

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 820
Judiciary

(Delegate Dumais, *et al.*)

Crimes - Domestic Violence Assault

This bill establishes the criminal offense of domestic violence assault. Domestic violence assault is an assault committed against (1) the spouse or a former spouse of the defendant; (2) a person with whom the defendant is cohabitating; (3) a person who has a child in common with the defendant; (4) the fiancée of the defendant; or (5) a person with whom the defendant currently has, or previously has had, a dating or an engagement relationship.

Violators are guilty of a misdemeanor and are subject to maximum penalties of imprisonment for 10 years and/or a \$2,500 fine. A defendant who has one previous conviction for conspiring to commit, attempting to commit, or committing specified offenses against the same victim within one year of the conviction for domestic violence assault is subject to enhanced penalties of imprisonment for at least 30 days but no more than 10 years and/or a fine of up to \$5,000. A defendant with two prior convictions against the same victim for the specified crimes is guilty of felony domestic violence assault and is subject to enhanced penalties of imprisonment for at least 1 year but no more than 10 years and/or a fine of up to \$7,500. A court may not suspend a mandatory minimum sentence for domestic violence assault. The State must notify the defendant in writing at least 30 days before trial if it intends to seek a mandatory minimum sentence for domestic violence assault.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures and revenues to the extent that the bill's mandatory minimum sentences and enhanced monetary penalties are enforced.

Local Effect: Potential minimal increase in local revenues and expenditures to the extent that the bill's mandatory minimum sentences and enhanced monetary penalties are enforced.

Small Business Effect: None.

Analysis

Bill Summary: The specified crimes that trigger the enhanced penalties for domestic violence assault are:

- assault in the first and second degrees;
- reckless endangerment;
- rape and attempted rape in any degree;
- sexual offense in any degree;
- attempted sexual offense in the first and second degrees;
- sodomy; and
- kidnapping.

Current Law: Under the current law, the crime of assault is separated into two offenses.

First Degree Assault: A person may not intentionally cause or attempt to cause serious physical injury to another. A person is also prohibited from committing an assault with a firearm. Violators are guilty of felony first degree assault and subject to a maximum penalty of imprisonment for 25 years.

Second Degree Assault: 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 or parole or probation agent engaged in the performance of the officer/agent'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.

Background: According to the State Commission on Criminal Sentencing Policy, there were 1,400 convictions for second degree assault in the circuit courts in fiscal 2010.

State Revenues: Potential minimal increase in general fund revenues to the extent that the bill's enhanced monetary penalties result in higher fines in District Court cases.

State Expenditures: The conduct covered under the bill is encompassed by current statutory prohibitions for first and second degree assault. This estimate assumes that prosecutors will charge defendants with the offense that provides a stronger incarceration penalty. Since the current maximum incarceration penalty for first degree assault is much greater than the maximum penalty under the bill, this estimate assumes that domestic violence assault will only be an option in second degree assault cases.

Current law does not provide mandatory minimum sentences in assault cases. To the extent that the bill's mandatory minimum sentences result in longer incarcerations, general fund expenditures may increase minimally.

Persons serving a sentence longer than 18 months are incarcerated in Division of Correction (DOC) facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,920 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 about \$390 per month. Excluding all medical care, the average variable costs total \$170 per month.

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. 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.

Local Revenues: Revenues increase minimally to the extent that the bill's enhanced monetary penalties result in higher fines in circuit court cases.

Local Expenditures: Expenditures increase minimally to the extent that the bill's mandatory minimum sentences result in longer incarcerations in local detention facilities.

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 have ranged from \$57 to \$157 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: SB 651 (Senator Ramirez, *et al.*) - Judicial Proceedings.

Information Source(s): Baltimore City; Kent and Worcester counties; Department of Public Safety and Correctional Services; State Commission on Criminal Sentencing Policy; Office of the Public Defender; Department of State Police; State's Attorneys' Association; Department of Human Resources; Governor's Office of Crime Control and Prevention; Department of Legislative Services

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