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FISCAL AND POLICY NOTE  
First Reader

House Bill 488  
Judiciary

(Delegate Dumais, *et al.*)

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Criminal Law - Third-Degree Assault

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This bill (1) establishes the offense of misdemeanor assault in the third degree; (2) specifies that the District Court has exclusive original jurisdiction over third-degree assault cases; (3) adds second-degree assault to the definition of a “crime of violence” in § 14-101 of the Criminal Law Article; (4) repeals the authorization for expungement of a conviction for misdemeanor second-degree assault and misdemeanor failure to comply with a protective order under § 4-509 of the Family Law Article; and (5) authorizes the expungement of a conviction for third-degree assault.

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Fiscal Summary

**State Effect:** Minimal decrease in general fund revenues from fines imposed in the District Court. Potential significant increase in future cumulative general fund incarceration expenditures depending on recidivism by individuals convicted of second-degree assault. Potential operational efficiencies for the District Court.

**Local Effect:** Minimal decrease in local revenues from fines imposed in the circuit courts. Minimal decrease in local incarceration expenditures. Reduction in caseloads and operational efficiencies for the circuit courts and local police departments.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** Under the bill, a person may not intentionally cause “offensive contact”; engage in conduct intending to put another in fear of offensive contact; or attempt to cause offensive contact. “Offensive contact” is nonconsensual physical contact that a reasonable

person would find to be offensive. Offensive contact does not include contact that results in physical injury; contact that causes a risk of serious physical injury; a domestically related crime, as defined in § 6-233 of the Criminal Procedure Article; or a sexual crime under Title 3, Subtitle 3 of the Criminal Law Article. Violators are guilty of assault in the third degree, a misdemeanor punishable by imprisonment for up to 90 days and/or a \$500 maximum fine. A physical injury of a victim resulting from a violation of the prohibition on assault in the third degree is not a defense to a charge of third-degree assault.

Unless specifically charged by the State, assault in the third degree is not a lesser included crime of any other crime. The bill specifies requirements for a charging document or warrant for assault in the third degree.

The District Court has exclusive original jurisdiction over third-degree assault cases. A circuit court does not have jurisdiction to try a case charging a violation of the prohibition on third-degree assault unless the defendant (1) properly demanded a jury trial; (2) appeals by law from a final judgment entered in the District Court; or (3) is charged with another offense arising out of the same circumstances that is within a circuit court's jurisdiction.

Under the bill, a person who has been convicted of misdemeanor assault in the third degree may petition for expungement of a police record, court record, or other record maintained by the State or a political subdivision of the State, in accordance with requirements under existing statute, including the 10-year waiting period after completion of all applicable sentences. The bill repeals the authorization for expungement of a conviction for misdemeanor second-degree assault and misdemeanor failure to comply with a protective order under § 4-509 of the Family Law Article.

**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.

### *Expungement*

Under the Criminal Procedure Article, a person who has been charged with the commission of a crime may file a petition for expungement listing the relevant facts of a police record, court record, or other record maintained by the State or a political subdivision of the State, under various circumstances listed in the statute.

Expungement of a court record means removal from public inspection:

- by obliteration;
- by removal to a separate secure area to which persons who do not have a legitimate reason for access are denied access; and
- if access to a court record or police record can be obtained only by reference to another such record, by the expungement of that record, or the part of it that provides access.

Chapter 515 of 2016, also known as the Justice Reinvestment Act, expanded eligibility for expungements by authorizing individuals convicted of specified misdemeanors contained in a list of approximately 100 offenses to file petitions for expungements, subject to specified procedures and requirements. Misdemeanor second-degree assault and misdemeanor failure to comply with a protective order under § 4-509 of the Family Law Article are among the included offenses. For the overwhelming majority of the offenses, a person may not file a petition for expungement earlier than 10 years after the person satisfies the sentences imposed for all convictions for which expungement is sought, including parole, probation, or mandatory supervision. However, a petition for expungement of a conviction for misdemeanor second-degree assault, common law

battery, or for an offense classified as a domestically related crime is subject to a 15-year waiting period. These provisions took effect on October 1, 2017.

Under § 6-233 of the Criminal Procedure Article, a “domestically related crime” is a crime committed by a defendant against a victim who is a “person eligible for relief” under a domestic violence protective order or who had a sexual relationship with the defendant within 12 months before the commission of the crime. A “person eligible for relief” includes (1) the current or former spouse of the respondent; (2) a cohabitant of the respondent; (3) a person related to the respondent by blood, marriage, or adoption; (4) a parent, stepparent, child, or stepchild of the respondent or the person eligible for relief who resides or resided with the respondent or person eligible for relief for at least 90 days within one year before the filing of the petition; (5) a vulnerable adult; (6) an individual who has a child in common with the respondent; or (7) an individual who has had a sexual relationship with the respondent within one year before the filing of the petition.

#### *§ 14-101 of the Criminal Law Article*

Individuals convicted of a crime of violence under § 14-101 of the Criminal Law Article are eligible for various additional criminal penalties and earn diminution credits at a lower rate than other offenders.

Section 14-101(a) of the Criminal Law Article specifies offenses classified as crimes of violence. Sections 14-101(b) through (d) impose mandatory sentences for individuals who have prior convictions for these offenses and meet other specified criteria.

Section 14-101(a) defines a “crime of violence” as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a handgun in the commission of a felony or other crime of violence; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) home invasion; (16) an attempt to commit crimes (1) through (15); (17) continuing course of certain sexual conduct with a child; (18) assault in the first degree; and (19) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

#### *Mandatory Sentences for Crimes of Violence (§ 14-101)*

Subsequent offenders sentenced for a crime of violence under § 14-101 of the Criminal Law Article are generally subject to mandatory sentences. For a second conviction of a crime of violence committed on or after October 1, 1994, a person must be sentenced to a mandatory minimum, nonsuspendable term of 10 years, if the person has been convicted on a prior occasion of a crime of violence, including a conviction for a crime committed

before October 1, 1994, and served a term for that conviction confined in a correctional facility.

For a third conviction, a person must be sentenced to a mandatory minimum term of 25 years, if the person has been convicted on two separate occasions of a crime of violence, in which the second or succeeding crime is committed after there has been a charging document filed for the preceding occasion and for which the convictions do not arise from a single incident, and has served at least one term of confinement in a correctional facility as a result of a conviction of a crime of violence.

For a fourth conviction, a person who has served three separate terms of confinement in a correctional facility as a result of three separate convictions of any crime of violence must be sentenced to life imprisonment without the possibility of parole.

### *Diminution Credits*

Generally, inmates sentenced to a State correctional facility are entitled to earn diminution of confinement credits to reduce the lengths of their incarcerations. Specified sexual offenders are not eligible to earn diminution credits. In addition, an inmate whose mandatory supervision release has been revoked may not be awarded any new diminution credits on the term of confinement for which the inmate was on mandatory supervision release.

Diminution credits are deducted from an inmate's "term of confinement," which is defined as (1) the length of the sentence, for a single sentence or (2) the period from the first day of the sentence that begins first through the last day of the sentence that ends last, for concurrent sentences, partially concurrent sentences, consecutive sentences, or a combination of concurrent and consecutive sentences.

Diminution credits are made for good conduct, work tasks, education, and special projects or programs, as follows:

- *For sentences imposed before October 1, 1992:* Good conduct credits are awarded at a rate of five days per month regardless of the offense.
- *For sentences imposed between October 1, 1992, and October 1, 2017:* Good conduct credits are awarded at the rate of 5 days per month if the inmate's term of confinement includes a sentence for a crime of violence under § 14-101 or distribution of controlled dangerous substances. Good conduct credits are awarded at the rate of 10 days per month for all other inmates (except for those inmates who are statutorily prohibited from earning diminution credits). Credits for work tasks and education may be awarded at the rate of up to 5 days per month. Special project

credits may be awarded at the rate of up to 10 days per month. Such inmates may not be allowed a total deduction, including good conduct credits, of more than 20 days per month.

- *For sentences imposed on October 1, 2017, or later:* Chapter 515 of 2016 increased the maximum possible deduction for diminution credits from 20 days to 30 days per calendar month, except for inmates serving a sentence in a State correctional facility for a crime of violence under § 14-101, specified sexual offenses, or specified volume or kingpin drug offenses. Also, except for that same group of inmates, the deduction for special selected work projects or other special programs, including recidivism reduction programming, increased from 10 to 20 days per calendar month. In addition, the maximum deduction for diminution credits increased for an individual who is serving a sentence in a local correctional facility (for a crime other than a crime of violence or specified volume drug offenses) from 5 to 10 days per month.

### *Parole and Mandatory Supervision*

State inmates must serve either one-quarter or one-half of their sentence to be eligible for parole, depending on the offense (including crimes of violence). Parole eligibility for inmates sentenced to local detention centers is one-quarter regardless of the offense. Certain persons are not eligible for parole while serving a mandatory minimum sentence.

Generally, a person convicted of a violent crime under § 14-101 committed on or after October 1, 2009, is not eligible for release on mandatory supervision until after the person becomes eligible for parole. Usually, a person sentenced to a mandatory sentence for a crime of violence under § 14-101 is not eligible for parole. However, with specified exceptions, beginning October 1, 2017, a person sentenced for a crime of violence may petition for, and be granted, parole if the person (1) is at least age 60 and (2) has served at least 15 years of the sentence imposed.

### *Charge by Citation*

State law requires a police officer to charge by citation (1) any misdemeanor or local ordinance violation that does not carry a term of imprisonment or (2) any misdemeanor or local ordinance violation for which the maximum penalty is 90 days imprisonment or less, unless otherwise specified. However, the defendant must meet certain criteria set forth in State law to be charged by citation.

**Background:** According to the Judiciary, during fiscal 2017, there were 41,480 misdemeanor second-degree assault violations filed in the District Court and 14,275 violations filed in the circuit courts. A violation is a charge filed with the court. It

is not a conviction, and one person may be associated with multiple violations. According to the Maryland State Sentencing Guidelines Database, 1,470 individuals were sentenced in the State's circuit courts for second-degree assault during fiscal 2017.

According to the Department of Public Safety and Correctional Services (DPSCS), during fiscal 2017, the department conducted intake at State correctional facilities on 989 inmates who had at least one second-degree assault offense, representing 1,180 counts total. The average sentence for the 847 inmates who entered State correctional facilities in fiscal 2017 for whom second-degree assault was their most serious offense was 41.2 months (41.2% of the 10-year maximum sentence).

The Division of Parole and Probation advises that in fiscal 2017, it conducted 4,874 intakes for individuals sentenced to probation with an underlying offense of second-degree assault.

**State Revenues:** General revenues decrease minimally from fines imposed in the District Court.

**State Expenditures:** Cumulative future general fund expenditures may increase significantly if the bill's designation of second-degree assault as a crime of violence significantly increases the number of individuals subject to mandatory minimum sentences for subsequent convictions of a crime of violence. The District Court may experience operational efficiencies from a reduction in initial appearances before District Court commissioners.

The offense of second-degree assault covers a wide range of behavior. The bill appears to designate behavior on the lower end of the spectrum as third-degree assault. Data is not available on where individual cases fell on the spectrum of behavior currently classified as misdemeanor second-degree assault and how many of these individual cases would be considered third-degree assault under the bill.

However, this analysis assumes that individuals whose behavior would be considered third-degree assault under the bill:

- have their cases heard in the District Court;
- are subject to dispositions that do not result in incarceration or are being incarcerated for brief amounts of time in local facilities; and
- will continue to be subject to dispositions other than convictions or will receive probation in lieu of incarceration.

This analysis also assumes that a sizeable portion of individuals sentenced to State correctional facilities committed more serious assaults that are still considered second-degree assaults under the bill.

As previously noted, 847 inmates entered State correctional facilities in fiscal 2017 for whom second-degree assault was their most serious offense. The average sentence for this group was 41.2 months (34.3% of the 10-year maximum sentence). Should these individuals be convicted of a second-degree assault in the future, they would be subject to a mandatory minimum sentence of 10 years, an increase of 78.8 months (6 years, 6.8 months) compared to the average sentence currently being imposed. Data is not available on the recidivism rate among this population. However, given the size of the annual cohort of individuals sentenced to a State correctional facility for second-degree assault, the number of individuals who could be subject to mandatory minimum sentences in the future is significant. Also, a person previously convicted of second-degree assault may be subject to these mandatory minimum sentences if he/she commits a crime of violence in the future, including another second-degree assault.

Due to the 90-day penalty for third-degree assault under the bill, individuals currently arrested for second-degree assault may be eligible to be charged by citation for third-degree assault instead. To the extent this occurs, the District Court may experience operational efficiencies from reduced initial appearances before commissioners. Pretrial detention costs in Baltimore City may also decrease.

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. Excluding overhead, the average cost of housing a new State inmate (including health care costs) is about \$870 per month. Excluding all health care (which is a fixed cost under the current contract), the average variable costs total \$210 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 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 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 bill's alteration of eligibility for expungements of convictions is not expected to materially affect State finances. As previously noted, those provisions took effect on October 1, 2017.

**Local Revenues:** Local revenues decrease minimally from fines imposed in circuit court cases.

**Local Expenditures:** Local incarceration expenditures decrease minimally due to the bill's incarceration penalty and pretrial detention costs for individuals charged by citation instead of arrest. Circuit courts and local police departments may experience operational efficiencies from reduced caseloads and increased use of citations instead of arrests.

It is likely that individuals incarcerated for the behavior considered third-degree assault under the bill are incarcerated in local facilities. If the bill's 90-day maximum incarceration penalty reduces the amount of time these individuals spend in local detention facilities, then local expenditures decrease.

Baltimore City and Harford County advise that the bill does not have an impact on their jurisdictions. The Maryland State's Attorneys' Association advises that the effect of the bill on prosecutors is unknown.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore City; Harford County; City of College Park; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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Analysis by: Amy A. Devadas

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510