

HOUSE BILL REPORT

HB 2516

As Reported by House Committee On:
Juvenile Justice & Family Law

Title: An act relating to support obligations of physical custodians.

Brief Description: Increasing the flexibility of the department of social and health services in dealing with support obligations of legal custodians.

Sponsors: Representative Benson.

Brief History:

Committee Activity:

Juvenile Justice & Family Law: 2/5/02, 2/6/02 [DPS].

Brief Summary of Substitute Bill

- Defines when a legal custodian is "wrongfully deprived" of physical custody of a child for the purposes of relieving the legal custodian of the obligation to pay child support in public assistance and nonassistance cases.

HOUSE COMMITTEE ON JUVENILE JUSTICE & FAMILY LAW

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Dickerson, Chair; Darneille, Vice Chair; Delvin, Ranking Minority Member; Armstrong, Eickmeyer and Tokuda.

Minority Report: Do not pass. Signed by 1 member: Representative Carrell.

Staff: Trudes Hutcheson (786-7384).

Background:

When a person applies for public assistance on behalf of a child, the state must generally provide benefits regardless of the child's legal custodial status. The state is assigned any rights to child support as reimbursement for the public assistance, and the state may initiate an action to collect child support from the parent.

A person required to pay child support for a child receiving public assistance may be

excused from paying support if the person has been wrongfully deprived of physical custody of the child.

Based on rules established by the agency, the person must show that: (a) the court has granted the person legal and physical custody of the child; (b) the custody order has not been modified or changed; (c) the child was taken without the person's consent and the person has not subsequently assented to the deprivation of custody; and (d) within a reasonable time after the deprivation, the person has exerted and has continued to exert reasonable efforts to regain physical custody.

Summary of Substitute Bill:

The bill defines under what circumstances a legal custodian is wrongfully deprived of physical custody of a child for the purposes of excusing the legal custodian of child support obligations in public assistance and nonassistance cases.

A legal custodian may be considered wrongfully deprived if it is not in the best interest of the child to be in the physical custody of the physical custodian, and the physical custodian:

- (a) Is not a relative;
- (b) is not licensed to care for children;
- (c) does not have legal custody; or
- (d) is not a person the child has been placed with under a court order.

The court may consider the following factors regarding the child's best interests:

- (a) The strength of the relationship between the child and the physical custodian;
- (b) the relationship between each of the child's parents and the physical custodian;
- (c) the nature and reason for either parent's objection to the physical custodian retaining custody;
- (d) any criminal history or history of physical, emotional, or sexual abuse or neglect by the physical custodian; and
- (e) any other relevant factor.

The bill also specifies that a person is wrongfully deprived of physical custody of a child if:

- (a) The child is taken or enticed away;
- (b) the legal custodian has not subsequently assented to the deprivation; and
- (c) the legal custodian has made reasonable efforts to regain physical custody.

Proof of enticement may include establishing that the child is allowed to live without reasonably appropriate supervision and restriction.

Whether a legal custodian has been wrongfully deprived must be determined by the court.

Substitute Bill Compared to Original Bill:

The substitute requires the determination to be made in a court as opposed to an administrative hearing.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: When a child runs away and lives with someone else, the person with physical custody can sue for child support. The parent should not be required to pay child support in those cases.

(With concerns) The bill needs to clarify that these determinations will be made by the court instead of an administrative law judge, who does not have the authority to appoint a guardian ad litem for the child.

Testimony Against: None.

Testified: Representative Benson, prime sponsor.

(With concerns) Georgiann DeKay, the Department of Social and Health Services.