

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 764

(Senator Carter)(By Request - Baltimore City
Administration)

Judicial Proceedings

Baltimore City - Assault of Special Enforcement Officers - Penalties

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 Baltimore City special enforcement officer, special parking enforcement officer, or special traffic enforcement officer engaged in the performance of the officer's official duties.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues. State expenditures are not materially affected.

Local Effect: Potential minimal increase in local revenues. 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 the person (1) intentionally causes or attempts to cause serious physical injury to another person; (2) commits an assault with a firearm, including a handgun, assault pistol, machine gun, or other specified firearms; or (3) intentionally strangles another person. 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 the person 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.

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

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.

Special Enforcement Officers

Section 16-16A of the Code of Public Laws of Baltimore City authorizes the Police Commissioner of Baltimore City to appoint persons as special enforcement officers of the City of Baltimore. The city may provide by ordinance for the duties, functions, and procedures of special enforcement officers. The officers may issue and serve citations and summonses to appear before the appropriate division of the District Court in proceedings for enforcement of any Baltimore City code, ordinance, regulation, or provision of public local law pertaining to building, housing, zoning, fire, public health, sanitation, and parks. These officers may receive complaints and investigate all of these violations and violations of any State law or regulation concerning buildings, public health, fire, or sanitation reported to them by any State department or agency. The officers may not arrest or take into custody any violator or otherwise have the power of arrest in their official capacity.

Special Parking Enforcement Officers

Under § 16-16B of the Code of Public Laws of Baltimore City, the Police Commissioner of Baltimore City may appoint employees of the city as special parking enforcement officers. The Mayor and City Council of Baltimore City by ordinance may provide for the nomination, duties, functions, and procedures as special parking enforcement officers. The

officers may issue citations to appear before the appropriate division of the District Court for parking violations. The officers have the same power and legal authority to enforce parking ordinances, laws, and regulations as do police officers of the Baltimore Police Department. The citations have the same legal effect as if issued by a Baltimore City police officer. Special parking enforcement officers may not arrest or take into custody any person for the violation of parking ordinances, laws, or regulations or otherwise have the power of arrest in their official capacity.

Special Traffic Enforcement Officers

Under § 16-16C of the Code of Public Laws of Baltimore City, the Mayor and City Council of Baltimore City by ordinance may provide for the nomination of special traffic enforcement officers and set the duties and functions of and procedures governing special traffic enforcement officers. Subject to this ordinance, the Police Commissioner of Baltimore City may appoint an employee of Baltimore City to be a special traffic enforcement officer or revoke the officer's appointment at any time.

A special traffic enforcement officer has the same authority to control and direct pedestrian and vehicular traffic under the Maryland Vehicle Law and Baltimore City ordinances regulating motor vehicles as a police officer during regular high traffic periods, as necessitated by an emergency situation or incident, and in connection with a special event. A special traffic enforcement officer does not have the power to make arrests and may not issue citations for moving violations *other than* for a failure to obey lawful traffic direction or traffic control devices.

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

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.

While data is not readily available on the number of Baltimore City special officers to which the bill would apply, this estimate assumes that the bill applies to a small group of potential victims. This estimate also assumes that the ability of a police officer to make a warrantless arrest for a felony does not significantly affect enforcement of laws prohibiting assaults against special officers in Baltimore City.

Generally, for a police officer to be authorized to make an arrest, a judge or District Court commissioner must first issue a warrant based on a finding of probable cause. A law enforcement officer may, however, make a warrantless arrest when (1) a person commits or attempts to commit a felony or misdemeanor in the police officer's presence or within view of the police officer; (2) the police officer has probable cause to believe that a felony or misdemeanor is being committed in the presence or within the view of the police officer; (3) the police officer has probable cause to believe that a person *has committed or attempted to commit a felony, whether or not in the presence or within the view of the police officer*; or (4) the police officer has probable cause to believe that the person has committed one of a limited number of offenses specified in statute and that unless the person is arrested immediately, the person may not be apprehended, may cause physical injury or property damage to another, or may tamper with, dispose of, or destroy evidence.

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 materially affected.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 613 (Delegate Smith)(By Request - Baltimore City Administration) - Judiciary.

Information Source(s): Baltimore City; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Department of Legislative Services

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