

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 873

(Senator Smith)

Judicial Proceedings

Criminal Law - Assault in the Third Degree

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) specifies that a person convicted of assault in the third degree is subject to imprisonment for up to 90 days and/or a maximum fine of \$500; (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 assault in the third degree.

Fiscal Summary

State Effect: Minimal decrease in general fund revenues from fines imposed in the District Court, as discussed below. Minimal decrease in general fund expenditures as a result of the bill's incarceration penalty. The bill is not anticipated to materially affect the finances or operations of the Judiciary and the Office of the Public Defender (OPD).

Local Effect: Minimal decrease in local revenues from fines imposed in the circuit courts. Minimal decrease in local incarceration expenditures.

Small Business Effect: None.

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 that is 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 demands 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 five-year waiting period for general misdemeanor convictions, as specified.

The bill repeals the authorization for expungement of a conviction for misdemeanor second-degree assault and misdemeanor failure to comply with a domestic violence 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 the person (1) intentionally causes or attempts to cause serious physical injury to another person; (2) commits an assault with a firearm, as specified; or (3) intentionally strangles another. A violator is guilty of a felony and subject to imprisonment for up to 25 years.

“Serious physical injury” means physical injury that (1) creates a substantial risk of death or (2) causes permanent or protracted serious disfigurement, loss of the function of any bodily member or organ, or impairment of the function of any bodily member or organ. “Strangling” is defined as impeding the normal breathing or blood circulation of another person by applying pressure to the other person's throat or neck.

Felony Second-degree Assault

A person commits a felony second-degree assault if they intentionally cause “physical injury” to another if they know or have 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. A violator is 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 assault cases.

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 degree. Under this 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.

Domestically Related Crimes (§ 6-233 of the Criminal Procedure Article)

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; (7) an individual who has had a sexual relationship with the respondent within one year before the filing of the petition; or (8) an individual who alleges that the respondent committed, within 6 months before the filing of a petition, rape, attempted rape, or other specified sexual offenses.

Failure to Comply with a Protective Order (§ 4-509 of the Family Law Article)

A person who violates a protective order is guilty of a misdemeanor and on conviction is subject to, for a first offense, imprisonment for up to 90 days and/or a maximum fine of

\$1,000, and for a second or subsequent offense, imprisonment for up to one year and/or a maximum fine of \$2,500.

Expungement

In general, a person seeking expungement of records pertaining to a criminal charge must file a petition for expungement with the court under § 10-105 or § 10-110 of the Criminal Procedure Article. With some exceptions, § 10-105 applies to dispositions other than a conviction, and § 10-110 applies to expungements of convictions.

Expungement of a court record or police 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; or
- 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.

Section 10-110 of the Criminal Procedure Article authorizes an individual convicted of any of a list of approximately 100 specified offenses or an attempt, a conspiracy, or a solicitation of any of these offenses, to file a petition for expungement of the conviction, subject to specified procedures and requirements.

Petitions for expungements under § 10-110 are subject to the waiting periods listed below. These waiting periods begin after the petitioner satisfies the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision:

- Misdemeanor (general): 5 years;
- Felony (general), Second-degree Assault, or Common Law Battery: 7 years;
- Domestically Related Crime (§ 6-233 of the Criminal Procedure Article): 15 years;
- Possession with Intent to Distribute Cannabis: 3 years; and
- Burglary in the First Degree (Breaking and Entering – Theft), Burglary in the Second Degree, or Felony General Theft: 10 years.

If the person is convicted of a new crime during the applicable waiting period, the original conviction or convictions are not eligible for expungement unless the new conviction becomes eligible for expungement.

A person is not eligible for expungement if the person is a defendant in a pending criminal proceeding.

A State's Attorney may file a timely objection to the petition for expungement, as specified.

Pursuant to § 10-107 of the Criminal Procedure Article, if two or more charges, other than one for a minor traffic violation or possession of cannabis under § 5-601 of the Criminal Law Article, arise from the same incident, transaction, or set of facts, they are considered to be a unit. A charge for a minor traffic violation or possession of cannabis under § 5-601 of the Criminal Law Article that arises from the same incident, transaction, or set of facts as a charge in the unit is not a part of the unit. If a person is not entitled to expungement of one charge or conviction in a unit, the person is not entitled to expungement of any other charge or conviction in the unit.

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 not involving serious injury or an immediate health risk 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.

State Fiscal Effect: General fund revenues decrease minimally as a result of the bill's monetary penalty for third-degree assault. The bill is not anticipated to materially affect general fund revenues from expungement filing fees (\$30 for a petition to expunge a conviction). General fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) decrease minimally, as discussed below. The bill is not anticipated to materially affect the finances or operations of the Judiciary or OPD. This estimate assumes that the potential for increased cases and convictions for assault (and corresponding fines and incarceration) due to the reduced penalty for third-degree assault and the ability to charge by citation does not have a significant effect on the overall impact of the bill on revenues and expenditures.

Relevant Offense Data

The Judiciary advises that, in fiscal 2024, there were 35,072 violations (charges) and 1,809 guilty dispositions (convictions) for second-degree assault in the District Court. In the State's circuit courts, there were 9,903 violations and 2,776 guilty dispositions for this offense in fiscal 2024. Data is not readily available on how many of these violations and guilty dispositions were specifically attributable to misdemeanor second-degree assault cases. However, it is assumed that most second-degree assault cases are charged as misdemeanors, rather than felonies.

According to DPSCS, during fiscal 2024, the department conducted intake at State correctional facilities on 745 individuals who had at least 1 second-degree assault offense, representing 908 counts total. The average sentence length imposed for these 908 counts was 37.4 months. The Maryland State Commission on Criminal Sentencing Policy advises that 1,707 individuals were sentenced to 2,027 total counts for second-degree assault in the State's circuit courts during fiscal 2024.

Fine Revenues in the District Court

While the bill shifts some cases from the circuit courts to the District Court, this estimate assumes that overall, the bill decreases general fund revenues from fines imposed in the District Court for third-degree assault (\$500 maximum fine) instead of misdemeanor second-degree assault (\$2,500 maximum fine). Any decrease in general fund revenues is anticipated to be minimal.

Department of Public Safety and Correctional Services

General fund expenditures for DPSCS decrease minimally due to fewer people being committed to State correctional facilities and decreased payments to counties for reimbursement of costs for incarcerated individuals.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per incarcerated individual, including overhead, is estimated at \$5,339 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 incarcerated individuals and for (1) incarcerated individuals who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced incarcerated individuals confined in a local detention center between 12 and 18 months; and (3) incarcerated individuals 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.

Local Revenues: Local fine revenues decrease minimally from fines imposed in circuit court cases that shift to the District Court or are subject to a lower fine in the circuit court under the bill.

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

The Maryland Association of Counties advises that the bill is not anticipated to meaningfully affect local government finances or operations. Baltimore, Harford, and Queen Anne's counties advise that the bill does not have an impact on their jurisdictions. Carroll County advises that while the bill may decrease jury trial prayers and affect expungement volume, it is not anticipated to have a material effect on its State's Attorney's office.

Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$140 to \$350 per incarcerated individual in recent years.

Additional Information

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

Designated Cross File: None.

Information Source(s): Baltimore, Carroll, Harford, and Queen Anne's counties; Maryland Association of Counties; 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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