

105TH CONGRESS  
2D SESSION

# H. R. 4164

To amend title 28, United States Code, with respect to the enforcement of child custody and visitation orders.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 1998

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

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## A BILL

To amend title 28, United States Code, with respect to the enforcement of child custody and visitation orders.

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. CHILD CUSTODY AND VISITATION DETERMINA-**  
4       **TIONS.**

5       Section 1738A of title 28, United States Code is  
6       amended as follows:

7               (1) Subsection (a) is amended by striking “sub-  
8       section (f) of this section, any child custody deter-  
9       mination” and inserting “subsections (f) and (g) of

1 this section, any custody determination or visitation  
2 determination”.

3 (2) Subsection (b)(2) is amended by striking “a  
4 parent” and inserting “, but not limited to, a parent  
5 or grandparent or, in cases involving a contested  
6 adoption, a person acting as a parent”.

7 (3) Subsection (b)(3) is amended—

8 (A) by striking “or visitation”;

9 (B) by striking “and” before “initial or-  
10 ders”; and

11 (C) by inserting before the semicolon at  
12 the end the following: “, and includes decrees,  
13 judgments, orders of adoption, and orders dis-  
14 missing or denying petitions for adoption”.

15 (4) Subsection (b)(4) is amended to read as fol-  
16 lows:

17 “(4)(A) except as provided in subparagraph  
18 (B), ‘home State’ means—

19 “(i) the State in which, immediately pre-  
20 ceeding the time involved, the child lived with his  
21 or her parents, a parent, or a person acting as  
22 a parent, with whom the child has been living  
23 for at least six consecutive months, a prospec-  
24 tive adoptive parent, or an agency with legal  
25 custody during a proceeding for adoption, and

1           “(ii) in the case of a child less than six  
2           months old, the State in which the child lived  
3           from birth, or from soon after birth,  
4           and periods of temporary absence of any such per-  
5           sons are counted as part of such 6-month or other  
6           period; and

7           “(B) in cases involving a proceeding for adop-  
8           tion, ‘home State’ means the State in which—

9           “(i) immediately preceding commencement  
10          of the proceeding, not including periods of tem-  
11          porary absence, the child is in the custody of  
12          the prospective adoptive parent or parents;

13          “(ii) the child and the prospective adoptive  
14          parent or parents are physically present and the  
15          prospective adoptive parent or parents have  
16          lived for at least six months; and

17          “(iii) there is substantial evidence available  
18          concerning the child’s present or future care;”.

19          (5) Subsection (b)(5) is amended by inserting  
20          “or visitation determination” after “custody deter-  
21          mination” each place it appears.

22          (6) Subsection (b) is amended by striking  
23          “and” at the end of paragraph (7), by striking the  
24          period at the end of paragraph (8) and inserting “;

1 and”, and by adding after paragraph (8) the follow-  
2 ing:

3 “(9) ‘visitation determination’ means a judg-  
4 ment, decree, or other order of a court providing for  
5 the visitation of a child and includes permanent and  
6 temporary orders and initial orders and modifica-  
7 tions.”.

8 (7) Subsection (c) is amended by striking “child  
9 custody determination” in the matter preceding  
10 paragraph (1) and inserting “custody determination  
11 or visitation determination”.

12 (8) Subsection (c)(2)(D) is amended by adding  
13 “or visitation” after “determine the custody”.

14 (9) Subsection (d) is amended by striking  
15 “child custody determination” and inserting “cus-  
16 tody determination or visitation determination”.

17 (10) Subsection (e) is amended—

18 (A) by striking “child custody determina-  
19 tion” and inserting “custody determination or  
20 visitation determination”; and

21 (B) by striking “a child” and inserting  
22 “the child concerned”.

23 (11) Subsection (f) is amended—

1 (A) by striking “determination of the cus-  
2 tody of the same child” and inserting “custody  
3 determination”;

4 (B) in paragraph (1) by striking “child”  
5 and by striking “and” after the semicolon;

6 (C) in paragraph (2) by striking the period  
7 and inserting “; and”; and

8 (D) by adding at the end the following:

9 “(3) in cases of contested adoption in which the  
10 child has resided with the prospective adoptive par-  
11 ent or parents for at least six consecutive months,  
12 the court finds by clear and convincing evidence that  
13 the court of the other State failed to consider—

14 “(A) the extent of the detriment to the  
15 child in being moved from the child’s custodial  
16 environment;

17 “(B) the nature of the relationship be-  
18 tween the biological parent or parents and the  
19 child;

20 “(C) the nature of the relationship between  
21 the prospective adoptive parent or parents and  
22 the child; and

23 “(D) the recommendation of the child’s  
24 legal representative or guardian ad litem.

1 This subsection shall apply only if the party seeking a new  
2 hearing has acted in good faith and has not abused or  
3 attempted to abuse the legal process.”.

4 (12) Subsection (g) is amended by inserting “or  
5 visitation determination” after “custody determina-  
6 tion” each place it appears.

7 (13) Section 1738A is amended by adding at  
8 the end the following:

9 “(h) A court of a State may not modify a visitation  
10 determination made by a court of another State unless the  
11 court of the other State has declined to exercise jurisdic-  
12 tion to modify such determination.

13 “(i) In all contested custody proceedings, including  
14 adoption proceedings, undertaken pursuant to this section,  
15 all proceedings and appeals shall be expedited.

16 “(j) In cases of conflicts between 2 or more States,  
17 the district courts shall have jurisdiction to determine  
18 which of conflicting custody determinations or visitation  
19 determinations is consistent with the provisions of this  
20 section or which State court is exercising jurisdiction con-  
21 sistently with the provisions of this section for purposes  
22 of subsection (g).”.

23 (14) Subsection (c)(2) is amended—

24 (A) by inserting “or her” after “his” each  
25 place it appears; and

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(B) by inserting “or she” after “he”.

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