

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1357
Judiciary

(Delegate Ghrist, *et al.*)

Criminal Law - Felony Second-Degree Assault

This bill expands the crime of 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 direct care assistant, case worker, or social worker employed by the Maryland Department of Health (MDH) engaged in the performance of their appropriate official duties.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues. Potential increase in general fund expenditures for MDH evaluations, as discussed below. Otherwise, State expenditures are not materially affected.

Local Effect: Potential minimal increase in local revenues. Expenditures are not materially affected, as discussed below.

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 (1) a 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: According to the Judiciary, there were 652 violations of felony second-degree assault filed in the District Court and 209 violations of felony second-degree assault filed in the circuit courts during fiscal 2019. With respect to misdemeanor second-degree assault, 38,100 violations were filed in the District Court and 11,793 violations were filed in the circuit courts during fiscal 2019. Data is not available on how many of the victims were direct care assistants, case workers, or social workers employed by MDH. A violation is a charge filed with the court. It is not a conviction, and one person may be associated with multiple violations.

The Maryland State Commission on Criminal Sentencing Policy advises that based on a review of the Maryland Sentencing Guidelines Database, 17 individuals were sentenced on 18 counts of felony second-degree assault in the State’s circuit courts during fiscal 2019.

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. General fund expenditures for MDH may increase if the bill increases evaluations, as discussed below.

The District Court has concurrent jurisdiction with the circuit courts for felony violations under § 3-203(c) of the Criminal Law Article, to which the bill is drafted. 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 more stringent 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.

General fund expenditures for MDH may increase if the bill's reclassification of currently illegal behavior from a misdemeanor to a felony increases the number of evaluations of residents in facilities operated by MDH's Developmental Disabilities Administration (DDA) and Behavioral Health Administration. Whether and to what extent this occurs as a result of the bill cannot be reliably determined at this time. MDH advises that individuals with developmental disabilities receive care at DDA's State Residential Centers (SRC). If an SRC resident is charged with felony second-degree assault under the bill, the resident needs to undergo evaluations for competency to stand trial and future dangerousness. In fiscal 2020, there were 132 assaults by residents against staff members at DDA's Potomac Center and Holly Center that required off-site medical attention.

DDA contracts with a third-party vendor to conduct both competency hearings and future dangerousness evaluations. Generally, those services cost DDA \$1,995 per evaluation. DDA estimates that the bill results in 171 additional evaluations in fiscal 2021 and 260 additional evaluations in 2022, at a cost of \$340,480 in fiscal 2021 and \$518,700 in 2022. However, DDA was not able to adequately explain its calculations and how the bill's treatment of *currently illegal* behavior increases the number of evaluations.

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.

Designated Cross File: None.

Information Source(s): Baltimore, Charles, Frederick, and Montgomery counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Maryland Department of Health; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - February 20, 2020
an/aad

Analysis by: Donovan A. Ham

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