

103^D CONGRESS
2^D SESSION

H. R. 4526

To amend the Revised Statutes of the United States to establish a Federal civil right requiring that State laws, and the laws of the District of Columbia, relating to physical assault, sexual assault, sexual abuse, and sexual harassment be enforced without regard to the age of the victim.

IN THE HOUSE OF REPRESENTATIVES

MAY 26, 1994

Mr. NADLER introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

To amend the Revised Statutes of the United States to establish a Federal civil right requiring that State laws, and the laws of the District of Columbia, relating to physical assault, sexual assault, sexual abuse, and sexual harassment be enforced without regard to the age of the victim.

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 “Children’s Equal Pro-
5 tection Act of 1994”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) Complaints of assault or abuse of children
4 raised during custody proceedings or under other
5 circumstances are often not pursued through crimi-
6 nal investigation and prosecution in the same man-
7 ner and with the same vigor that similar complaints
8 against adult victims are pursued.

9 (2) Complaints are often adjudicated in family
10 courts ill-equipped to, or jurisdictionally prohibited
11 from, investigating criminal matters.

12 (3) The failure by States, territories, and the
13 District of Columbia to bring their full criminal in-
14 vestigatory and prosecutorial skills to bear regarding
15 such complaints regarding alleged child victims
16 places these alleged child victims at risk of further
17 harm.

18 (4) Children are a discrete and insular minor-
19 ity, within the Supreme Court's understanding of
20 the Fourteenth Amendment to the Constitution of
21 the United States.

22 (5) Because of such status, children have been
23 deprived of equal and adequate enforcement of the
24 laws, and particularly those criminal laws prohibit-
25 ing assault, battery, and torture.

1 (6) It would be a violation of the alleged child
2 victims' right to equal protection of law if enforce-
3 ment actions are brought to bear regarding alleged
4 adult victims but not brought to bear regarding child
5 victims.

6 **SEC. 3. RIGHT TO PROTECTION; DUTY TO INTERVENE.**

7 The Revised Statutes of the United States are
8 amended by inserting after section 1979 the following:

9 **SEC. 1979A. RIGHT TO PROTECTION; DUTY TO INTERVENE.**

10 “(a) Where the statutes, ordinances, regulations, cus-
11 tom, or usage of any State or territory or the District of
12 Columbia provide for investigation and, where warranted,
13 criminal prosecution in response to complaints of physical
14 assault, sexual assault, sexual abuse, or sexual harassment
15 of citizens or other persons within the jurisdiction thereof,
16 these ordinances, regulations, customs, and usage shall be
17 applied without regard to the age of the victim.

18 “(b) Neither the investigation and determination of
19 facts for the purpose of awarding guardianship for or cus-
20 tody of a minor, nor the act of awarding such guardian-
21 ship or custody shall relieve any State or territory or the
22 District of Columbia of the duty to investigate and crimi-
23 nally prosecute valid complaints against child victims in
24 the same vigorous and timely manner as complaints
25 against adult victims.

1 “(c) Nothing in this section shall be construed to per-
2 mit the public disclosure of any victim’s identity. To the
3 contrary, to the maximum extent possible, the identity of
4 all child victims shall be protected in any investigation and
5 prosecution.

6 “(d) Every person who, under color of any statute,
7 ordinance, regulation, custom, or usage, of any State or
8 territory or the District of Columbia, fails to provide the
9 affirmative protection or intervention required pursuant to
10 subsection (a) to a citizen of the United States or other
11 person within the jurisdiction thereof shall be liable to the
12 party injured in an action at law, suit in equity, or other
13 proper proceeding for redress. Such protection and inter-
14 vention as required by law shall not be limited to those
15 cases in which the injured party is in the physical or con-
16 structive custody of such person.

17 “(e) The failure of a State, county, locality, or the
18 District of Columbia to comply with this section shall act
19 as an absolute disability to receipt of Federal grants for
20 law-enforcement purposes as otherwise provided for in
21 such laws as Congress may from time to time enact.

22 **“SEC. 1979B. RELIEF.**

23 “An injured party under section 1979A may apply
24 to the court for such relief as the court may grant in its
25 discretion. Such relief may include injunctive relief, re-

1 straining orders, and monetary damages. Such relief may
2 not include punitive damages. Granting of such relief as
3 the court may grant does not preclude criminal prosecu-
4 tion under the laws of a State or the United States. Judg-
5 ment entered on such action may be considered by the De-
6 partment of Justice in its determination of whether a
7 State, locality, or the District of Columbia has met the
8 requirements of section 1979A.

9 **“SEC. 1979C. ABSTENTION; DENOVO REVIEW.**

10 “The court may not abstain from hearing a case
11 under section 1979B until the completion of State court
12 proceedings or exhaustion of State remedies unless the de-
13 fendant demonstrate by clear and convincing evidence that
14 delay of Federal proceedings will not endanger the injured
15 party or deprive such party of the protection which is the
16 subject of the proceeding. In making any determination
17 in a proceeding under this section, the court may, in its
18 discretion, review all factual issues de novo, and shall not
19 be limited by doctrines of res judicata or collateral estop-
20 pel, except that a final criminal conviction in a State or
21 Federal court after a fully-litigated trial shall estop any
22 review of the act or acts underlying such conviction.

23 **“SEC. 1979D. WHO MAY BRING.**

24 “An action under section 1979B may be brought by
25 the injured party, a guardian ad litem, a class of affected

1 individuals, the Attorney General of the United States, or
2 the attorney general of a State, commonwealth, territory.
3 A refusal by such attorneys general to prosecute shall not
4 act as a bar to private action.

5 **“SEC. 1979E. COSTS.**

6 “In any action under section 1979B, the court, in its
7 discretion, may allow the prevailing party, other than the
8 United States or a State, territory or jurisdiction, a rea-
9 sonable attorney’s fee.”.

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