

Department of Legislative Services  
Maryland General Assembly  
2021 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 48  
Judiciary

(Delegates Bhandari and Jackson)

Judicial Proceedings

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**Criminal Procedure – Registered Sex Offenders – Entry Onto School Property**

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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 local board of education must develop and adopt a policy that enables a registered sex offender who is a student to continue receiving an education by participating in the home and hospital teaching program for students; participating in or attending a program approved by the local board; or by attending a regional institute for children and adolescents (RICA). The State Board of Education must develop and adopt guidelines and a model policy to assist a local board with the development of a policy.

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**Fiscal Summary**

**State Effect:** 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.

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## Analysis

**Current Law:** Generally, 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 or older and under age 16 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 disability 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.

### *Regional Institutes for Children and Adolescents*

The Maryland Department of Health's Behavioral Health Administration oversees RICAs. Each facility also has a citizen advisory board, appointed by the Governor, which assesses and makes recommendations on the needs of individuals who have a mental disorder and the extent to which the facility meets these needs. RICAs serve children and adolescents with severe emotional disabilities and provide residential and day treatment.

A parent or guardian may apply, on behalf of a minor, for the minor's voluntary admission to any facility that is not a State facility, a State facility that is a RICA, or the child or adolescent unit of a State facility for the treatment of a mental disorder. A facility may not admit an individual unless (1) the individual has a mental disorder; (2) the mental disorder is susceptible to care or treatment; (3) the applicant understands the nature of a request for admission; and (4) specified health care professionals have assented to the admission.

Residents of a RICA must be accorded specified rights, including protections against mental, physical, and sexual abuse. Residents must receive appropriate humane treatment and services in a manner that restricts the individual's personal liberty within a facility only to the extent necessary and consistent with the individual's treatment needs and applicable legal requirements.

### *Home and Hospital Teaching Programs*

Each local school system must make instructional services available to students who are unable to participate in their school of enrollment due to a physical or emotional condition. In implementing home and hospital teaching programs, a local school system must comply with the federal Individuals with Disabilities Education Act, Americans with Disabilities Act, and § 504 of the Rehabilitation Act of 1973, as appropriate. Concurrent delivery of instructional services and enrollment in a public school must be provided for a student whose physical or emotional condition requires the student to be absent from school on an intermittent basis. In making instructional services available, local school systems must consult with the parent, guardian, student, psychologist, physician, psychiatrist, and nurse practitioner, as appropriate. Instructional services must be available to all students during convalescence or treatment time in a medical institution or therapeutic treatment center and at the student's place of residence, or all of these.

### *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 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.

**Local Expenditures:** According to MSDE, local school systems may incur significant additional costs associated with seeking alternative ways to provide education services to students who are registered sex offenders. These costs may relate to ensuring that home and hospital teaching programs are properly staffed and that RICAs have the capacity to deliver instruction to students, 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.

MSDE indicates 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.

Anne Arundel County Public Schools (AACPS) estimates a cost per student of \$35,000 for a school year in the home and hospital program, though AACPS is not aware of any students on a registered sex offender list. St. Mary's County Public Schools does not anticipate additional costs under the bill. Baltimore City Public Schools and Prince George's Public Schools both advise that in instances when a student is a minor, a local school system may not be aware of registrant status.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** SB 515 (Senator Klausmeier) - Judicial Proceedings.

**Information Source(s):** Baltimore City Public Schools; Anne Arundel County Public Schools; Frederick County Public Schools; Prince George’s County Public Schools; St. Mary’s County Public Schools; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Maryland Department of Health; Department of Public Safety and Correctional Services; Department of Legislative Services

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