

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 1351
Judiciary

(Delegate Kipke)

Registered Sex Offenders - Prohibition - Halloween Activities

This bill prohibits a registrant in the State's sex offender registry from participating in any Halloween activity that involves children or any activity offered as an alternative to Halloween that involves children, including participating in trick-or-treating, distributing candy to children, attending a school function, and attending a community festival. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for five years and/or a fine of \$5,000.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: Potential minimal increase in State revenues and expenditures due to the bill's penalty provision. The number of people convicted of this proposed crime is expected to be minimal.

Local Effect: Potential minimal increase in local revenues and expenditures due to the bill's penalty provision.

Small Business Effect: None.

Analysis

Current Law: Generally, a person convicted of a sex crime or other specified crime in Maryland, including kidnapping and false imprisonment, is required to register with the State sex offender registry upon release from prison or release from court if the person did 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 the home state are required to register in Maryland if the crime would have required registration in Maryland if committed in Maryland.

Registered sex offenders may not knowingly enter onto real property that is used for public or nonpublic elementary or secondary education or where a State-registered/licensed family day care home, child care home, or child care institution is located. The prohibition, however, does not apply to a registrant who enters real property:

- where the registrant is a student or the registrant's child is a student or 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; or
- for the purpose of voting at a school on an election day in the State if the registrant is properly registered to vote and the registrant's polling place is at the school.

A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for five years and/or a fine of \$5,000.

Background: Sex offenders are restricted from certain activities on Halloween and other holidays in some states by statute, administrative agency regulations, municipal ordinances, or through local probation and parole district rules. Some of the more typical Halloween restrictions for sex offenders include prohibiting certain offenders from distributing candy, mandating that offenders turn off outside house lights, and/or requiring that offenders attend a mandatory meeting on Halloween night. The National Conference of State Legislatures cites the following statutory restrictions:

Florida

Certain sex offenders who are on conditional release, probation, or community control cannot give out "candy or other items to children on Halloween."

Illinois

Certain sex offenders, unless the offender is a parent or guardian of the person under 18 years of age present in the home and no nonfamilial minors are present, may not participate in a holiday event involving children under 18 years of age, such as

distributing candy or other items to children on Halloween, wearing a Santa Claus costume on or preceding Christmas, being employed as a department store Santa Claus, or wearing an Easter Bunny costume on or preceding Easter.

Louisiana

Every person convicted of, or who pleads guilty to, a sex offense is prohibited from using or wearing a hood, mask, or disguise of any kind with the intent to hide, conceal, or disguise his identity on or concerning Halloween, Mardi Gras, Easter, Christmas, or any other recognized holiday for which hoods, masks, or disguises are generally used. Any person convicted of, or who pleads guilty to, a sex offense is prohibited from distributing candy or other gifts to persons under 18 years of age on or concerning Halloween, Mardi Gras, Easter, Christmas, or any other recognized holiday for which generally candy is distributed or other gifts given to persons under 18 years of age.

Missouri

Any person required to register as a sexual offender is required on October 31 of each year to (1) avoid all Halloween-related contact with children; (2) remain inside his or her residence between the hours of 5:00 p.m. and 10:30 p.m. unless required to be elsewhere for just cause, including but not limited to, employment or medical emergencies; (3) post a sign at his or her residence stating, "No candy or treats at this residence"; and (4) leave all outside residential lighting off during the evening hours after 5:00 p.m. A violator is guilty of a Class A misdemeanor.

In addition, in some states sex offenders may already be precluded from participating in Halloween events through some existing general sex offender statutes that prohibit certain possession, conduct, or presence among children.

State Revenues: General fund revenues increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalty due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

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 \$2,900 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 variable medical care and variable operating costs) is about \$385 per month. Excluding all medical care, the average variable costs total \$170 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. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of DOC but are confined in 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 DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

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

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of DOC but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Kent, Montgomery, Washington, and Worcester counties; Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Department of State Police; Office of the Public Defender; Department of Public Safety and Correctional Services; Department of Legislative Services

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mc/hlb

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