

**Date:** March 15, 2023

**Bill number:** SB0566

**Committee:** Senate Judicial Proceedings Committee

**Bill title:** **Family Law - Fundamental Parental Rights**

**DHS Position:** **LETTER OF INFORMATION**

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The Maryland Department of Human Services (DHS) thanks the Committee for the opportunity to provide written information for Senate Bill 566 (SB 566).

Senate Bill 566 would reiterate established law that a parent has the fundamental right to direct the upbringing, education, care, and welfare of the parent’s child. Current law already only allows state involvement when certain limited circumstances exist and when that involvement is mandated by the best interest of the child.<sup>1</sup> Maryland law has long recognized that the “best interest of the child” standard is the overarching consideration in all proceedings involving children, whether public or private.<sup>2</sup> Looking at the best interest of the child does not ignore the rights of parents, because that standard “embraces a strong presumption that the child’s best interests are served by maintaining parental rights.”<sup>3</sup> The proposed legislation, however, addresses only parental rights and does not mention the best interest of the child.

DHS serves as the state’s primary social services agency and has the authority for statewide implementation of Child Protective Services (CPS). DHS has been at the forefront of implementing the Family First Prevention Services Act (FFPSA). FFPSA aims to minimize trauma experienced by children through preventive services supporting DHS’ efforts to increase the number of children who can safely remain in their homes. There are times when children cannot safely remain in their homes which requires DHS to remove children and file a Child in Need of Assistance (“CINA”) petition. Senate Bill 566 could nullify existing statutes governing CINA cases.<sup>4</sup> DHS’ vision includes ensuring individuals are safe from abuse and neglect. It is important that DHS is able to intervene on behalf of a child’s best interest when absolutely necessary. The current level of proof in a Shelter Care hearing is “reasonable grounds to believe”<sup>5</sup> the child needs protection from “serious, immediate danger”<sup>6</sup> and in a CINA adjudication, thirty days after shelter, is preponderance of the evidence.<sup>7</sup> By requiring clear and convincing evidence – the highest level of proof in a civil case – at *any* proceeding affecting parental rights, this would make the temporary, emergency removal of children from even the most dangerous situations difficult, if not impossible, because of the time necessary to compile admissible evidence sufficient to satisfy that requirement. Consequently, this proposed legislation would negatively impact and hinder DHS’ ability to protect Maryland’s children from abuse and neglect.

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<sup>1</sup> *Troxel v. Granville*, 530 U.S. 57, 72-73 (2000); *In re T.K.*, 480 Md. 122, 131 (2022); Md. Code Ann., Cts. & Jud. Proc. §§ 3-801 – 3-830 (LexisNexis 2020, Supp. 2022); Md. Code Ann., Fam. Law § 5-323 (LexisNexis 2019)

<sup>2</sup> *In re T.K.*, 480 Md. 122, 147 (2022);; *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 497-98 (2007).

<sup>3</sup> *In re Yve S.*, 373 Md. 551, 571 (2003).

<sup>4</sup> Cts. & Jud. Proc. §§ 3-801-3-830

<sup>5</sup> Md. Rule 11-204(d)(1)

<sup>6</sup> Md. Code Ann., Cts. & Jud. Proc. § 3-815(b)(1) (LexisNexis 2020)

<sup>7</sup> Md. Code Ann., Cts. & Jud. Proc. § 3-817(c) (LexisNexis 2020)



When it is absolutely necessary to remove a child, DHS provides services and support to the parents to address the safety concerns that require the child's removal. Typically, these services and supports are provided to families for at least a year before considering termination of parental rights. Maryland law already protects parents' fundamental rights in a termination of parental rights proceeding and requires that the court must make its findings in that proceeding by clear and convincing evidence when evaluating whether to terminate a parental relationship.<sup>8</sup>

The Department appreciates the opportunity to provide the aforementioned information to the Committee for consideration during your deliberations. DHS welcomes continued collaboration with the Committee on Senate Bill 566.

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<sup>8</sup> Md. Code. Ann., Fam. Law § 5-323(b) (LexisNexis 2019)

