

HOUSE BILL REPORT

HB 1878

As Amended by the Senate

Title: An act relating to providing the courts access to information in third-party custody petitions.

Brief Description: Providing the courts access to information in third-party custody petitions.

Sponsors: By Representatives Dickerson and Pettigrew.

Brief History:

Committee Activity:

Juvenile Justice & Family Law: 2/25/03, 2/27/03 [DP].

Floor Activity:

Passed House: 3/18/03, 97-0.

Senate Amended.

Passed Senate: 4/16/03, 49-0.

Brief Summary of Bill

- Requires the courts to consult the judicial information system before entering any order in a third party custody proceeding.
- Requires the courts to request, and the Department of Social and Health Services to release, certain investigation information pertaining to the child of a third party custody proceeding, the petitioner, and the petitioner's household members.
- Requires the petitioner in a third party custody proceeding to provide the court with background checks of the petitioner and adult members of the petitioner's household.

HOUSE COMMITTEE ON JUVENILE JUSTICE & FAMILY LAW

Majority Report: Do pass. Signed by 7 members: Representatives Dickerson, Chair; Pettigrew, Vice Chair; Delvin, Ranking Minority Member; Carrell, Eickmeyer, Hinkle and Upthegrove.

Staff: Trudes Tango Hutcheson (786-7384).

Background:

Third party custody proceedings

A person other than the parent may seek legal custody of a child by filing a third party custody petition in court if the child is not in the physical custody of one of the parents or the nonparent alleges that neither parent is a suitable custodian.

To be awarded custody, the nonparent must prove that custody is in the child's best interests and that the parent is either unfit or that there would be detriment to the child if placed with the parent. In determining custody, the court may order an investigation, hear the opinions of experts, and take into consideration the wishes of the child. However, there is generally no casework supervision available for third party custody matters. In addition, third party custody petitions may be decided on default if the other party fails to respond to the petition.

The Judicial Information System

The Washington State Supreme Court maintains the Judicial Information System (JIS), which is a statewide network designed to connect the courts and criminal justice agencies to a common database. In particular, the JIS contains the names of the parties in domestic violence protection orders, no-contact orders, anti-harassment orders, family law proceedings, and the criminal history of the parties. The courts are directed to consult the JIS in a variety of circumstances.

The Department of Social and Health Services records of investigations

Upon the receipt of a report of possible child abuse or neglect, the Department of Social and Health Services (DSHS) must investigate and provide the Child Protective Services Section (CPS) with a report. The CPS must determine whether alleged incidents or conditions constitute abuse or neglect. The CPS must notify the alleged perpetrator of the allegations, and when the CPS completes the investigation, the CPS must notify the alleged perpetrator of the findings. An alleged perpetrator in a founded CPS report made on or after October 1, 1998 may challenge the finding. The DSHS may not keep records of unfounded reports of child abuse or neglect for more than six years, unless within those six years from the receipt of the unfounded report, there has been another report made on the same perpetrator.

Criminal history information held by the Washington State Patrol

The Washington State Patrol (WSP) maintains criminal history record information on all persons who have been arrested and charged with or convicted of any criminal offense. The WSP also maintains dependency record information, which includes identifying data on persons over the age of 18 who have been found in a dependency proceeding to have abused a child. Agencies and businesses may require certain applicants to undergo background checks.

Summary of Bill:

Before granting any order in third party custody proceedings, the court must consult the JIS, if available, to determine the existence of any information and proceedings that are relevant to the placement of the child.

Before entering any final order in a third party custody proceeding, the court must:

- (a) direct the DSHS to release certain investigation information; and
- (b) require the petitioner to provide the results of an examination of state and national identification data from the WSP for the petitioner and the adult members of the petitioner's household.

Investigation information that the DSHS may release to a court entering a third party custody order includes:

- (a) information in which the child was an alleged victim of abandonment, abuse, or neglect; and
- (b) information in which the petitioner or any person aged 16 or older residing in the petitioner's household, was the subject of a founded or currently pending investigation by CPS made after October 1, 1998.

Additional investigation information from the DSHS may only be released with the written consent of the subject of the investigation and the juvenile alleged to be the victim or by court order obtained with notice to all interested parties. Disclosure of records or information by the DSHS shall not be considered a waiver of any confidentiality or privilege, and any recipient of the records or information shall maintain it in such a manner as to comply with state and federal laws regarding disclosure.

The petitioner in a third party custody proceeding must include in the petition the names of any adult members of the petitioner's household. The JIS data base must contain the names of any adult cohabitant of a petitioner to a third party custody action.

EFFECT OF SENATE AMENDMENT(S):

The Senate added SHB 2000 (as it passed the House) and HB 1720 (as it passed the committee) to the bill. Every third party custody petition filed must contain a statement alleging whether the child is or may be an Indian child as defined under the ICWA, and every third party custody order entered state whether the ICWA does or does not apply. If the ICWA applies, the order must also contain a finding that all ICWA notice and evidentiary requirements have been satisfied. A procedure for a threshold hearing is added to the third party custody statutes.

Appropriation: None.

Fiscal Note: Requested on February 21, 2003.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The bill will enable the court to obtain information on founded allegations of child abuse or neglect. The fiscal impact on the DSHS should be minimal. Courts don't have casework services in third party custody cases, so courts have to find out information for themselves. Most third parties petitioning for custody of a child are respectable and well-intentioned. But there are some cases where the third party would not be a suitable custodian. If the parents in a third party custody case are contesting the petition, then the courts hear information about the petitioner from the contesting parents. But if the parents are not contesting the petition, the courts need to get information about the petitioner some other way. This bill presents three fairly nonintrusive ways for courts to get relevant information.

Testimony Against: The Washington Defender's Association has concerns about how much information is being released.

Testified: (In support) Representative Dickerson, prime sponsor; Laverne Lamoureux, Department of Social and Health Services; and Kimberly Prochnau, Superior Court Judges Association.

(Opposed) Sherry Appleton, Washington Defenders Association.