

Department of Legislative Services  
Maryland General Assembly  
2018 Session

FISCAL AND POLICY NOTE

House Bill 28  
Judiciary

(Delegate Angel)

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**Criminal Law - Assault - Public Transportation Operator and Penalties**

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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 bus operator, a train operator, a light rail operator, or any other individual engaged in providing public transportation 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 bill's alteration and expanded application of existing incarceration penalty provisions. Potential minimal increase in general fund revenues due to the bill's expanded application of an existing monetary penalty.

**Local Effect:** Potential minimal increase in local revenues due to the bill's expanded application of an existing monetary penalty. Potential minimal decrease in local incarceration expenditures if the bill shifts individuals from local jails to State correctional facilities.

**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 (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 calendar 2017.

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**Exhibit 1**  
**Assault Incidents Against MTA Transportation Operators**  
**Calendar 2013 – Calendar 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
<b>Total</b>	<b>53</b>	<b>51</b>	<b>35</b>	<b>50</b>	<b>60</b>	<b>50</b>

Source: Maryland Transit Administration

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The Department of Public Safety and Correctional Services (DPSCS) 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 Expenditures:** General fund expenditures increase minimally due to 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. This estimate assumes that assaults committed against public transit operators are currently being prosecuted according to the appropriate assault statute and that the bill does not increase the overall number of prosecutions.

Based on DPSCS and MTA statistics, it appears that relatively few individuals are convicted of felony second-degree assaults each year and the extent to which the bill expands application of the felony second-degree assault statute is relatively low. (It should be noted that assaults against local public transportation providers are also affected by the bill's provisions.)

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

\$3,800 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 a State correctional facility. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from 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 State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

The Office of the Public Defender (OPD) advises that the bill does not have a fiscal effect on OPD, since the office already provides representation in these cases. The State's Attorneys' Association advises that the bill does not have an effect on prosecutors.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; Maryland Department of Transportation; Department of Legislative Services

**Fiscal Note History:** First Reader - January 15, 2018  
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