WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5036

By Delegate Heckert, Crouse, Foggin, Mazzocchi, Kirby and Kimble

[Introduced January 23, 2024; Referred to the Committee on Senior, Children, and Family Issues then the Judiciary]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §49-11-1, §49-11-2, and §49-11-3, all relating to codifying the Parents' Bill of Rights.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. PARENTS' BILL OF RIGHTS.

[§49-11-1](https://code.wvlegislature.gov/44-10A-1). Short title.

This article shall be known and may be cited as the "Parents' Bill of Rights".

§49-11-2. Fundamental rights of parents.

Parents and legal guardians of minor children in the State of West Virginia shall have complete and final decision-making authority over all matters regarding general health and welfare of children. These rights include but are not limited to the following:

(a) Parents and legal guardians shall have the right to make any and all decisions relating to the medical, psychological, religious, moral, and/or ethical training and well-being of their children.

(b) Parents and legal guardians shall have the right to make any and all decisions relating to the type and extent of medical treatment of their children. Such decisions include but are not limited to: dispensing of medicines and vaccines, invasive procedures, medical testing and diagnostics, physical therapy, and all matters concerning mental health.

(c) The parental right to direct education includes, but is not limited to, the right to choose, as an alternative to public education, private, religious, or home schools, and the right to make reasonable choices within public schools for one's child.

(d) Parents and legal guardians shall have primary legal standing as the chief advocate for their minor children in any court proceeding or any administrative procedure before any government authority and may appear in any legal proceeding on behalf of their children without representation by an attorney.

(e) No institution, agency, representative, or employee of a government, whether local or state, federal or international, has the right to question, alter, or invalidate a parental decision regarding any right enumerated herein. The decisions of a parent or legal guardian regarding their minor child or children are recognized as final, unalterable, and irrevocable at any level of government unless statutorily authorized and only to the extent such decision is shown by clear and convincing evidence to pose serious and imminent harm to the child.

(f) (1) No institution, agency, representative, or employee of any unit of the government may curtail any right of a parent regarding the child of a parent unless by order of a Court and then limited only to the extent necessary to protect a child from imminent harm or danger.

(2) No institution, agency, representative, or employee of any unit or instrumentality of government, whether local, state or federal, may expose or make available to a minor child any obscene, indecent, or profane literature, graphic materials, audio/video recordings, internet materials, or sexually explicit demonstrations or performances in accordance with Federal Laws set forth in 18 U.S. Code Chapter 71.

(g) No institution, agency, representative, or employee of any unit or instrumentality of government, whether local, state or federal, may permit or allow the exposure of a member of the opposite biological sex’s nudity, including any sexual organ, to a minor in a public place, including but not limited to any place on the premises of a public education institution, a bathroom, a shower room, a locker room or a changing room.

(h) A parent may bring suit against the state, any agency or locality thereof, any government official, or any person acting under color of law based on any violation of this article and seek appropriate relief, including, but not limited to, injunctive relief, monetary damages, reasonable attorneys' fees, and court costs. A parent may also raise this article as a defense before any court or administrative tribunal.

(i) If a child has no affirmative right of access to a particular medical procedure or service, then nothing in this article may be construed to grant the child's parent an affirmative right of access to the procedure or service on the child's behalf.

(j) The rights granted or affirmed to Parents and legal guardians of minor children in the State of West Virginia in this section specifically exclude any right to:

(1) Take any action that contributes to the delinquency of a child and

(2) Administer or facilitate the administration to a minor within the state of West Virginia of any drug or substance causing or leading to (i) the purposeful termination of a pregnancy; or (ii) interference with the natural and normal development of hormones associated with puberty development.

§49-11-3. Applicability.

(a) *In general*. -- This article shall apply to any state or local law, rule, or ordinance and the implementation of that law, rule, or ordinance, whether statutory or otherwise, and whether adopted or effective prior to or after the effective date of this article

(b) *Rule of construction*. -- Statutory law adopted after the date of the
enactment of this article is subject to this article unless such law explicitly excludes such
application by reference to this article.

NOTE: The purpose of this bill is to codify a Parents' Bill of Rights.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.