

Department of Legislative Services  
Maryland General Assembly  
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 392

(Senator Montgomery, *et al.*)

Judicial Proceedings

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Criminal Law - Assault - First Responders

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This bill expands provisions prohibiting felony second-degree assault to include the intentional causing of physical injury to another person by a person who knows or has reason to know that the victim is a firefighter, an emergency medical technician, a rescue squad member, or any other first responder engaged in providing emergency medical care or rescue services. The bill also increases the maximum incarceration penalty for felony second-degree assault from 10 years to 15 years.

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Fiscal Summary

**State Effect:** Minimal increase in general fund expenditures due to the increased incarceration penalty under the bill. Revenues are not significantly affected.

**Local Effect:** Potential minimal increase in local revenues from fines imposed in circuit court cases. Expenditures are not affected.

**Small Business Effect:** None.

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Analysis

**Current Law:** A person may not commit an assault. However, the consequences of an assault vary depending on the circumstances involved.

*First-degree Assault:* A person commits a first-degree assault if he/she (1) intentionally causes or attempts to cause serious physical injury to another person or (2) 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 person 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:* The misdemeanor second-degree assault statute applies to assaults that are not considered to be felony assaults in the first or second degrees. 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 the Maryland State Commission on Criminal Sentencing Policy, there were 20 convictions for felony second-degree assault in the State's circuit courts during fiscal 2013 and 15 convictions in fiscal 2014. One of the fiscal 2014 offenders represented two of the convictions.

The Department of Public Safety and Correctional Services conducted intake on 1,151 individuals for second-degree assault (felony or misdemeanor) in fiscal 2014. For 1,048 individuals in this group, second-degree assault (felony or misdemeanor) was their most serious offense. The average sentence for these individuals was 39.4 months.

**State Fiscal Effect:** General fund expenditures increase minimally as a result of the bill's enhanced incarceration penalty and the bill's reclassification provision due to more people being committed to State correctional 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 State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,100 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 State inmate (including variable health care costs) is about \$735 per month. Excluding all health care, the average variable costs total \$185 per month.

It should be noted that changing crimes from misdemeanors to felonies means that (1) such cases are likely to be filed in the circuit courts rather than the District Court and (2) some persons may eventually serve longer incarcerations due to enhanced penalty provisions

applicable to some offenses for prior felony convictions. Accordingly, it is assumed that this bill shifts an unknown number of cases from the District Court to the circuit courts. It is not known whether such a prospective shift may spur more plea bargains and affect actual sentencing practices for this offense.

The Office of the Public Defender (OPD) advises that the bill has a fiscal impact because felonies require more preparation and casework than misdemeanor cases. OPD also advises that reclassifying this behavior from a misdemeanor to a felony makes it less likely that these cases will be disposed of before trial. However, given the number of cases likely to be affected by the bill and the seriousness of an assault against a first responder, it is unlikely that the bill has a significant impact on OPD workloads.

**Local Fiscal Effect:** Local revenues may increase minimally from fines imposed in circuit court cases. Given the maximum incarceration penalty for second-degree assaults under existing statute and under the bill, it is unlikely that the bill materially affects local incarceration expenditures. Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities.

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### **Additional Information**

**Prior Introductions:** HB 1183 of 2014, a similar bill, received an unfavorable report from the House Judiciary Committee. Its cross file, SB 797, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

**Cross File:** HB 498 (Delegate Waldstreicher, *et al.*) - Judiciary.

**Information Source(s):** Maryland State Commission on Criminal Sentencing Policy, Maryland Institute for Emergency Medical Services Systems, Office of the Public Defender, Department of Legislative Services

**Fiscal Note History:** First Reader - February 24, 2015  
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