

HB 993

# **Department of Legislative Services**

## Maryland General Assembly

### 2014 Session

# FISCAL AND POLICY NOTE

## **Registered Sex Offenders - Prohibition - Halloween Activities**

This bill prohibits sex offender registrants that are convicted of specified sexual crimes from participating in any Halloween activity that involves children or any activity offered as an alternative to Halloween that involves children. A violator is guilty of a misdemeanor and subject to up to five years imprisonment and/or a \$5,000 fine.

The bill takes effect July 1, 2014.

## **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

**Bill Summary:** The 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 if the registrant's underlying offense involved a victim younger than age 14 and the registrant was at least age 21 at the time the offense was committed; or if the registrant was convicted of any of the following crimes, regardless of the age of the registrant and victim at the time of the crime:

- first degree rape;
- second degree rape by force, or the threat of force, without the consent of the other;
- second degree rape, where the victim was mentally defective, incapacitated, or was physically helpless, and the registrant knew or reasonably should have known that the victim was mentally defective, incapacitated, or was physically helpless;
- first degree sexual offense;
- second degree sexual offense by force, or the threat of force, without the consent of the other;
- second degree sexual offense, where the victim was mentally defective, incapacitated, or was physically helpless, and the registrant knew or reasonably should have known that the victim was mentally defective, incapacitated, or was physically helpless;
- third degree sexual offense, where the registrant (1) displayed or employed a dangerous weapon, or a physical object that the victim reasonably believed was a dangerous weapon; (2) suffocated, strangled, disfigured, or inflicted serious physical injury on the victim or another in the course of committing the crime; (3) threatened, or placed the victim in fear, that the victim, or an individual known to the victim, imminently would be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping; or (4) committed the crime while aided and abetted by another; or
- third degree sexual offense, where the victim was mentally defective, incapacitated, or was physically helpless, and the registrant knew or reasonably should have known that the victim was mentally defective, incapacitated, or was physically helpless.

The bill further specifies that a Halloween activity that involves children or any activity offered as an alternative to Halloween that involves children includes (1) participating in trick-or-treating; (2) distributing candy to children; (3) attending a school function; and (4) attending a community festival.

**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.

The federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act of 1994 required all states to register sex offenders, sexually violent predators, and offenders who commit certain crimes against children. The federal Sex Offender Registration and Notification Act (SORNA), enacted as Title I of the Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248), required additional enactments by the states.

In 2010, Maryland's sex offender registration laws were substantially revised to comply with SORNA and to increase penalties for certain sex offenses committed against minors. Among the enacted provisions, sexual offenders are now sorted into three separate tiers, replacing the four former categories of sexual offenders. A Tier I sex offender must register every six months for 15 years, a Tier II sex offender must register every six months for 25 years, and a Tier III sex offender must register every three months for life.

An individual convicted of a fourth degree sexual offense is a Tier I sex offender. An individual convicted of a third degree sexual offense is a Tier III sex offender if the conviction was for engaging in sexual contact with a victim who is younger than age 14 and the defendant was at least 4 years older than the victim. Other acts that qualify as a third degree sexual offense may result in classification as a Tier II or Tier III sex offender.

A registrant may not knowingly enter onto real property that is used for public or nonpublic elementary education; or where a registered family child care home, licensed child care home or child care institution, or informal child care home is located. The prohibition 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 received 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 a school.

A violator is guilty of a misdemeanor and on conviction is subject to up to five years imprisonment and/or a \$5,000 fine.

**Background:** Sex offenders are restricted from certain activities on Halloween and other holidays in some states by statute, administrative agency regulations, municipal  
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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.

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## **Additional Information**

**Prior Introductions:** HB 1351 of 2012, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken.

**Cross File:** None.

**Information Source(s):** Baltimore, Carroll, Harford, Montgomery, and St. Mary's counties; Town of Bel Air; Maryland State 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

**Fiscal Note History:** First Reader - February 24, 2014  
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