

Department of Legislative Services  
Maryland General Assembly  
2025 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1205  
Judiciary

(Delegate Wivell, *et al.*)

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Family Law - Prospective Foster Care Parents and Out-of-Home Placements

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This bill requires a local department of social services to provide a prospective foster parent information on the medical, educational, and behavioral history of a child that (1) directly relates to the care of the child and (2) would possibly affect the care provided by a prospective foster parent. The bill also allows a local department of social services to place up to four children in an out-of-home placement.

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Fiscal Summary

**State Effect:** The bill is not anticipated to materially affect State operations or finances.

**Local Effect:** The bill is not anticipated to materially affect local government operations or finances.

**Small Business Effect:** Minimal.

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Analysis

**Current Law:** The Department of Human Services (DHS) is required to establish a program of out-of-home placement for minor children (1) who are placed in the custody of a local department, for a period of up to 180 days, by a parent or legal guardian under a voluntary placement agreement; (2) who are abused, abandoned, neglected, or dependent, if a juvenile court has determined that continued residence in the child's home is contrary to the child's welfare and has committed the child to the custody or guardianship of a local department; or (3) who, with the approval of DHS, are placed in an out-of-home placement by a local department under a voluntary placement agreement regarding a child with a developmental disability or a mental illness, as specified. An out-of-home placement may

include family foster care, group and residential care, kinship care, and treatment foster care.

Foster parents in the State are afforded numerous rights, including, prior to a local department placing a child in a home, and upon learning new information, for the case worker to provide the foster parent with all known information about the child in care in regard to the child's medical, mental health, behavioral, educational, social, and emotional background, including the reason the child in care came into care and any change in the case plan. Information about the child's family that may be privileged or confidential may not be disclosed. (COMAR 07.02.25.12)

### *Health Insurance Portability and Accountability Act*

Under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), covered entities may not use or disclose protected health information except either as the privacy rule permits or as an individual authorizes in writing. Covered entities may disclose protected health information without an individual's authorization for such purposes as treatment, payment, health care operations, and public interest activities. The HIPAA privacy rule defines "covered entities" as health plans, health care clearinghouses, and health care providers. "Protected health information" is individually identifiable health information that is transmitted or maintained by electronic media or any other form or medium, excluding individually identifiable health information in education records covered by the Family Educational Rights and Privacy Act (FERPA), student health records for individuals attending an institution of postsecondary education who are at least age 18, and employment records held by a covered entity in its role as employer.

### *Family Educational Rights and Privacy Act*

At the federal level, FERPA of 1974 governs the privacy of student data. FERPA generally prohibits the disclosure by schools that receive federal education funding of personally identifiable information from a student's education record unless the educational institution has obtained signed and dated written consent from a parent or eligible student or one of FERPA's exceptions applies. An education record includes a range of information about a student.

FERPA's exceptions are not always well understood, which leads to some believing that no information about a student may be disclosed without facing a lawsuit, even in the face of health or safety concerns. However, federal regulations (34 CFR 99.36) specifically address these circumstances so that an institution may disclose personally identifiable information from an education record to appropriate parties, including parents of an eligible student, in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

In addition, not all information that comes into the hands of an educator, administrator, or other school staff is an “education record” subject to FERPA restrictions. Two particular sources of information are outside FERPA’s definition of “education record”: (1) information an educator learns through personal observation, peer reports, or social media; and (2) records of school security personnel, which are governed under a specific exception to FERPA. Therefore, this information may be disclosed outside of FERPA.

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### **Additional Information**

**Recent Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** None.

**Information Source(s):** Montgomery County; Judiciary (Administrative Office of the Courts); Department of Human Services; Department of Legislative Services

**Fiscal Note History:** First Reader - February 20, 2025  
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