

HOUSE BILL ANALYSIS

HJM 4003

Brief Description: Requesting that Senate adoption of the Convention on the Rights of Children be denied.

Sponsors: Representatives Koster, Mulliken, Lambert, Sherstad, Sterk, Backlund, Smith, Boldt, McMorris, Johnson and Bush.

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Bill Perry (786-7123).

Background:

UNITED NATIONS CONVENTIONS ON HUMAN RIGHTS:

The United Nations (U.N.) has proposed and adopted a number of multinational conventions— on human rights. These treaties are agreements among the participating nations on a variety of subjects. In the 1980s, the United States ratified two such conventions. These are the Genocide Convention and the Torture Convention. In 1989, the U.N. adopted the Convention on the Rights of the Child. In 1995, the U.S. representative to the U.N. signed this convention. Under the U.S. Constitution, the President has the power to enter into international treaties with the concurrence of two-thirds of the U.S. Senate. The U.S. Senate has not yet ratified the Convention on the Rights of the Child.

CONVENTION ON THE RIGHTS OF THE CHILD:

The U.N. Convention on the Rights of the Child provides for both general and specific rights for children. General rights include the right to life and the right to have governments act in the best interests of children. More specific rights cover a wide variety of subjects including economic, cultural, civil, criminal justice, and humanitarian rights. The convention defines a child as a person under the age of 18, unless a nation's laws provide for a younger age. The convention is to be applied to all children without discrimination with regard to race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Nations are charged with taking all appropriate measures to implement the guaranteed rights, including taking measures to the maximum extent of available resources to protect a child's economic, social, and cultural rights. Nations are to respect the responsibilities, rights, and duties of parents and extended families to provide appropriate direction and guidance in the child's exercise of his or her rights.

Specifically enumerated rights in the convention include rights regarding:

- Name and nationality;
- Preservation of identity;
- Separation from parents;
- Family reunification;
- Illicit transfer of children abroad;
- Opportunity to be heard in judicial hearings;
- Freedom of expression, thought, conscience and religion;
- Freedom of association;
- Privacy;
- Access to appropriate information;
- Common interest of both parents in raising the child;
- Protection from abuse and neglect;
- Loss of family;
- Adoption;
- Refugees;
- Disabilities;
- Health services;
- Review of out-of-home placement;
- Social security;
- Standard of living;
- Education;
- Ethnic, religious, or linguistic minority status;
- Leisure, recreational, and cultural activities;
- Child labor;
- Drug abuse;
- Sexual exploitation;
- Abduction, trafficking, and sale of children;
- Torture and other cruel, inhuman, or degrading treatment;
- Death penalty or life imprisonment without possible release;
- Armed conflicts;
- Rehabilitative care; and
- Administration of juvenile justice.

The convention also contains provisions for implementing and monitoring the convention. A committee of 10 experts of high moral standing and recognized competence— is to be elected by secret ballot by nations party to the convention.

Within two years of becoming a party to the convention, and thereafter every five years, a nation is to report to the U.N. on the measures it has adopted to protect the rights guaranteed by the convention.

Two-thirds of the nations participating in the convention may amend its provisions. An individual nation may ratify the convention with reservations,— but a reservation incompatible with the object and purpose of the convention— is not permitted. A nation that has ratified the convention may subsequently change its mind and denounce— the convention by written notice to the U.N. Denunciation becomes effective one year after the notice.

ENFORCEMENT OF INTERNATIONAL TREATIES:

A treaty becomes a part of the law of a ratifying nation. The U.S. Supreme Court has held, however, that a treaty may not conflict with the U.S. Constitution. If a treaty conflicts with a federal statute, the more recent of the two will control. If a treaty conflicts with a state law, the treaty controls.

Treaties, however, are subject to the doctrine of self-execution. A treaty may be enforced in courts in this country only if the treaty is self-executing. A treaty is self-executing only to the extent that no implementing legislation is necessary to give it effect. Some of the provisions in the Convention on the Rights of the Child are self-executing. Some are not. For instance, many of the provisions, such as many of those dealing with economic rights, require nations to take reasonable measures to insure the rights. Those rights, under the doctrine of self-execution, would not be enforceable without enabling legislation. However, other rights enumerated in the convention, for instance the right of a child not to be subject to the death penalty or to life in prison without possible release, do appear to be self-executing.

It is also possible, as noted above, for a ratifying nation to ratify the convention with reservations.— A reservation is a formal declaration that modifies or limits the effect of some provision of the convention. Some commentators have suggested that, if the U.S. is to ratify the convention, it will do so only with significant reservations. These reservations might include general reservations such as making the entire convention subject to implementing U.S. legislation, and therefore not self-executing in this country's courts, or making the convention enforceable, under U.S. principles of federalism, only to the extent its provisions fall within the legislative and judicial jurisdiction of the federal government. Specific reservations might deal with any one of the enumerated rights. Reservations such as these may violate the convention's prohibition on reservations that are incompatible.— The practical effect of other nations' rejecting the reservations as incompatible, however, would be to nullify the U.S. ratification.

Summary of Bill: The Washington State Legislature declares that the United Nations Convention on the Rights of the Child infringes on parental rights with respect to health care, education, religion, and other aspects of raising children.

The U.S. Senate is requested not to adopt the convention.

Fiscal Note: Not requested.

Office of Program Research