

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1638 (Delegate Boteler, *et al.*)
Rules and Executive Nominations

Criminal Procedure - Registered Sex Offenders - Entry Onto School Property

This emergency bill repeals the authorization of a student who is a registered sex offender to, under certain circumstances, enter onto real property (1) that is used for public or nonpublic elementary or secondary education or (2) on which a registered family child care home, a licensed child care home or child care institution, or a home used for informal child care is located. Each county board of education must develop and adopt a policy that enables a registered sex offender who is a student to continue receiving an education in accordance with State law in a location other than real property that is used for public or nonpublic elementary or secondary education. The State Board of Education must develop and adopt guidelines and a model policy to assist a county board with the development of a policy.

Fiscal Summary

State Effect: None. The State Board of Education and the Maryland State Department of Education (MSDE) can develop and adopt guidelines and model policy using existing resources. Any additional State court system operations can be handled with existing resources.

Local Effect: Local school systems may incur additional costs associated with providing alternative means for providing education services to students who are registered sex offenders.

Small Business Effect: None.

Analysis

Current Law: A child age 5 to 17 must attend public school regularly unless the child is otherwise receiving regular, thorough instruction at an alternative setting (*i.e.*, a private or home school). An individual who has legal custody of a child age 5 to 17 and fails to see that the child attends school is guilty of a misdemeanor. Compulsory attendance does not apply to specified individuals, including an individual who is severely ill and requires home or hospital instruction. A child who has a mental, emotional, or physical handicap must attend school unless the child's condition makes attending school harmful to the child's development or if the child may cause serious physical harm to others.

The local superintendent, with the advice of specified school officials and with the written recommendation of a licensed doctor or a MSDE certified or licensed psychologist, may provide other free education or permit the child to be withdrawn from school as long as the above conditions exist. If a child is withdrawn from school, the local board of education must make provisions for the education of the child.

School Safety and Student Rights

According to State regulations, all students in State public schools, without exception and regardless of race, ethnicity, region, religion, gender, sexual orientation, language, socioeconomic status, age, or disability, have the right to educational environments that are safe; appropriate for academic achievement; and free from any form of harassment. Each local board of education has both the responsibility and authority to adopt policies designed to create safe schools. State regulations also require each local board of education to have and disseminate to all members of the school community a document on students' responsibilities and rights.

Sex Offender Registry and Entry onto Specified Real Property

Generally, a person convicted of a sex crime or other specified crime in Maryland, including kidnapping and false imprisonment under specified circumstances, is required to register with the State sex offender registry upon release from prison or release from court if the person does not receive a prison sentence. Offenders who are required to register in other states and who come to Maryland are required to register upon entering Maryland. Offenders from other states who may not be required to register in their home state are required to register in Maryland if the crime would have required registration in Maryland if committed in Maryland. The registry is maintained by the Department of Public Safety and Correctional Services.

Unless otherwise specified in statute, a registrant may not knowingly enter onto real property (1) that is used for public or nonpublic elementary or secondary education or

(2) on which a registered family child care home, a licensed child care home or child care institution, or a home used for informal child care is located. A violator is guilty of a misdemeanor and subject to maximum penalties of five years imprisonment and/or a \$5,000 fine.

The prohibition does not apply to real property specified above if the registrant is a student, parent of a student, or parent of a child that receives child care, if (1) within the past year the registrant has been given the specific written permission of the Superintendent of Schools, the local school board, the principal of the school, or the owner or operator of the registered family child care home, licensed child care home, or licensed child care institution, as applicable and (2) the registrant promptly notifies an agent or employee of the school, home, or institution of the registrant's presence and purpose of visit. The prohibition also does not apply for the purpose of voting at a school on Election Day if the registrant is properly registered to vote and the registrant's polling place is at the school.

Background: In fiscal 2019, there were 27 charges and 6 convictions statewide under current law regarding prohibited entry onto specified property, as described above. Prohibiting access for student registrants may increase the number of violations.

Local Fiscal Effect: According to MSDE, local school systems may incur additional costs associated with seeking ways to provide education services to students who are registered sex offenders. These costs may relate to identifying appropriate instructional space, providing instructional materials, hiring new or reallocating existing instructional staff, providing transportation, and ensuring that students have access to other services that may be otherwise provided in a school building (such as school counseling, school psychological services, school health services, and other required student services). The costs to each local school system will depend on the number of registrants of compulsory school age who presently are permitted to enter onto school property.

Both MSDE and Baltimore City Public Schools (BCPS) indicate that though the bill is an emergency bill to take effect upon enactment, full development of policies and guidelines may not occur until significantly later than enactment. BCPS advises that in instances when a student is a minor, a local school system may not be aware of registrant status, and indicates concern that school staff may be liable to legal penalties under the bill. However, the Department of Legislative services assumes that it is the individual who knowingly enters onto property despite the prohibition who is subject to legal penalties.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 1052 (Senator Klausmeier, *et al.*) - Judicial Proceedings.

Information Source(s): Baltimore City Public Schools; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Department of Public Safety and Correctional Services; Department of Legislative Services

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