

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 819
Judiciary

(Delegate Dumais, *et al.*)

Crimes - Definition of Serious Physical Injury - Strangulation and Suffocation

This bill specifies that the definition of “serious physical injury” includes strangulation and suffocation with respect to statutory provisions for first degree assault, reckless endangerment, abuse or neglect of a vulnerable adult, and local domestic violence fatality review teams.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures if the bill’s provisions result in increased convictions for the crimes specified or convictions for more serious offenses.

Local Effect: Minimal increase in local revenues and expenditures if the bill’s provisions result in increased convictions for the crimes specified or convictions for more serious offenses.

Small Business Effect: None.

Analysis

Current Law: “Serious physical injury” means physical injury that (1) creates a substantial risk of death; or (2) causes permanent or protracted serious disfigurement, loss of the function of any bodily member or organ, or impairment of the function of any bodily member or organ.

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.

Reckless Endangerment: A person may not recklessly (1) engage in conduct that creates a substantial risk of death or serious physical injury to another; or (2) discharge a firearm from a motor vehicle in a manner that creates a substantial risk of death or serious physical injury to another. Violators are guilty of misdemeanor reckless endangerment and are subject to maximum penalties of imprisonment for five years and/or a \$5,000 fine.

The prohibition against engaging in substantially risky conduct does not apply to conduct involving (1) the use of a motor vehicle; or (2) the manufacture, production, or sale of a product or commodity. The prohibition against discharging a firearm from a motor vehicle does not apply to (1) a law enforcement officer or security guard in the performance of an official duty; or (2) an individual acting in defense of a crime of violence.

Abuse or Neglect of a Vulnerable Adult: A caregiver, a parent, or other person who has permanent or temporary care or responsibility for the supervision of a vulnerable adult may not cause abuse or neglect of the vulnerable adult that results in death, causes serious physical injury, or involves sexual abuse. The same prohibition applies to a household member or family member.

A violator is guilty of the felony of abuse or neglect of a vulnerable adult in the first degree and subject to maximum penalties of 10 years imprisonment and/or a fine of \$10,000. A sentence imposed under this section must be in addition to any other sentence imposed for a conviction arising from the same facts and circumstances unless the evidence required to prove each crime is substantially identical.

Chapter 233 of 2005 authorized a county to establish a “local domestic violence fatality review team” to investigate the causes of serious physical injury or death that result from domestic violence and to make recommendations for comprehensive improvement in agency and organizational responses to victims of domestic violence. Chapter 233 established immunity for team participants, specified confidentiality and disclosure provisions, and established penalties for violation of disclosure and confidentiality provisions.

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

State Expenditures: General fund expenditures increase minimally as a result of the bill's expanded application of current incarceration penalties due to more people being committed to Division of Correction (DOC) facilities or people being committed for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people convicted of the proposed expansion of the included crimes 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 \$2,920 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 as a result of expanded application of current monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of expanded application of current incarceration penalties. 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 593 (Senators Raskin and Jacobs) - Judicial Proceedings.

Information Source(s): Baltimore and Frederick counties; Office of the Public Defender; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; State Commission on Criminal Sentencing Policy; Department of Human Resources; Department of State Police; Maryland Municipal League; Governor's Office of Crime Control and Prevention; Department of Legislative Services

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