaughter, malicious burning and mischief, certain theft offenses, carrying or wearing a concealed weapon, and certain controlled dangerous substance offenses.

A police officer may also arrest a person without a warrant in situations involving domestic abuse and stalking. An officer is required to arrest with or without a warrant and take into custody any person the officer has probable cause to believe is in violation of an interim, temporary, or final protective order in effect at the time of the violation.

A person may not commit an assault. A violator is guilty of the misdemeanor of second degree assault and subject to maximum penalties of imprisonment for 10 years and/or a fine of \$2,500. Assault means the crimes of assault, battery, and assault and battery.

The felony of second degree assault occurs when a person intentionally causes physical injury to another knowing or having reason to know that the other person is a “law enforcement officer” engaged in the performance of the officer’s official duties. A violator is subject to maximum penalties of 10 years imprisonment and/or a fine of \$5,000. Physical injury means any impairment of physical condition, excluding minor injuries. The term “law enforcement officer” includes a correctional officer at a correctional facility.

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### **Additional Information**

**Prior Introductions:** HB 1393 of 2009 received a hearing in the House Judiciary Committee, but no further action was taken.

**Cross File:** None.

**Information Source(s):** Charles, Frederick, and Montgomery counties; Department of Natural Resources; Department of Labor, Licensing, and Regulation; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

**Fiscal Note History:** First Reader - February 5, 2010  
mpc/kdm

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