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POSITION ON PROPOSED LEGISLATION

BILL: House Bill 666 Family Law – Fundamental Parental Rights

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 2/20/2023

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on House Bill 666. It codifies a right that has long been recognized and protected under the state and federal constitutions.

The United States Supreme Court has recognized as far back as 1923 that parents have a Constitutionally-protected “fundamental” right to raise their children as they choose, without excessive interference from the State.” *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (stating that “the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.”). Consistent with this principle, Maryland law views a parent’s right to raise his or her children free from undue and unwarranted interference on the part of the State, including its courts, as a fundamental Constitutionally-based right. *In re Adoption/ Guardianship of Rashawn H.*, 402 Md. 477, 495 (2007).

Choices about the upbringing of children – the religion they practice, their education, with whom they associate, where they travel, among other things – are among associational rights the Supreme Court has ranked as “of basic importance in our society,” rights sheltered by the Fourteenth Amendment against the State’s unwarranted usurpation, disregard, or disrespect. House Bill 666 requires that any infringement on this fundamental right by the State or political subdivision must be shown by clear and convincing evidence to be necessary to achieve a compelling government interest, narrowly tailored to achieve the compelling government interest, and is the least restrictive means to achieve the compelling government interest. This is the same requirement in Constitutional jurisprudence when there is an infringement on any Constitutional Right, and Maryland has consistently echoed the Supreme Court, declaring a

parent's liberty interest in raising a child a fundamental one that cannot be taken away unless clearly justified.

While HB 666 does not create a new law and only codifies existing Supreme Court and Maryland case law, it is important to pass a bill that reflects the will of the people to reinforce the Constitutional principles regarding the parent-child relationship. The fundamental rights of parents in Maryland must be protected by statute.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on HB 666.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.

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