

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1100 (Senator Muse)
Judicial Proceedings

Criminal Law - Assault - Sentencing (Violence Prevention Education Act)

This bill requires a court, as a condition of sentencing, to order a person convicted of assault in the first degree or assault in the second degree to participate for at least 12 weeks in a program certified by the Office of Health Care Quality (OHCQ) of the Maryland Department of Health (MDH) that addresses mental health, violence prevention, substance abuse, or alcohol abuse.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures to handle violations of probation resulting from the bill. Revenues are not affected.

Local Effect: Minimal increase in local expenditures to handle violations of probation resulting from the bill. Revenues are not affected.

Small Business Effect: Meaningful.

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: According to the Judiciary, during fiscal 2017, there were:

- 9,295 violations in the District Court and 5,432 violations in the circuit courts of § 3-202 of the Criminal Law Article (first-degree assault);
- 521 violations in the District Court and 303 violations in the circuit courts of violations of § 3-203(c)(2) of the Criminal Law Article (felony second-degree assault against a law enforcement officer, parole agent, probation agent, firefighter, emergency medical technician, rescue squad member, or first responder); and
- 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 308 inmates who had at least one first-degree assault offense and 989 inmates who had at least one second-degree assault offense.

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

State Expenditures: General fund expenditures increase minimally for the District Court, the Office of the Public Defender (OPD), and DPSCS to handle additional violations of probation and sentences for contempt of court brought as a result of the bill. The extent to which this occurs cannot be reliably determined at this time and depends on judicial discretion.

The bill requires a court, as a condition of sentencing, to order a person convicted of assault in the first degree or assault in the second degree to participate for at least 12 weeks in a program certified by OHCQ that addresses mental health, violence prevention, substance abuse, or alcohol abuse. Should courts order completion of these programs, violation of probation and contempt of court proceedings increase from defendants who fail to complete the required programs and defendants who cannot afford to participate in court-ordered programming. (OHCQ advises that as of July 1, 2017, the Behavioral Health Administration of MDH, not OHCQ, certifies these types of programs.)

This estimate assumes that:

- the bill's requirements apply to defendants who are not sentenced to serve their sentences in a Division of Correction (DOC) facility (*e.g.*, probation), since, under State law, a court does not have the authority to dictate the programming an inmate may receive once the inmate has been remanded to DOC custody; and
- in the vast majority of cases, a court is not likely to find a defendant in violation of probation or in contempt of court solely because the defendant cannot afford to pay for court-ordered programming.

The bill does not specify who must pay for a defendant to participate in the required program if the defendant cannot afford the cost of the program. According to MDH, a defendant would likely not be eligible for MDH funding, including Medicaid or Developmental Disabilities Administration funds. MDH could not provide information on the cost to attend the types of programs required under the bill.

MDH advises that while a sentencing court may waive program fees for indigent defendants, a program would likely refuse to treat the defendant unless another entity pays. Information is not available at this time as to whether a local health department would pay for program costs in this situation. Based on information provided by the Judiciary, DPSCS, and OPD, the defendant is responsible for program fees, none of those agencies pay for program participation, and a defendant may be held in violation of probation or in contempt of court for failure to complete the program as required.

DPP advises that it is unlikely that a defendant would be held in violation of probation or contempt of court simply because the defendant cannot afford to attend a court-ordered program and there is proof to support the defendant's claims. In these situations, it is likely that a court would modify the order of probation or close the case unsatisfactorily.

However, should courts hold defendants in violation of probation as a result of the bill and alter sentences to require defendants to spend additional time in custody, DPSCS incarceration expenditures increase.

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.

Local Expenditures: Local expenditures increase minimally for circuit courts, State's Attorneys, and local detention facilities to handle additional violations of probation and contempts of court generated by the bill. Local expenditures may increase further if local health departments are asked to pay programming costs for defendants who cannot afford to participate in court-ordered programming.

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 \$40 to \$170 per inmate in recent years.

Small Business Effect: The bill has a meaningful impact on small businesses that operate programs affected by the bill to the extent they experience increased enrollment as a result of the bill.

Additional Information

Prior Introductions: None.

Cross File: HB 1529 (Delegate Ali, *et al.*) - Judiciary.

Information Source(s): Maryland Department of Health; Office of the Public Defender; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Department of Legislative Services

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