
**Juvenile Justice & Family Law
Committee**

HB 1878

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

Sponsors: Representatives Dickerson and Pettigrew.

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.

Hearing Date: 2/25/03

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. For example, before granting a domestic violence protection order that directs the residential placement of a child or restrains a party from contacting a child, the court must consult the JIS, if available, to determine if there are pending proceedings involving the child's residential placement.

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 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. For example, the DSHS and other agencies may require background checks to help in the investigation of child abuse and to protect children from further abuse.

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 a background check of 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 for third party custody, or any person aged 16 or older residing in the petitioner's household, was the subject of a founded or currently pending investigation by child protective services 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.

Appropriation: None.

Fiscal Note: Requested on February 21, 2003.

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