
**Juvenile Justice & Family Law
Committee**

HB 2516

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 Summary of 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.

Hearing Date: 2/5/02

Staff: Trudes Hutcheson (786-7384).

Background:

When a parent and child apply for public assistance, the state must generally pay them benefits regardless of the child's legal custodial status. When public assistance is awarded, the state is assigned any rights to child support as reimbursement for the public assistance.

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 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.

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.

A legal custodian may also 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 determination of the child's best interest must be made by the court. The court may consider the following factors:

- (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.

Appropriation: None.

Fiscal Note: Not Requested.

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