

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1242
Judiciary

(Delegate Cox)

Family Law - Fundamental Parental Rights

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 cause physical harm or long-term emotional harm to the parent's child. 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, 2020.

Fiscal Summary

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

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

Small Business Effect: None.

Analysis

Current Law: No statutory provisions specifically address the *rights* of parents. The U.S. Supreme Court and the Maryland Court of Appeals 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)).

However, statutory provisions impose numerous obligations on parents in regards to their children. For example, pursuant to the Education Article, each person who has legal custody or care and control of a child, as specified, must see that the child attends school or otherwise receives required educational instruction. Pursuant to the Family Law Article, a parent may be ordered to pay child support, in an amount determined by the court.

A parent, family member, household member, or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not neglect the minor. “Neglect” is the intentional failure to provide necessary assistance and resources for the physical needs or mental health of a minor that creates a substantial risk of harm to the minor’s physical health or a substantial risk of mental injury to the minor. Neglect does not include the failure to provide necessary assistance and resources when the failure is due solely to a lack of financial resources or homelessness. A violator is guilty of a misdemeanor and subject to maximum penalties of five years imprisonment and/or a \$5,000 fine.

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 provided similar information, also noting that requirements regarding compulsory school attendance or prohibitions against leaving children younger than a certain age unattended may be challenged. Montgomery County advises that if the clear and convincing standard is applied to all proceedings in child in need of assistance cases, the county would likely be overwhelmed with litigation costs. Regardless of the merits of any potential claim and despite the probability that in many, if not all, 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 agrees that the bill is likely to result in increased litigation costs for State and local entities.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Association of Counties; Maryland Municipal League; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Department of Human Services; Montgomery County Public Schools; Department of Legislative Services

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an/lgc

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