

104TH CONGRESS
1ST SESSION

S. 984

To protect the fundamental right of a parent to direct the upbringing of a child, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 29 (legislative day, JUNE 19), 1995

Mr. GRASSLEY (for himself, Mr. LOTT, Mr. HELMS, and Mr. COCHRAN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To protect the fundamental right of a parent to direct the upbringing of a child, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Parental Rights and
5 Responsibilities Act of 1995”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

8 (1) the Supreme Court has regarded the right
9 of parents to direct the upbringing of their children
10 as a fundamental right implicit in the concept of or-

1 dered liberty within the 14th amendment to the
2 Constitution, as specified in *Meyer v. Nebraska*, 262
3 U.S. 390 (1923) and *Pierce v. Society of Sisters*,
4 268 U.S. 510 (1925);

5 (2) the role of parents in the raising and
6 rearing of their children is of inestimable value and
7 deserving of both praise and protection by all levels
8 of government;

9 (3) the tradition of western civilization recog-
10 nizes that parents have the responsibility to love,
11 nurture, train, and protect their children;

12 (4) some decisions of Federal and State courts
13 have treated the right of parents not as a fundamen-
14 tal right but as a nonfundamental right, resulting in
15 an improper standard of judicial review being ap-
16 plied to government conduct that adversely affects
17 parental rights and prerogatives;

18 (5) parents face increasing intrusions into their
19 legitimate decisions and prerogatives by government
20 agencies in situations that do not involve traditional
21 understandings of abuse or neglect but simply are a
22 conflict of parenting philosophies;

23 (6) governments should not interfere in the de-
24 cisions and actions of parents without compelling
25 justification; and

1 (7) the traditional 4-step process used by courts
2 to evaluate cases concerning the right of parents de-
3 scribed in paragraph (1) appropriately balances the
4 interests of parents, children, and government.

5 (b) PURPOSES.—The purposes of this Act are—

6 (1) to protect the right of parents to direct the
7 upbringing of their children as a fundamental right;

8 (2) to protect children from abuse and neglect
9 as the terms have been traditionally defined and ap-
10 plied in State law, such protection being a compel-
11 ling government interest;

12 (3) while protecting the rights of parents, to ac-
13 knowledge that the rights involve responsibilities and
14 specifically that parents have the responsibility to
15 see that their children are educated, for the purposes
16 of literacy and self-sufficiency, as specified by the
17 Supreme Court in *Wisconsin v. Yoder*, 406 U.S. 205
18 (1972);

19 (4) to preserve the common law tradition that
20 allows parental choices to prevail in a health care de-
21 cision for a child unless, by neglect or refusal, the
22 parental decision will result in danger to the life of
23 the child or result in serious physical injury to the
24 child;

1 (5) to fix a standard of judicial review for pa-
2 rental rights, leaving to the courts the application of
3 the rights in particular cases based on the facts of
4 the cases and law as applied to the facts; and

5 (6) to reestablish a 4-step process to evaluate
6 cases concerning the right of parents described in
7 paragraph (1) that—

8 (A) requires a parent to initially dem-
9 onstrate that—

10 (i) the action in question arises from
11 the right of the parent to direct the up-
12 bringing of a child; and

13 (ii) a government has interfered with
14 or usurped the right; and

15 (B) shifts the burdens of production and
16 persuasion to the government to demonstrate
17 that—

18 (i) the interference or usurpation is
19 essential to accomplish a compelling gov-
20 ernmental interest; and

21 (ii) the method of intervention or
22 usurpation used by the government is the
23 least restrictive means of accomplishing
24 the compelling interest.

1 **SEC. 3. DEFINITIONS.**

2 As used in this Act:

3 (1) APPROPRIATE EVIDENCE.—The term “ap-
4 propriate evidence” means—

5 (A) for a case in which a government seeks
6 a temporary or preliminary action or order, ex-
7 cept a case in which the government seeks to
8 terminate parental custody or visitation, evi-
9 dence that demonstrates probable cause; and

10 (B) for a case in which a government seeks
11 a final action or order, or in which the govern-
12 ment seeks to terminate parental custody or
13 visitation, clear and convincing evidence.

14 (2) CHILD.—The term “child” has the meaning
15 provided by State law.

16 (3) PARENT.—The term “parent” has the
17 meaning provided by State law.

18 (4) RIGHT OF A PARENT TO DIRECT THE UP-
19 BRINGING OF A CHILD.—

20 (A) IN GENERAL.—The term “right of a
21 parent to direct the upbringing of a child” in-
22 cludes, but is not limited to a right of a parent
23 regarding—

24 (i) directing or providing for the edu-
25 cation of the child;

1 (ii) making a health care decision for
2 the child, except as provided in subpara-
3 graph (B);

4 (iii) disciplining the child, including
5 reasonable corporal discipline, except as
6 provided in subparagraph (C); and

7 (iv) directing or providing for the reli-
8 gious teaching of the child.

9 (B) NO APPLICATION TO PARENTAL DECI-
10 SIONS ON HEALTH CARE.—The term “right of
11 a parent to direct the upbringing of a child”
12 shall not include a right of a parent to make a
13 decision on health care for the child that, by ne-
14 glect or refusal, will result in danger to the life
15 of the child or in serious physical injury to the
16 child.

17 (C) NO APPLICATION TO ABUSE AND NE-
18 GLECT.—The term “right of a parent to direct
19 the upbringing of a child” shall not include a
20 right of a parent to act or refrain from acting
21 in a manner that constitutes abuse or neglect of
22 a child, as the terms have traditionally been de-
23 fined and applied in State law.

1 **SEC. 4. PROHIBITION ON INTERFERING WITH OR USURP-**
2 **ING RIGHTS OF PARENTS.**

3 No Federal, State, or local government, or any offi-
4 cial of such a government acting under color of law, shall
5 interfere with or usurp the right of a parent to direct the
6 upbringing of the child of the parent.

7 **SEC. 5. STRICT SCRUTINY.**

8 No exception to section 4 shall be permitted, unless
9 the government or official is able to demonstrate, by ap-
10 propriate evidence, that the interference or usurpation is
11 essential to accomplish a compelling governmental interest
12 and is narrowly drawn or applied in a manner that is the
13 least restrictive means of accomplishing the compelling in-
14 terest.

15 **SEC. 6. CLAIM OR DEFENSE.**

16 Any parent may raise a violation of this Act in an
17 action in a Federal or State court, or before an adminis-
18 trative tribunal, of appropriate jurisdiction as a claim or
19 a defense.

20 **SEC. 7. DOMESTIC RELATIONS CASES AND DISPUTES BE-**
21 **TWEEN PARENTS.**

22 This Act shall not apply to—

23 (1) domestic relations cases concerning the ap-
24 pointment of parental rights between parents in cus-
25 tody disputes; or

26 (2) any other dispute between parents.

1 **SEC. 8. ATTORNEY'S FEES.**

2 Subsections (b) and (c) of section 722 of the Revised
3 Statutes (42 U.S.C. 1988 (b) and (c)) (concerning the
4 award of attorney's and expert fees) shall apply to cases
5 brought or defended under this Act. A person who uses
6 this Act to defend against a suit by a government de-
7 scribed in section 4 shall be construed to be the plaintiff
8 for the purposes of the application of such subsections.

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