

Department of Legislative Services  
 Maryland General Assembly  
 2022 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 618 (Delegate Cox, *et al.*)  
 Ways and Means and Judiciary

Maryland Parental Rights Act

This bill, among other provisions, expresses the finding of the General Assembly that (1) it is a fundamental right of parents to direct the upbringing, education, and care of their minor children; (2) no information relating to a minor child should be withheld, either inadvertently or purposefully, from the child’s parent, including information relating to the child’s health, well-being, and education while the child is in the custody of a local school system; and (3) it is necessary to establish a consistent mechanism for parents to be notified of information relating to the health and well-being of their minor children. To this end, the bill (1) explicitly establishes numerous parental rights in statute; (2) requires various State and local entities to take specified actions related to such rights, particularly in regard to the education of a minor child; and (3) prohibits various State and local entities from taking specified actions related to such rights. **The bill takes effect July 1, 2022.**

Fiscal Summary

**State Effect:** General fund expenditures increase by a *minimum* of \$124,000 in FY 2023 for staff; general fund expenditures likely increase further to implement the bill’s requirements, as discussed below. Future years reflect annualization. No material effect on revenues.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	124,000	151,500	155,700	159,800	163,800
Net Effect	(\$124,000)	(\$151,500)	(\$155,700)	(\$159,800)	(\$163,800)

*Note: ( ) = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** Potential significant increase in local school system expenditures. Revenues are not materially affected. **This bill may impose a mandate on a unit of local government.**

**Small Business Effect:** Minimal.

---

## Analysis

### Bill Summary:

#### *Specific Requirements Related to Education*

The bill requires each public meeting of the Maryland State Board of Education (SBE) to allow at least 10 minutes for testimony from parents and guardians of students in public schools in the State. A local board of education must also allow at least 10 minutes for testimony from parents and guardians at each public meeting.

The bill expresses a finding of the General Assembly that no information relating to the health and well-being of a minor child documented by any employee of the school district, including diagnoses or observations given by employees trained in medicine or mental health, is to be withheld from a child's parents or guardians.

Each local school board must, in consultation with parents, teachers, and administrators, establish and adopt a policy to promote parental involvement in the public school system. The policy must include (1) a plan for parental participation in schools to improve parent and teacher cooperation in homework, school attendance, and discipline; (2) a procedure for a parent to learn about a minor child's course of study, including the source of any supplemental educational materials; (3) a procedure for a parent to object to instructional materials and other materials, as specified, if the objection is based on beliefs regarding morality, religion, philosophy, any fundamental value system deemed important by a parent, or the belief that the materials are harmful; (4) a procedure for a parent to withdraw the minor child from any portion of the local board's comprehensive health education, as specified; (5) a procedure for a parent to learn about the nature and purpose of clubs and activities offered at the minor child's school, including those that are extracurricular or part of the school curriculum; and (6) a procedure for a parent to learn about parental rights and responsibilities under general law, including those listed in the bill (some of which are specified below).

The above information may be provided electronically, and a parent may request, in writing, from the county superintendent the above information. A county superintendent must provide the information to the parent within 10 days after receiving a request. If a county superintendent denies a request for information or fails to respond within 10 days, a parent may appeal the denial or delay to the local board, as specified.

At least 14 days before the first day of each school year, each local board must provide to the parent or guardian of each student enrolled in a public school under the board's jurisdiction a written summary of the curriculum for the student's grade. The summary

must be written in plain language and explain any changes in the curriculum from the immediately preceding school year.

### *Parental Rights – Generally*

As previously noted, the bill expresses a finding of the General Assembly that parents have a fundamental right to direct the upbringing, education, and care of their minor children. The bill prohibits the State, any of its political subdivisions, any other governmental entity, or any other institution from infringing on the fundamental rights of a parent to direct the upbringing, education, health care, and mental health of the parent's minor child without demonstrating that the action is (1) reasonable and necessary to achieve a compelling State interest; (2) narrowly tailored; and (3) not otherwise served by a less restrictive means. Before terminating a parent's rights, the State must give the parent the opportunity to be tried before a jury.

The bill specifies that all parental rights are reserved to the parent of a minor child in the State without instruction or interference from the State, any of its subdivisions, any other governmental entity, or any other institution, except as otherwise provided by law. The bill lists numerous examples of such parental rights, including the right to:

- direct the education and care of the child;
- direct the upbringing and the moral or religious training of the child;
- make health care decisions for the child;
- access and review all medical records of the child, unless the parent is the subject of an investigation of a crime committed against the child or parental rights have been terminated;
- opt the child out of any portion of the comprehensive health education required that relates to sex education instruction, as specified;
- exempt the child from immunizations;
- enroll the child in gifted or special education programs;
- receive a school report card and be informed of the child's attendance requirements; and
- opt out of any county-level data collection relating to the child.

An employee of the State, any of its subdivisions, or any other governmental entity that encourages or coerces – or attempts to encourage or coerce – a minor child to withhold information from the child's parent may be subject to disciplinary action by the appropriate authority. A parent of a minor child in the State has inalienable rights that are more comprehensive than those listed above, unless the rights have been legally waived or terminated. Except as otherwise provided by law, the rights of a parent of a minor child

may not be limited or denied. The bill may not be construed to prescribe all rights to a parent of a minor child in the State.

### *Parents' Bill of Rights – Prohibitions Regarding Medical Treatment of a Minor*

Except as otherwise provided by law, a health care practitioner (or individual employed by a health care practitioner) must obtain consent from a minor's parent or guardian before providing or soliciting or arranging to provide health care services or prescribe medicinal drugs to a minor. Except as otherwise provided by law, the owner of a health care facility must obtain consent from a minor's parent or guardian before allowing a medical procedure to be performed on a minor at the facility. A violator (1) may be subject to disciplinary actions by the appropriate licensing board and (2) is guilty of a misdemeanor, subject to imprisonment of up to one year and/or a \$5,000 fine.

**Current Law:** Generally, statutory provisions do not explicitly address most of the specific rights of parents as set forth in the bill. However, 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)).

*Termination of Parental Rights (TPR):* Statutory provisions/the Maryland Rules outline a process by which parental rights may be terminated under specified circumstances (e.g., in a guardianship proceeding after a child has been found to be a child in need of assistance). There are no jury trials in proceedings to terminate parental rights.

*Program of Instruction:* With the advice of the State Superintendent of Schools, SBE establishes basic policy and guidelines for the program of instruction for public schools. Subject to State law and the regulations, bylaws, policies, and guidelines established by SBE, each local board of education must establish the curriculum guides and courses of study for schools in its jurisdiction. Policies, rules, and regulations for the graduation of students from Maryland public schools are established by local boards of education and SBE.

The State Standards and Frameworks defines what students should know and be able to do at each grade level. Using the standards and frameworks, local school systems develop curriculums. Teachers then develop lesson plans to teach the curriculum.

*Comprehensive Health Education:* Each local school system must (1) provide in public schools a comprehensive health education program with sufficient frequency and duration to meet the requirements of the State curriculum for all students in prekindergarten through grade 8 and (2) offer in public schools a comprehensive health education program in

grades 9 through 12 that enables students to meet graduation requirements and to select health education electives. Access to the curriculum must be provided for nondiplomat-bound students.

In order to graduate from a public high school in Maryland, students must complete a credit of health. State law requires local school systems to teach a number of specified health topics including drug addiction and prevention education; awareness and prevention of sexual abuse and assault; and cardiopulmonary resuscitation (CPR) that includes hands-only CPR and the use of an automated external defibrillator.

State regulations require health instruction in the following topics: mental and emotional health; alcohol, tobacco, and other drugs; personal and consumer health; family life and human sexuality; safety and injury prevention; nutrition and fitness; and disease prevention and control.

*Immunizations:* Under § 7-403 of the Education Article, the Maryland Department of Health, in cooperation with SBE and the Statewide Advisory Commission on Immunizations, must adopt rules and regulations regarding immunizations required of children entering schools. 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. The Secretary of Health must adopt related regulations.

*Medical Treatment of a Minor:* Generally, a parent must give consent before a physician can give medical or surgical treatment to a minor. Title 20, Subtitle 1 of the Health-General Article sets forth numerous exceptions, including providing a minor with the same capacity as an adult to consent to medical treatment if, in the judgment of the attending physician, the life or health of the minor would be affected adversely by delaying treatment. Among other provisions, it states that a minor also has the same capacity as an adult to consent to (1) treatment or advice about drug abuse, alcoholism, venereal disease, pregnancy, contraception (other than sterilization), and the prevention of HIV and (2) physical exams and treatment of injuries from an alleged rape or sexual offense (including physical exams to obtain related evidence). Statutory provisions also specifically address parental notification prior to performing an abortion on an unmarried minor.

**State/Local Fiscal Effect:** State/local expenditures increase, potentially significantly, for likely impacted entities, including local school systems, to meet the bill's requirements.

*Maryland State Department of Education and Office of the Attorney General*

The Maryland State Department of Education does not anticipate a fiscal or operational impact, and notes that it already affords the opportunity for public comment at each State board meeting.

The Office of the Attorney General (OAG) anticipates that the bill likely results in increased litigation involving the State (*e.g.*, appeals to SBE) and estimates that one additional assistant Attorney General is required. Accordingly, general fund expenditures increase by \$124,026 in fiscal 2023, which accounts for a 90-day start-up delay from the bill’s July 1, 2022 effective date. This estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salaries and Fringe Benefits	\$116,683
Operating Expenses	<u>7,343</u>
<b>Total OAG FY 2023 State Expenditures</b>	<b>\$124,026</b>

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

*Termination of Parental Rights*

The Judiciary notes that the provisions establishing a right to a jury trial prior to terminating a parent’s rights have a significant operational and likely fiscal impact on the processing of such cases. According to the Judiciary, TPR proceedings, which are subject to strict federal and State timelines, are already notoriously difficult to schedule and are often held in installments over the course of several weeks due to the multiple parties involved. Authorizing the election of a jury trial in such matters exacerbates these challenges. The Department of Human Services and the Office of the Public Defender (as well as the circuit courts) likely incur additional expenses related to their roles in such proceedings to the extent that a significant number of parents request jury trials in TPR proceedings. However, a specific impact, including any potential need for additional staff, cannot be quantified in advance.

*Local Boards of Education*

Local boards of education may incur significant expenditures to facilitate the multitude of requirements under the bill. Any specific impact depends largely on existing practices of local jurisdictions, the extent to which parents exercise any rights newly specified in the bill, and the specific policies adopted by local boards to promote parental involvement.

For example, St. Mary's County Public Schools advises that the legislation has a significant implication to many of its current practices and protocols and anticipates the need for additional staff at each school to facilitate incoming requests from parents, central office supervisory staff, and an additional attorney to ensure compliance. Costs associated with these 62 positions are estimated at approximately \$5.5 million annually.

*Penalty Provisions*

The bill's penalty provisions are not anticipated to materially affect State or local finances or operations.

---

**Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Maryland Association of County Health Officers; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Maryland Department of Health; Department of Human Services; Baltimore City Public Schools; St. Mary's County Public Schools; Department of Legislative Services

**Fiscal Note History:** First Reader - February 23, 2022  
rh/clb

---

Analysis by: Jennifer K. Botts

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510