

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 980
Judiciary

(Delegate Malone, *et al.*)

Criminal Law - Substantive Crimes - Assault by Burning

This bill establishes the felony of assault by burning by prohibiting a person from willfully and maliciously setting fire to or burning another person. A violator is subject to maximum penalties of imprisonment for 30 years and/or a fine of \$50,000. The crime of assault by burning is added to the list of crimes of violence for which enhanced penalties are applicable.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures due to the bill's incarceration penalty provision.

Local Effect: Minimal increase in local revenues due to the bill's monetary penalty provision.

Small Business Effect: None.

Analysis

Current Law: Under the State's prohibition against first degree assault, a person may not intentionally cause or attempt to cause serious physical injury to another. A person may not commit an assault with a firearm. A violator is guilty of the felony of first degree assault and subject to imprisonment for up to 25 years.

The felony of second degree assault occurs when a person intentionally causes physical injury to another knowing or having reason to know that the other person is a "law

enforcement officer” engaged in the performance of the officer’s official duties. A violator is subject to maximum penalties of imprisonment for 10 years and/or a fine of \$5,000. Physical injury means any impairment of physical condition, excluding minor injuries. The term “law enforcement officer” includes a correctional officer at a correctional facility.

For a conviction for a second time 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 correctional facility confinement term for that conviction.

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.

A person sentenced under these provisions may petition for and be granted parole if the person is at least 65 years old and has served at least 15 years of the sentence imposed.

State Expenditures: General fund expenditures could increase minimally as a result of the bill’s incarceration penalty due to more people being committed to Division of Correction (DOC) facilities. However, assuming a person charged as a result of such conduct could already be charged with first degree assault (among other charges), this bill should not immediately affect State incarceration costs. The number of people convicted of this proposed crime is expected to be few.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,600 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$526 per month. Excluding medical care, the average variable costs total \$148 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 DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2009 are estimated to range from \$19 to \$71 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues could increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Commission on Criminal Sentencing Policy, Department of Public Safety and Correctional Services, Department of Legislative Services

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