

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 683
Judiciary

(Delegate Waldstreicher, *et al.*)

Criminal Law - Assault of Public Transportation Operator - Penalties

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 bus operator, a train operator, a light rail operator, or any other individual engaged in providing public transportation services.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues. Expenditures are not materially affected, as discussed below.

Local Effect: Potential minimal increase in local revenues due to the bill's expanded application of an existing monetary penalty. Local expenditures are not materially affected.

Small Business Effect: None.

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 (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.

The District Court has concurrent jurisdiction with the circuit courts over felony second-degree assaults.

Background: The Maryland Transit Administration (MTA) advises that the agency averages 50 operator assault incidents annually across all transit modes affected by the bill. **Exhibit 1** contains information on operator assaults against MTA employees from calendar 2013 through 2017.

Exhibit 1
Assault Incidents Against MTA Transportation Operators
Calendar 2013-2017

	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>Average</u>
Spit	8	17	13	12	19	14
Struck by Patron/Other	7	4	13	21	14	12
Bus struck by thrown object	3	1	1	5	10	4
Operator struck by thrown object	3	10	8	12	17	10
Sexual Assault	0	1	0	0	0	0
Unknown	32	18	0	0	0	10
Total	53	51	35	50	60	50

Source: Maryland Transit Administration

The Department of Public Safety and Correctional Services advises that it conducted intake at its correctional facilities for 23 individuals convicted of felony second-degree assault and 957 individuals convicted of misdemeanor second-degree assault during fiscal 2017. The average sentence for felony second-degree assault for this population was 56.4 months (47% of the maximum 10-year sentence). The average sentence for misdemeanor second-degree assault for this population was 41 months (34.1% of the maximum 10-year sentence).

State Fiscal Effect: General fund revenues may increase minimally from fines imposed in the District Court. The maximum fine for misdemeanor second-degree assault is \$2,500; the maximum fine for felony second-degree assault is \$5,000. 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 incarceration expenditures. This fiscal and policy note assumes that the acts affected by this bill would be prosecuted as misdemeanor second-degree assaults under the existing second-degree assault law and that 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.

Additional Information

Prior Introductions: None.

Cross File: None. However, HB 312 (Delegate Davis, *et al.* – Judiciary) is identical.

Information Source(s): cities of Bowie and Takoma Park; Montgomery and Prince George's counties; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Maryland State Commission on Criminal Sentencing Policy; Department of State Police; Office of the Public Defender; Maryland State's Attorneys' Association; Department of Legislative Services

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nb/kdm

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