

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 222
Judiciary

(Delegate West, *et al.*)

Criminal Law - Assault in the Second Degree - Educators

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 an “educator,” as defined in § 2-608 of the Courts and Judicial Proceedings Article.

Fiscal Summary

State Effect: The bill does not materially affect State finances, as discussed below.

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

Small Business Effect: None.

Analysis

Current Law: Section 2-608 of the Courts and Judicial Proceedings Article defines an “educator” as a principal, vice principal, teacher, or teacher’s aide at a public or private preschool, elementary, or secondary school.

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 (1) law enforcement officer or parole or probation agent engaged in the performance of the officer/agent’s official duties or (2) a firefighter, an emergency medical technician, a rescue squad member, or any other first responder engaged in providing emergency medical care or rescue services. “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 (DPSCS) advises that it conducted intake at its correctional facilities for 1,036 individuals convicted of second-degree assault (felony or misdemeanor) in fiscal 2015. For 853 individuals in this group, second-degree assault (felony or misdemeanor) was their most serious offense. The average sentence for these individuals was 44.7 months. During fiscal 2015, DPSCS conducted 5,030 probation intakes for individuals found guilty of second-degree assault.

State Fiscal Effect: Given that the maximum incarceration penalty for misdemeanor second-degree assault is the same as the maximum incarceration penalty for felony second-degree assault, this bill is not expected to materially affect State finances. The bill’s specification of these acts as felony second-degree assaults based on the victim of the crime does not increase the likelihood of charges being filed and convictions being secured in these cases.

This analysis assumes that felony charges are likely to be filed in situations when the victim was assaulted during the performance of his/her official duties as an educator, and not in situations where the defendant assaulted the victim without knowledge that he/she was an educator.

However, 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. Furthermore, the bill may result in a shifting of cases from the juvenile courts to the adult courts. The juvenile court does not have jurisdiction over a child who previously has been convicted as an adult of a felony and is subsequently alleged to have committed an act that would be a felony if committed by an adult. However, the criminal court may transfer the case back to juvenile court if the court determines from a preponderance of the evidence that transfer is in the interest of the child or society and certain other conditions are met.

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, OPD advises that given the number of factors involved in determining the additional workload that may be expected under the bill, the office is unable to accurately predict the bill's impact on the office's operations or finances. According to the *Maryland Attorney and Staff Workload Assessment, 2005*, OPD staff attorneys in district offices were allotted the following number of minutes for the case types listed: 116 minutes (District Court criminal case), 238 minutes (misdemeanor jury trial demands/appeals), 1,528 minutes (violent felony – includes assault, but excludes homicide), and 466 (juvenile).

The Department of Legislative Services advises that the bill's reclassification of an existing offense does not alter OPD's overall client load. Furthermore, felony second-degree assault requires intentional "physical injury," which is defined as an impairment of a person's physical condition, *excluding* minor injuries. This is a higher standard than what is required for misdemeanor second-degree assault and may reduce the number of incidents that result in felony charges.

Local Fiscal Effect: Local revenues may increase minimally from fines imposed in circuit court cases. Because the incarceration penalty for felony and misdemeanor assault in the second degree is the same, local incarceration expenditures are not likely to be affected.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Public Defender, Maryland State Department of Education, Department of Public Safety and Correctional Services, Department of State Police, Department of Legislative Services

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