

# HOUSE BILL REPORT

## HB 1878

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### As Passed Legislature

**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.

House Concurred.

Passed House: 4/21/03, 97-0.

Passed Legislature.

#### **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.
- Requires that third party custody petitions contain a statement of whether the Indian child welfare act applies, and if so, that the requirements under the act have been satisfied.
- Adds a procedure for a threshold hearing in third party custody cases.

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## 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. The statutes do not set forth any particular requirement that must be met for a third party to have standing (the right to bring legal action). However, the statutes specify that a petition may only be filed if the child is not in the physical custody of one of the parents or if the petitioner alleges that neither parent is a suitable custodian.

In determining custody, the court may order an investigation or hear from experts, but there is generally no casework supervision. 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 among other things, contains the names of parties in domestic violence protection orders, family law proceedings, and the criminal history of the parties. 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. 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.

### **The Indian Child Welfare Act (ICWA)**

The federal Indian Child Welfare Act contains numerous substantive and procedural provisions. For example, the ICWA requires that notice of child custody proceedings be provided to the child's tribe as well as to the parents, and the tribe may intervene in proceedings. The ICWA applies to any state court custody proceeding that involves placing the child with someone other than the parents. Failure to verify whether the child is an Indian child, as defined under the ICWA, can jeopardize the validity of subsequent proceedings pertaining to the child.

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### **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, 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.

The DSHS may release to a court entering a third party custody order information in which:

- (a) the child was an alleged victim of abandonment, abuse, or neglect; and
- (b) 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.

A procedure for a threshold hearing is added to the third party custody statutes. In addition, a third party custody petition must contain a statement alleging whether the child is or may be an Indian child as defined under the ICWA. Every third party custody order must state whether the ICWA applies, and if applicable, state that all notice requirements and evidentiary requirements under the ICWA have been satisfied.

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**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.