

FAMILY ISSUES FACT SHEET

No. 2022-07 (January 2022/Updated March 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.ⁱ HB 2161 clarifies existing parental rights laws by stating that a parent has access to a minor child's medical and educational records. 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 permits the court to award them declaratory relief, injunctive relief, compensatory damages, and attorney's fees.

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 denied them access to their child's medical records. 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,ⁱⁱ 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 access to parents.

HB 2161 Ensures Parental Access to All Educational Records

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 the ability to sue school districts or charter schools that 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. HB 2161 deletes the one year requirement so that schools must provide all surveys and a written informed consent form to parents seven days prior to administering the surveys. 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 for 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.

TALKING POINTS

1. **Our laws acknowledge the fundamental right of parents to raise their children, including the right to access educational and medical records.** HB 2161 clarifies that parents are granted access to these records. A mother testified that she could not access her son's medical records after he turned 12. The hospital told her they automatically shut out the parents when the child turns 12.
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. Parents must have recourse available for when their rights are violated.
4. **Schools are surveying students without the requisite parental permission, and they are asking students personal and inappropriate questions about their families. Parents testified to the need for this law.**

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.

ⁱ A.R.S. §§ 1-601, 1-602(A).

ⁱⁱ 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).