

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1878

Chapter 105, Laws of 2003

58th Legislature
2003 Regular Session

CUSTODY PETITIONS--COURT ACCESS

EFFECTIVE DATE: 7/27/03

Passed by the House April 21, 2003
Yeas 97 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 16, 2003
Yeas 49 Nays 0

BRAD OWEN

President of the Senate

Approved May 7, 2003.

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1878** as passed by the House of Representatives and the Senate on the dates hereon set forth.

CYNTHIA ZEHNDER

Chief Clerk

FILED

May 7, 2003 - 2:19 p.m.

**Secretary of State
State of Washington**

HOUSE BILL 1878

AS AMENDED BY THE SENATE

Passed Legislature - 2003 Regular Session

State of Washington

58th Legislature

2003 Regular Session

By Representatives Dickerson and Pettigrew

Read first time 02/13/2003. Referred to Committee on Juvenile Justice & Family Law.

1 AN ACT Relating to providing the courts access to information in
2 third-party custody petitions; amending RCW 13.50.100, 26.10.030, and
3 43.43.830; adding new sections to chapter 26.10 RCW; and adding a new
4 section to chapter 26.50 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 26.10 RCW
7 to read as follows:

8 (1) Before granting any order regarding the custody of a child
9 under this chapter, the court shall consult the judicial information
10 system, if available, to determine the existence of any information and
11 proceedings that are relevant to the placement of the child.

12 (2) Before entering a final order, the court shall:

13 (a) Direct the department of social and health services to release
14 information as provided under RCW 13.50.100; and

15 (b) Require the petitioner to provide the results of an examination
16 of state and national criminal identification data provided by the
17 Washington state patrol criminal identification system as described in
18 chapter 43.43 RCW for the petitioner and adult members of the
19 petitioner's household.

1 **Sec. 2.** RCW 13.50.100 and 2001 c 162 s 2 are each amended to read
2 as follows:

3 (1) This section governs records not covered by RCW 13.50.050.

4 (2) Records covered by this section shall be confidential and shall
5 be released only pursuant to this section and RCW 13.50.010.

6 (3) Records retained or produced by any juvenile justice or care
7 agency may be released to other participants in the juvenile justice or
8 care system only when an investigation or case involving the juvenile
9 in question is being pursued by the other participant or when that
10 other participant is assigned the responsibility of supervising the
11 juvenile. Records covered under this section and maintained by the
12 juvenile courts which relate to the official actions of the agency may
13 be entered in the statewide judicial information system. However,
14 truancy records associated with a juvenile who has no other case
15 history, and records of a juvenile's parents who have no other case
16 history, shall be removed from the judicial information system when the
17 juvenile is no longer subject to the compulsory attendance laws in
18 chapter 28A.225 RCW. A county clerk is not liable for unauthorized
19 release of this data by persons or agencies not in his or her employ or
20 otherwise subject to his or her control, nor is the county clerk liable
21 for inaccurate or incomplete information collected from litigants or
22 other persons required to provide identifying data pursuant to this
23 section.

24 (4) Subject to (a) of this subsection, the department of social and
25 health services may release information retained in the course of
26 conducting child protective services investigations to a family or
27 juvenile court hearing a petition for custody under chapter 26.10 RCW.

28 (a) Information that may be released shall be limited to
29 information regarding investigations in which: (i) The juvenile was an
30 alleged victim of abandonment or abuse or neglect; or (ii) the
31 petitioner for custody of the juvenile, or any individual aged sixteen
32 or older residing in the petitioner's household, is the subject of a
33 founded or currently pending child protective services investigation
34 made by the department subsequent to October 1, 1998.

35 (b) Additional information may only be released with the written
36 consent of the subject of the investigation and the juvenile alleged to
37 be the victim of abandonment or abuse and neglect, or the parent,

1 custodian, guardian, or personal representative of the juvenile, or by
2 court order obtained with notice to all interested parties.

3 (5) Any disclosure of records or information by the department of
4 social and health services pursuant to this section shall not be deemed
5 a waiver of any confidentiality or privilege attached to the records or
6 information by operation of any state or federal statute or regulation,
7 and any recipient of such records or information shall maintain it in
8 such a manner as to comply with such state and federal statutes and
9 regulations and to protect against unauthorized disclosure.

10 (6) A contracting agency or service provider of the department of
11 social and health services that provides counseling, psychological,
12 psychiatric, or medical services may release to the office of the
13 family and children's ombudsman information or records relating to
14 services provided to a juvenile who is dependent under chapter 13.34
15 RCW without the consent of the parent or guardian of the juvenile, or
16 of the juvenile if the juvenile is under the age of thirteen years,
17 unless such release is otherwise specifically prohibited by law.

18 ~~((+5+))~~ (7) A juvenile, his or her parents, the juvenile's attorney
19 and the juvenile's parent's attorney, shall, upon request, be given
20 access to all records and information collected or retained by a
21 juvenile justice or care agency which pertain to the juvenile except:

22 (a) If it is determined by the agency that release of this
23 information is likely to cause severe psychological or physical harm to
24 the juvenile or his or her parents the agency may withhold the
25 information subject to other order of the court: PROVIDED, That if the
26 court determines that limited release of the information is
27 appropriate, the court may specify terms and conditions for the release
28 of the information; or

29 (b) If the information or record has been obtained by a juvenile
30 justice or care agency in connection with the provision of counseling,
31 psychological, psychiatric, or medical services to the juvenile, when
32 the services have been sought voluntarily by the juvenile, and the
33 juvenile has a legal right to receive those services without the
34 consent of any person or agency, then the information or record may not
35 be disclosed to the juvenile's parents without the informed consent of
36 the juvenile unless otherwise authorized by law; or

37 (c) That the department of social and health services may delete

1 the name and identifying information regarding persons or organizations
2 who have reported alleged child abuse or neglect.

3 ~~((+6))~~ (8) A juvenile or his or her parent denied access to any
4 records following an agency determination under subsection ~~((+5))~~ (7)
5 of this section may file a motion in juvenile court requesting access
6 to the records. The court shall grant the motion unless it finds
7 access may not be permitted according to the standards found in
8 subsection ~~((s-+5))~~ (7)(a) and (b) of this section.

9 ~~((+7))~~ (9) The person making a motion under subsection ~~((+6))~~ (8)
10 of this section shall give reasonable notice of the motion to all
11 parties to the original action and to any agency whose records will be
12 affected by the motion.

13 ~~((+8))~~ (10) Subject to the rules of discovery in civil cases, any
14 party to a proceeding seeking a declaration of dependency or a
15 termination of the parent-child relationship and any party's counsel
16 and the guardian ad litem of any party, shall have access to the
17 records of any natural or adoptive child of the parent, subject to the
18 limitations in subsection ~~((+5))~~ (7) of this section. A party denied
19 access to records may request judicial review of the denial. If the
20 party prevails, he or she shall be awarded attorneys' fees, costs, and
21 an amount not less than five dollars and not more than one hundred
22 dollars for each day the records were wrongfully denied.

23 ~~((+9))~~ (11) No unfounded allegation of child abuse or neglect as
24 defined in RCW 26.44.020(12) may be disclosed to a child-placing
25 agency, private adoption agency, or any other licensed provider.

26 **Sec. 3.** RCW 26.10.030 and 2000 c 135 s 3 are each amended to read
27 as follows:

28 (1) Except as authorized for proceedings brought under chapter
29 13.34 RCW, or chapter 26.50 RCW in district or municipal courts, a
30 child custody proceeding is commenced in the superior court by a person
31 other than a parent, by filing a petition seeking custody of the child
32 in the county where the child is permanently resident or where the
33 child is found, but only if the child is not in the physical custody of
34 one of its parents or if the petitioner alleges that neither parent is
35 a suitable custodian. In proceedings in which the juvenile court has
36 not exercised concurrent jurisdiction and prior to a child custody

1 hearing, the court shall determine if the child is the subject of a
2 pending dependency action.

3 (2) Notice of a child custody proceeding shall be given to the
4 child's parent, guardian and custodian, who may appear and be heard and
5 may file a responsive pleading. The court may, upon a showing of good
6 cause, permit the intervention of other interested parties.

7 (3) The petitioner shall include in the petition the names of any
8 adult members of the petitioner's household.

9 NEW SECTION. **Sec. 4.** A new section is added to chapter 26.50 RCW
10 to read as follows:

11 In addition to the information required to be included in the
12 judicial information system under RCW 26.50.160, the data base shall
13 contain the names of any adult cohabitant of a petitioner to a third-
14 party custody action under chapter 26.10 RCW.

15 **Sec. 5.** RCW 43.43.830 and 2002 c 229 s 3 are each amended to read
16 as follows:

17 Unless the context clearly requires otherwise, the definitions in
18 this section apply throughout RCW 43.43.830 through 43.43.840.

19 (1) "Applicant" means:

20 (a) Any prospective employee who will or may have unsupervised
21 access to children under sixteen years of age or developmentally
22 disabled persons or vulnerable adults during the course of his or her
23 employment or involvement with the business or organization;

24 (b) Any prospective volunteer who will have regularly scheduled
25 unsupervised access to children under sixteen years of age,
26 developmentally disabled persons, or vulnerable adults during the
27 course of his or her employment or involvement with the business or
28 organization under circumstances where such access will or may involve
29 groups of (i) five or fewer children under twelve years of age, (ii)
30 three or fewer children between twelve and sixteen years of age, (iii)
31 developmentally disabled persons, or (iv) vulnerable adults; ~~((or))~~

32 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;
33 or

34 (d) Any prospective custodian in a nonparental custody proceeding
35 under chapter 26.10 RCW.

1 (2) "Business or organization" means a business or organization
2 licensed in this state, any agency of the state, or other governmental
3 entity, that educates, trains, treats, supervises, houses, or provides
4 recreation to developmentally disabled persons, vulnerable adults, or
5 children under sixteen years of age, including but not limited to
6 public housing authorities, school districts, and educational service
7 districts.

8 (3) "Civil adjudication" means a specific court finding of sexual
9 abuse or exploitation or physical abuse in a dependency action under
10 RCW 13.34.040 or in a domestic relations action under Title 26 RCW. In
11 the case of vulnerable adults, civil adjudication means a specific
12 court finding of abuse or financial exploitation in a protection
13 proceeding under chapter 74.34 RCW. It does not include administrative
14 proceedings. The term "civil adjudication" is further limited to court
15 findings that identify as the perpetrator of the abuse a named
16 individual, over the age of eighteen years, who was a party to the
17 dependency or dissolution proceeding or was a respondent in a
18 protection proceeding in which the finding was made and who contested
19 the allegation of abuse or exploitation.

20 (4) "Conviction record" means "conviction record" information as
21 defined in RCW 10.97.030(3) relating to a crime against children or
22 other persons committed by either an adult or a juvenile. It does not
23 include a conviction for an offense that has been the subject of an
24 expungement, pardon, annulment, certificate of rehabilitation, or other
25 equivalent procedure based on a finding of the rehabilitation of the
26 person convicted, or a conviction that has been the subject of a
27 pardon, annulment, or other equivalent procedure based on a finding of
28 innocence. It does include convictions for offenses for which the
29 defendant received a deferred or suspended sentence, unless the record
30 has been expunged according to law.

31 (5) "Crime against children or other persons" means a conviction of
32 any of the following offenses: Aggravated murder; first or second
33 degree murder; first or second degree kidnaping; first, second, or
34 third degree assault; first, second, or third degree assault of a
35 child; first, second, or third degree rape; first, second, or third
36 degree rape of a child; first or second degree robbery; first degree
37 arson; first degree burglary; first or second degree manslaughter;
38 first or second degree extortion; indecent liberties; incest; vehicular

1 homicide; first degree promoting prostitution; communication with a
2 minor; unlawful imprisonment; simple assault; sexual exploitation of
3 minors; first or second degree criminal mistreatment; endangerment with
4 a controlled substance; child abuse or neglect as defined in RCW
5 26.44.020; first or second degree custodial interference; first or
6 second degree custodial sexual misconduct; malicious harassment; first,
7 second, or third degree child molestation; first or second degree
8 sexual misconduct with a minor; patronizing a juvenile prostitute;
9 child abandonment; promoting pornography; selling or distributing
10 erotic material to a minor; custodial assault; violation of child abuse
11 restraining order; child buying or selling; prostitution; felony
12 indecent exposure; criminal abandonment; or any of these crimes as they
13 may be renamed in the future.

14 (6) "Crimes relating to drugs" means a conviction of a crime to
15 manufacture, delivery, or possession with intent to manufacture or
16 deliver a controlled substance.

17 (7) "Crimes relating to financial exploitation" means a conviction
18 for first, second, or third degree extortion; first, second, or third
19 degree theft; first or second degree robbery; forgery; or any of these
20 crimes as they may be renamed in the future.

21 (8) "Disciplinary board final decision" means any final decision
22 issued by a disciplining authority under chapter 18.130 RCW or the
23 secretary of the department of health for the following businesses or
24 professions:

- 25 (a) Chiropractic;
- 26 (b) Dentistry;
- 27 (c) Dental hygiene;
- 28 (d) Massage;
- 29 (e) Midwifery;
- 30 (f) Naturopathy;
- 31 (g) Osteopathic medicine and surgery;
- 32 (h) Physical therapy;
- 33 (i) Physicians;
- 34 (j) Practical nursing;
- 35 (k) Registered nursing; and
- 36 (l) Psychology.

37 "Disciplinary board final decision," for real estate brokers and

1 salespersons, means any final decision issued by the director of the
2 department of licensing for real estate brokers and salespersons.

3 (9) "Unsupervised" means not in the presence of:

4 (a) Another employee or volunteer from the same business or
5 organization as the applicant; or

6 (b) Any relative or guardian of any of the children or
7 developmentally disabled persons or vulnerable adults to which the
8 applicant has access during the course of his or her employment or
9 involvement with the business or organization.

10 (10) "Vulnerable adult" means "vulnerable adult" as defined in
11 chapter 74.34 RCW, except that for the purposes of requesting and
12 receiving background checks pursuant to RCW 43.43.832, it shall also
13 include adults of any age who lack the functional, mental, or physical
14 ability to care for themselves.

15 (11) "Financial exploitation" means the illegal or improper use of
16 a vulnerable adult or that adult's resources for another person's
17 profit or advantage.

18 (12) "Agency" means any person, firm, partnership, association,
19 corporation, or facility which receives, provides services to, houses
20 or otherwise cares for vulnerable adults.

21 NEW SECTION. **Sec. 6.** A new section is added to chapter 26.10 RCW
22 to read as follows:

23 (1) A party seeking a custody order shall submit, along with his or
24 her motion, an affidavit declaring that the child is not in the
25 physical custody of one of its parents or that neither parent is a
26 suitable custodian and setting forth facts supporting the requested
27 order. The party seeking custody shall give notice, along with a copy
28 of the affidavit, to other parties to the proceedings, who may file
29 opposing affidavits.

30 (2) The court shall deny the motion unless it finds that adequate
31 cause for hearing the motion is established by the affidavits, in which
32 case it shall set a date for hearing on an order to show cause why the
33 requested order should not be granted.

34 NEW SECTION. **Sec. 7.** A new section is added to chapter 26.10 RCW
35 to read as follows:

36 (1) Every petition filed in proceedings under this chapter shall

1 contain a statement alleging whether the child is or may be an Indian
2 child as defined in 25 U.S.C. Sec. 1903. If the child is an Indian
3 child as defined under the Indian child welfare act, the provisions of
4 the act shall apply.

5 (2) Every order or decree entered in any proceeding under this
6 chapter shall contain a finding that the Indian child welfare act does
7 or does not apply. Where there is a finding that the Indian child
8 welfare act does apply, the decree or order must also contain a finding
9 that all notice requirements and evidentiary requirements under the
10 Indian child welfare act have been satisfied.

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