

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 566
Judicial Proceedings

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 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, 2023.

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.

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 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. In response to information submitted on similar legislation in a prior legislative session, 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 has previously advised (also for similar legislation) that if the clear and convincing standard is applied to all proceedings in child in need of assistance cases, the county could be overwhelmed with litigation costs. 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.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 1242 of 2020.

Designated Cross File: HB 666 (Delegate Miller, *et al.*) - Judiciary.

Information Source(s): Maryland Association of County Health Officers; Montgomery and Worcester counties; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Anne Arundel County Public Schools; Department of Legislative Services

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js/lgc

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