

Department of Legislative Services  
Maryland General Assembly  
2024 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 438

(Senator Ready, *et al.*)

Judicial Proceedings

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Family Law - Fundamental Parental Rights

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This bill establishes that a parent has the fundamental right to direct the upbringing, education, care, and welfare of the parent’s child. The State or a political subdivision may not infringe on these rights of a parent unless it demonstrates by clear and convincing evidence that the infringement is (1) necessary to achieve a compelling government interest; (2) narrowly tailored to achieve the compelling government interest; and (3) the least restrictive means to achieve the compelling government interest. The bill may not be construed to authorize a parent to engage in conduct that is unlawful or to abuse or neglect the parent’s minor child in violation of State law. The General Assembly may exempt a law or ordinance from these provisions only if specified requirements are met. Otherwise, the bill applies to all State and local laws and ordinances, whether statutory or otherwise, effective before, on, or after October 1, 2024.

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Fiscal Summary

**State Effect:** Potential significant increase in expenditures to litigate claims asserted under the bill, as discussed below. No material effect on revenues.

**Local Effect:** Potential significant increase in expenditures for local governments to litigate claims asserted under the bill, as discussed below. No material effect on revenues.

**Small Business Effect:** Minimal.

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Analysis

**Current Law:** The U.S. Supreme Court and the Maryland Court of Appeals (now the Supreme Court of Maryland) have recognized that parents have a fundamental right to

govern the care, custody, and control of their children without state interference, unless there is a showing of parental unfitness or the existence of exceptional circumstances (see, e.g., *Troxel v. Granville*, 530 U.S. 57 (2000); *Koshko v. Haining*, 398 Md. 404 (2007)).

Generally, statutory provisions do not explicitly state the fundamental rights of parents. However, certain provisions of law include procedural or other requirements that protect parental interests. For example, statutory provisions/the Maryland Rules outline the process by which parental rights may be terminated in specified circumstances (e.g., in a guardianship proceeding after a child has been found to be a child in need of assistance (CINA) or if a child is alleged to have been conceived without consent). Such provisions generally include requirements related to notice, the right to be heard at specified hearings, and the right to the assistance of counsel. Under § 7-403 of the Education Article, the Maryland Department of Health, in cooperation with the State Board of Education and the Statewide Advisory Commission on Immunizations, must adopt rules and regulations regarding immunizations required of children entering schools. However, unless the Secretary of Health declares an emergency or an epidemic of disease, a child whose parent or guardian objects to immunization on the ground of a conflict with *bona fide* religious beliefs and practices may not be required to present a physician's certification of immunization in order to be admitted to school.

**State/Local Fiscal Effect:** State and local expenditures related to litigation costs may increase, potentially significantly, to the extent that parents attempt to assert rights under the bill's provisions. For example, the Maryland State Department of Education advises that numerous policies and procedures regarding education, such as the development of Individualized Education Plans and approval or denial of transfers between schools, may be deemed to potentially infringe on the rights of a parent. The Judiciary similarly notes that the bill may spur challenges in educational matters, as well as CINA and delinquency matters. Baltimore City Public Schools advises that based on the broad reach of the bill, it anticipates increased litigation from parents wanting specific curriculums, discipline, special education services, attendance, and grading requirements, among other policies and procedures. Regardless of the merits of any potential claim and despite the probability that in many cases, a State or political subdivision could meet the necessary, narrowly tailored, and least restrictive means test as specified in the bill, the Department of Legislative Services (DLS) agrees that the bill is likely to result in increased litigation costs for State and local entities.

The Maryland Association of County Health Officers notes that although the bill has the potential to change how services are offered at local health departments to minors, it is unable to determine the impact at this time. DLS agrees that any potential associated impact with the *provision of services* (for local health departments and other State/local entities) cannot be determined in advance, as it may depend on the nature of any litigation pursued

and the outcome of litigation. Accordingly, any potential impact is not accounted for in this fiscal and policy note.

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### **Additional Information**

**Recent Prior Introductions:** Similar legislation has been introduced within the last three years. See SB 566 and HB 666 of 2023.

**Designated Cross File:** HB 553 (Delegate Miller, *et al.*) - Judiciary.

**Information Source(s):** Maryland Association of County Health Officers; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State Department of Education; Baltimore City Public Schools; Department of Legislative Services

**Fiscal Note History:** First Reader - February 12, 2024  
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