

# **FAMILY ISSUES FACT SHEET**

No. 2022-07 (January 2022)

## **PARENTAL RIGHTS**

### **HB 2161 PARENTAL RIGHTS; SCHOOLS; EDUCATIONAL RECORDS**

#### **EXECUTIVE SUMMARY**

Arizona law recognizes the fundamental right of parents to raise their child without interference by the government or other institutions.<sup>i</sup> HB 2161 clarifies existing parental rights laws by stating that a parent has access to a minor child's medical and educational records, whether written or electronic. It ensures that public district and charter schools that wish to survey students, must first provide the survey language to the parent to properly obtain written informed consent. Lastly, the bill allows parents to sue the government, including public schools, for violations of their rights, and allows the court to award them declaratory, injunctive relief, compensatory damages, and attorney's fees. The bill also subjects private and public employees to discipline for withholding from a parent relevant information about the physical, emotional, or mental health of the parent's child, or attempting to coerce the child to withhold information from the child's parent.

#### **WHAT ARE THE PROBLEMS AND WHAT DOES THE BILL DO?**

##### **HB 2161 Ensures Parental Access to Medical Records**

In the last year, alarmed parents contacted CAP because their health providers shut them out of their child's online medical portals upon a child's 12th birthday. These electronic portals allow parents to view their child's medical records, make payments, schedule appointments, contact pediatricians and other physicians directly, and request prescription refills, among other services. State law already explicitly protects the right of parents to access and review all medical records of a minor child. But many local healthcare providers, hiding behind a rhetorical cocktail of HIPPA privacy rules and a handful of state laws allowing minors to obtain certain medical procedures without parental consent,<sup>ii</sup> exclude parents from electronic access to the portals. HB 2161 clarifies the statutory parental right to medical records by stating that health care entities must provide portal access to parents.

##### **HB 2161 Ensures Parental Access to All Educational Records**

Parents are running into similar access problems at their local public schools. HB 2161 delineates the existing parental right to access their child's records by detailing that a parent of a public district and charter school student must have access to all written and electronic records of a public school related to that child, including extracurricular activities, psychological records, health records, teacher and counselor evaluations, email accounts, and online accounts. The bill further provides a parent a private right of action against school districts or charter schools who violate this right.

## **HB 2161 Prohibits Schools Surveying Students Absent Proper Parental Notice and Consent**

Arizona law already prohibits public schools from giving students surveys without written parental consent, but only if the school is keeping the survey for more than one year. The one year requirement is deleted to ensure that all surveys and a written informed consent form are provided to parents seven days prior to being administered. A recent survey given without consent at one local school asked such personal questions as: “Do you believe in God?” And, “How do your mother and father get along?”

## **HB 2161 Provides Parents a Right to Sue the Government from Interfering with Their Rights**

HB 2161 also responds to multiple complaints about the lack of recourse available to parents whose rights have been violated. Parents deserve a fair hearing and a vindication of their rights when the government interferes or obstructs those rights. To that end, HB 2161 provides a statutory cause of action against the state, its political subdivisions, other government entities, and government employees acting under color of state law, who interfere with the fundamental rights of parents. The government bears the burden of proof to show their action was essential to a compelling government interest, and that they used narrowly tailored and least restrictive means possible. In addition, HB 2161 expands existing law to permit the discipline of public or private employees who withhold information from a parent related to the physical, emotional, or mental health of their child.

## **TALKING POINTS**

- 1. Our laws acknowledge the fundamental right of parents to raise their children, including the right to access educational and medical records.** In this technological era, parents must have easy access to *electronic records* as well as written records.
- 2. Public schools cannot use surveys as an end run around parental rights.** Schools must provide access to student surveys before they are administered so that parents can make an informed decision about their child’s participation.
- 3. Parents have the right and responsibility to make decisions for their children - not school administrators or teachers, nor healthcare providers. Public and private institutions must be held accountable for violating parents’ rights.** The strict scrutiny standard makes the government answer for interferences with parental rights.

## **CONCLUSION**

HB 2161 enhances existing parental rights to direct the education and upbringing of their children without unjust treatment by government or private institutions. The bill provides essential legal recourse to parents who experience violations of their rights.

---

<sup>i</sup> A.R.S. §§ 1-601, 1-602(A).

<sup>ii</sup> In general, Arizona law requires parental consent for any medical procedures involving a minor. However, Arizona law contains several exceptions to the general rule of parental consent for medical treatment. A.R.S. § 36-2272 (emergency mental health treatment); A.R.S. § 36-2272 (abortion by judicial bypass); A.R.S. § 36-2152 (treatment for STDs); A.R.S. § 44-132.01 (emergency substance abuse treatment); A.R.S. § 44-133.01 (prescriptions including birth control).