

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 1074
Judiciary

(Delegate Dumais, *et al.*)

Criminal Law - First Degree Assault - Strangulation

This bill expands the crime of felony first degree assault to include the commission of an assault through the application of pressure on the throat or neck of another person that (1) causes a loss of consciousness for any period of time; (2) substantially impedes the normal breathing or circulation of blood; or (3) causes the person to urinate, defecate, or vomit. A violator is subject to the current statutory penalties for felony first degree assault.

Fiscal Summary

State Effect: Minimal decrease in general fund revenues from fines imposed in District Court cases. Minimal increase in general fund expenditures as a result of the bill's expanded application of current incarceration penalties.

Local Effect: Minimal decrease in local revenues from fines imposed in circuit court cases. Minimal decrease in local expenditures if the bill results in more defendants being incarcerated in State correctional facilities instead of local correctional facilities.

Small Business Effect: None.

Analysis

Current Law:

First Degree Assault

A person commits a first degree assault if he/she:

- intentionally causes or attempts to cause serious physical injury to another person; or
- commits an assault with a firearm, including a handgun, assault pistol, machine gun, or other specified firearms.

A person who commits a first degree assault is guilty of a felony and subject to imprisonment for up to 25 years.

Felony Second Degree Assault

A person commits a felony second degree assault if he/she intentionally causes 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. Violators are subject to imprisonment for up to 10 years and/or a maximum fine of \$5,000.

Misdemeanor Second Degree Assault

Under the misdemeanor second degree assault statute, a person is prohibited from committing an assault. A violator is subject to imprisonment for up to 10 years and/or a maximum fine of \$2,500. Assault means the crimes of assault, battery, and assault and battery, which are defined through case law.

Background: According to various studies, 23% to 68% of female victims of domestic violence have experienced at least one strangulation assault by a male partner during their lifetime. Domestic violence experts note that strangulation assaults pose a challenge to law enforcement and prosecutors, since they often leave no marks or external evidence on the skin.

State Revenues: General fund revenues from fines imposed in District Court cases decrease minimally to the extent that the bill results in the prosecution of strangulation cases as felony first degree assault cases in the circuit courts instead of as misdemeanor second degree assault cases in the District Court.

State Expenditures: General fund expenditures increase to the extent that the bill (1) results in lengthier incarcerations for defendants; or (2) results in more defendants being incarcerated in State correctional facilities instead of local correctional facilities.

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 \$2,900

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 \$385 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 the 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: Local revenues from fines imposed in circuit court cases decrease minimally if the bill results in the prosecution of strangulation cases as felony first degree assaults (which does not carry a monetary penalty) instead of misdemeanor second degree assaults (which does carry a monetary penalty).

Local Expenditures: Expenditures decrease minimally if the bill transfers defendants from local correctional facilities to State correctional 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 the DOC but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: SB 612 (Senator Raskin, *et al.*) - Judicial Proceedings.

Information Source(s): 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, Ortner-Unity Family Violence Center, Department of Legislative Services

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