

Department of Legislative Services  
Maryland General Assembly  
2010 Session

FISCAL AND POLICY NOTE

House Bill 1074  
Judiciary

(Delegate Kipke)

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**Criminal Law - Threatening, Assaulting, or Wounding Officer Attempting or Interference with Service of Civil Process - Penalties**

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This bill prohibits a person from threatening, assaulting, or wounding an officer attempting the lawful service of civil process with the intention of obstructing the service or otherwise knowingly or intentionally interfering with the service. A violator is guilty of a misdemeanor and subject to maximum penalties of one-year imprisonment and/or a \$1,000 fine.

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**Fiscal Summary**

**State Effect:** Potential minimal increase in general fund revenues due to the bill's monetary penalty.

**Local Effect:** Potential minimal increase in local expenditures due to the bill's incarceration penalty.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** Service of process may be made by a sheriff or by a competent private person 18 years of age or older, including an attorney of record. A party to an action may not effectuate service of process. If the process must be executed in a manner other than delivery, mailing, or publication, service of process must be made by the sheriff of the county where the execution takes place, unless the court orders otherwise. When the sheriff is a party to or interested in the action, any interested party may apply to the court

to have another person (an “elisor”) appointed by the court to serve or execute the process.

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” is defined in statute and includes a correctional officer at a correctional facility.

Under federal law, a person is prohibited from willfully and knowingly obstructing, resisting, or opposing an officer of the United States, or a person duly authorized, in serving, attempting to serve, or executing any legal or judicial writ or process of any court of the United States or a U.S. magistrate judge. A person who has knowledge of the officer or authorized individual’s function or position and assaults, beats, or wounds the officer or authorized individual while he/she is conducting service or execution of process is subject to a fine and/or imprisonment for up to one year.

**Local Expenditures:** Expenditures 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 12 months of the sentence. Per diem operating costs of local detention facilities are expected to range from \$57 to \$157 per inmate in fiscal 2011.

**Additional Comments:** The bill prohibits a person from threatening, assaulting, or wounding an “officer” attempting the lawful service of civil process. Current law does not contain a definition for the term “officer.” In some states, private process servers are considered “officers of the court.” The Administrative Office of the Courts advises that that is not the case in Maryland. Under the Maryland Constitution, judges have the authority to *appoint* officers of the court. A private process server, other than perhaps an elisor, is not appointed.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore City, Howard County, Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, Department of Legislative Services

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

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