

# HOUSE BILL REPORT

## HJR 4203

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### As Reported By House Committee On:

Law & Justice

**Brief Description:** Amending the state Constitution to protect rights of parents to upbringing and educate children.

**Sponsors:** Representatives Padden, Campbell, Boldt, Stevens, Carrell, Benton, Johnson, L. Thomas, McMorris, Crouse, Casada, Backlund, Mulliken, Elliot, McMahan, Buck, Thompson, Hargrove, Sherstad and Koster.

### Brief History:

#### Committee Activity:

Law & Justice: 2/3/95, 2/15/95 [DPS].

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Padden, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Campbell; Carrell; Lambert; McMahan; Morris; Robertson; Sheahan and Smith.

**Minority Report:** Do not pass. Signed by 6 members: Representatives Appelwick, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Chappell; Cody; Thibaudeau and Veloria.

**Staff:** Pat Shelledy (786-7149).

### Background:

### Resolutions:

An amendment to the state constitution may be proposed by either or both Houses of the Legislature. Proposed amendments to the constitution are called resolutions. If two-thirds of the members of each House approve the resolution, the resolution is submitted to the voters at the next general election. If the voters approve the amendment by a majority vote, the amendment becomes part of the state constitution.

The Legislature must also provide that notice of the amendment must be published at least four times during the four weeks preceding the election in every legal newspaper in the state.

### **Parental Rights to Care and Custody of Children:**

The liberty and privacy protections of the due process clause of the 14th Amendment to the United States Constitution establish a parental constitutional right to the care, custody, and companionship of the child. In several cases, our courts have emphasized the right of parents to direct the upbringing and education of children under their control. Early United States Supreme Court cases established this principle. In Pierce v. Society of Sisters, the United States Supreme Court invalidated a state statute that required parents to send their children to public rather than private schools. The court found that the statute impermissibly infringed the parents' rights without a reasonable relation to some purpose within the competency of the state. In Meyer v. Nebraska, the United States Supreme Court invalidated a state statute that prohibited the teaching of foreign languages. The court found that teaching a foreign language was not clearly so harmful as to justify the prohibition. Consequently, the court held the state was arbitrary and without reasonable relation to any end within the competency of the state.

The parents' constitutional rights, however, do not afford an absolute protection against state interference with the family relationship. Nor do they supersede the minor's rights to privacy in certain instances.

If a state constitution conflicts with the federal Constitution, the federal Constitution controls to the extent of the conflict. States can afford greater constitutional protection to their citizens, but they cannot restrict those rights afforded under the federal Constitution.

Other provisions of our state constitution concern various rights and duties. For example, Article 9, Section 1, provides that it is the paramount duty of the state to make provision for the education of all children within the state. Washington State's constitutional provisions contained in Article 1, Section 3, and Article 1, Section 12, have also been interpreted to provide rights to parents and to minors. If existing constitutional provisions conflict in a particular situation, courts engage in statutory interpretation and balancing tests.

The state constitution does not contain an explicit provision governing parental rights in regard to their children.

**Summary of Substitute Bill:** An amendment to the state constitution is proposed. The new provision states:

It is a fundamental principle that the right of parents to direct the upbringing and education of their children shall not be infringed. The legislature shall have power to enforce, by appropriate legislation, the provisions of this section.

The Secretary of State is directed to publish notice of the proposed constitutional amendment at least four times during the four weeks preceding the next election.

**Substitute Bill Compared to Original Bill:** The amendment is rewritten to state that it is a fundamental principle that the right of parents to direct the upbringing and education of their children is paramount.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Substitute Bill:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** Parents have existing constitutional rights to direct the upbringing and education of their children. This bill embodies that principle. The basic unit of our society is the family, and the family needs societal support. In education, parents are squeezed out of the process and become disengaged. Lower courts and agencies do not abide by existing constitutional provisions giving parents authority over their children. The amendment does not go far enough to protect families from invasive actions of third parties.

**Testimony Against:** None.

**Testified:** Professor Richard Duncan, University of Nebraska College of Law (pro); Jeff Kemp, Washington Family Council (pro); Lynn Harsh, Evergreen Freedom Foundation (pro); Cris Shardelman, citizen (pro); Roberta Berg, citizen (pro); Victoria Enriquez, Runaway Alliance (pro); Douglas White, citizen (pro); and Mike Jones, citizen (pro).