

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 365

(Delegate Anderson, *et al.*)

Judiciary

Judicial Proceedings

Criminal Law - Assault - Law Enforcement Officers and Parole and Probation
Agents

This bill expands the current statutory prohibition on intentionally causing physical injury to another if the person knows or had reason to know that the victim was a law enforcement officer engaged in the performance of the officer's official duties to include parole and probation agents engaged in official duties.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures due to the bill's expanded scope for felony second degree assault.

Local Effect: Minimal increase in local revenues and expenditures due to the bill's expanded scope for felony second degree assault.

Small Business Effect: None.

Analysis

Current Law: A person may not commit an assault. A violator is guilty of the misdemeanor of second degree assault and subject to maximum penalties of 10 years imprisonment and/or a fine of \$2,500. Assault means the crimes of assault, battery, and assault and battery, which are defined through case law.

A person may not intentionally cause physical injury to another if the person knows or has reason to know that the other is a law enforcement officer, including a correctional officer, engaged in the performance of the officer's official duties. "Physical injury"

means any impairment of physical condition, excluding minor injuries. A violator is guilty of the felony of second degree assault and subject to maximum penalties of imprisonment for 10 years and/or a fine of \$5,000.

A law enforcement officer is defined as an individual who, in an official capacity, is legally authorized to make arrests and is a member of:

- the Department of State Police;
- the Baltimore City Police Department;
- the Baltimore City School Police Force;
- the Baltimore City Watershed Police Force;
- the police department, bureau, or force of any county or municipal corporation;
- the office of the sheriff of any county;
- the police department, bureau, or force of any bicounty agency;
- the Maryland Transportation Authority Police and the police forces of the Maryland Department of Transportation;
- the police forces of the Department of Natural Resources;
- the Field Enforcement Division of the Comptroller's Office;
- the Housing Authority of Baltimore City Police Force;
- the Crofton Police Department;
- the police force of the Department of Health and Mental Hygiene;
- the police force of the Department of General Services;
- the police force of the Department of Labor, Licensing, and Regulation;
- the office of the State Fire Marshal;
- the police forces of the University System of Maryland;
- the police force of Morgan State University;
- the Ocean Pines Police Department;
- the police force of the Baltimore City Community College; or
- the police force of the Hagerstown Community College.

Under the provision governing this prohibition against assault, "law enforcement officer" also includes any of the following:

- a correctional officer at a correctional facility;
- an officer employed by the Washington Metropolitan Area Transit Authority Metro Transit Police, subject to jurisdictional limitations;

- an individual who serves at the pleasure of the Police Commissioner of Baltimore City;
- an individual who serves at the pleasure of the appointing authority of a charter county;
- the police chief of a municipal corporation;
- an officer who is in probationary status on initial entry into the law enforcement agency except if the status results from an allegation of brutality in the execution of the officer's duties; and
- a fire and explosive investigator in Anne Arundel, Montgomery, Prince George's, or Worcester counties; or the cities of Annapolis and Hagerstown.

Background: According to the Maryland State Commission on Criminal Sentencing Policy, there were 15 convictions in circuit courts for assault on a law enforcement officer in fiscal 2009. In nine of the cases, assault on a law enforcement officer was the most serious offense at sentencing. The average prison sentence for these nine offenders was 32.3 months.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalty due to more people being committed to Division of Correction (DOC) facilities for longer periods of time. 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 \$2,750 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 variable medical care and variable operating costs) is \$409 per month. Excluding all medical care, the average variable costs total \$182 per month.

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. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of DOC but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in DOC facilities. The

Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

The Office of the Public Defender does not anticipate that the bill will result in an increased workload.

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

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of DOC but are confined in a local facility. Per diem operating costs of local detention facilities are expected to range from \$57 to \$157 per inmate in fiscal 2011.

Additional Information

Prior Introductions: SB 365 and HB 409 of 2009 received unfavorable reports from the Senate Judicial Proceedings Committee and House Judiciary Committee, respectively.

Cross File: Although not designated as a cross file, SB 255 (Senator Stone, *et al.* – Judicial Proceedings) is identical.

Information Source(s): Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, State's Attorneys' Association, Department of Legislative Services

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