

HB 1878 - S COMM AMD

By Committee on Children & Family Services & Corrections

ADOPTED 04/16/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 26.10 RCW
4 to read as follows:

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

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

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

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

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

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

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

22 (3) Records retained or produced by any juvenile justice or care
23 agency may be released to other participants in the juvenile justice or
24 care system only when an investigation or case involving the juvenile
25 in question is being pursued by the other participant or when that
26 other participant is assigned the responsibility of supervising the
27 juvenile. Records covered under this section and maintained by the
28 juvenile courts which relate to the official actions of the agency may
29 be entered in the statewide judicial information system. However,

1 truancy records associated with a juvenile who has no other case
2 history, and records of a juvenile's parents who have no other case
3 history, shall be removed from the judicial information system when the
4 juvenile is no longer subject to the compulsory attendance laws in
5 chapter 28A.225 RCW. A county clerk is not liable for unauthorized
6 release of this data by persons or agencies not in his or her employ or
7 otherwise subject to his or her control, nor is the county clerk liable
8 for inaccurate or incomplete information collected from litigants or
9 other persons required to provide identifying data pursuant to this
10 section.

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

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

22 (b) Additional information may only be released with the written
23 consent of the subject of the investigation and the juvenile alleged to
24 be the victim of abandonment or abuse and neglect, or the parent,
25 custodian, guardian, or personal representative of the juvenile, or by
26 court order obtained with notice to all interested parties.

27 (5) Any disclosure of records or information by the department of
28 social and health services pursuant to this section shall not be deemed
29 a waiver of any confidentiality or privilege attached to the records or
30 information by operation of any state or federal statute or regulation,
31 and any recipient of such records or information shall maintain it in
32 such a manner as to comply with such state and federal statutes and
33 regulations and to protect against unauthorized disclosure.

34 (6) A contracting agency or service provider of the department of
35 social and health services that provides counseling, psychological,
36 psychiatric, or medical services may release to the office of the
37 family and children's ombudsman information or records relating to

1 services provided to a juvenile who is dependent under chapter 13.34
2 RCW without the consent of the parent or guardian of the juvenile, or
3 of the juvenile if the juvenile is under the age of thirteen years,
4 unless such release is otherwise specifically prohibited by law.

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

9 (a) If it is determined by the agency that release of this
10 information is likely to cause severe psychological or physical harm to
11 the juvenile or his or her parents the agency may withhold the
12 information subject to other order of the court: PROVIDED, That if the
13 court determines that limited release of the information is
14 appropriate, the court may specify terms and conditions for the release
15 of the information; or

16 (b) If the information or record has been obtained by a juvenile
17 justice or care agency in connection with the provision of counseling,
18 psychological, psychiatric, or medical services to the juvenile, when
19 the services have been sought voluntarily by the juvenile, and the
20 juvenile has a legal right to receive those services without the
21 consent of any person or agency, then the information or record may not
22 be disclosed to the juvenile's parents without the informed consent of
23 the juvenile unless otherwise authorized by law; or

24 (c) That the department of social and health services may delete
25 the name and identifying information regarding persons or organizations
26 who have reported alleged child abuse or neglect.

27 ~~((+6+))~~ (8) A juvenile or his or her parent denied access to any
28 records following an agency determination under subsection ~~((+5+))~~ (7)
29 of this section may file a motion in juvenile court requesting access
30 to the records. The court shall grant the motion unless it finds
31 access may not be permitted according to the standards found in
32 subsection ~~((s-+5+))~~ (7)(a) and (b) of this section.

33 ~~((+7+))~~ (9) The person making a motion under subsection ~~((+6+))~~ (8)
34 of this section shall give reasonable notice of the motion to all
35 parties to the original action and to any agency whose records will be
36 affected by the motion.

1 ~~((8))~~ (10) Subject to the rules of discovery in civil cases, any
2 party to a proceeding seeking a declaration of dependency or a
3 termination of the parent-child relationship and any party's counsel
4 and the guardian ad litem of any party, shall have access to the
5 records of any natural or adoptive child of the parent, subject to the
6 limitations in subsection ~~((5))~~ (7) of this section. A party denied
7 access to records may request judicial review of the denial. If the
8 party prevails, he or she shall be awarded attorneys' fees, costs, and
9 an amount not less than five dollars and not more than one hundred
10 dollars for each day the records were wrongfully denied.

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

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

16 (1) Except as authorized for proceedings brought under chapter
17 13.34 RCW, or chapter 26.50 RCW in district or municipal courts, a
18 child custody proceeding is commenced in the superior court by a person
19 other than a parent, by filing a petition seeking custody of the child
20 in the county where the child is permanently resident or where the
21 child is found, but only if the child is not in the physical custody of
22 one of its parents or if the petitioner alleges that neither parent is
23 a suitable custodian. In proceedings in which the juvenile court has
24 not exercised concurrent jurisdiction and prior to a child custody
25 hearing, the court shall determine if the child is the subject of a
26 pending dependency action.

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

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

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

35 In addition to the information required to be included in the

1 judicial information system under RCW 26.50.160, the data base shall
2 contain the names of any adult cohabitant of a petitioner to a third-
3 party custody action under chapter 26.10 RCW.

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

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

8 (1) "Applicant" means:

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

13 (b) Any prospective volunteer who will have regularly scheduled
14 unsupervised access to children under sixteen years of age,
15 developmentally disabled persons, or vulnerable adults during the
16 course of his or her employment or involvement with the business or
17 organization under circumstances where such access will or may involve
18 groups of (i) five or fewer children under twelve years of age, (ii)
19 three or fewer children between twelve and sixteen years of age, (iii)
20 developmentally disabled persons, or (iv) vulnerable adults; ((~~or~~))

21 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;
22 or

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

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

32 (3) "Civil adjudication" means a specific court finding of sexual
33 abuse or exploitation or physical abuse in a dependency action under
34 RCW 13.34.040 or in a domestic relations action under Title 26 RCW. In
35 the case of vulnerable adults, civil adjudication means a specific
36 court finding of abuse or financial exploitation in a protection

1 proceeding under chapter 74.34 RCW. It does not include administrative
2 proceedings. The term "civil adjudication" is further limited to court
3 findings that identify as the perpetrator of the abuse a named
4 individual, over the age of eighteen years, who was a party to the
5 dependency or dissolution proceeding or was a respondent in a
6 protection proceeding in which the finding was made and who contested
7 the allegation of abuse or exploitation.

8 (4) "Conviction record" means "conviction record" information as
9 defined in RCW 10.97.030(3) relating to a crime against children or
10 other persons committed by either an adult or a juvenile. It does not
11 include a conviction for an offense that has been the subject of an
12 expungement, pardon, annulment, certificate of rehabilitation, or other
13 equivalent procedure based on a finding of the rehabilitation of the
14 person convicted, or a conviction that has been the subject of a
15 pardon, annulment, or other equivalent procedure based on a finding of
16 innocence. It does include convictions for offenses for which the
17 defendant received a deferred or suspended sentence, unless the record
18 has been expunged according to law.

19 (5) "Crime against children or other persons" means a conviction of
20 any of the following offenses: Aggravated murder; first or second
21 degree murder; first or second degree kidnaping; first, second, or
22 third degree assault; first, second, or third degree assault of a
23 child; first, second, or third degree rape; first, second, or third
24 degree rape of a child; first or second degree robbery; first degree
25 arson; first degree burglary; first or second degree manslaughter;
26 first or second degree extortion; indecent liberties; incest; vehicular
27 homicide; first degree promoting prostitution; communication with a
28 minor; unlawful imprisonment; simple assault; sexual exploitation of
29 minors; first or second degree criminal mistreatment; endangerment with
30 a controlled substance; child abuse or neglect as defined in RCW
31 26.44.020; first or second degree custodial interference; first or
32 second degree custodial sexual misconduct; malicious harassment; first,
33 second, or third degree child molestation; first or second degree
34 sexual misconduct with a minor; patronizing a juvenile prostitute;
35 child abandonment; promoting pornography; selling or distributing
36 erotic material to a minor; custodial assault; violation of child abuse

1 restraining order; child buying or selling; prostitution; felony
2 indecent exposure; criminal abandonment; or any of these crimes as they
3 may be renamed in the future.

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

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

11 (8) "Disciplinary board final decision" means any final decision
12 issued by a disciplining authority under chapter 18.130 RCW or the
13 secretary of the department of health for the following businesses or
14 professions:

- 15 (a) Chiropractic;
- 16 (b) Dentistry;
- 17 (c) Dental hygiene;
- 18 (d) Massage;
- 19 (e) Midwifery;
- 20 (f) Naturopathy;
- 21 (g) Osteopathic medicine and surgery;
- 22 (h) Physical therapy;
- 23 (i) Physicians;
- 24 (j) Practical nursing;
- 25 (k) Registered nursing; and
- 26 (l) Psychology.

27 "Disciplinary board final decision," for real estate brokers and
28 salespersons, means any final decision issued by the director of the
29 department of licensing for real estate brokers and salespersons.

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

31 (a) Another employee or volunteer from the same business or
32 organization as the applicant; or

33 (b) Any relative or guardian of any of the children or
34 developmentally disabled persons or vulnerable adults to which the
35 applicant has access during the course of his or her employment or
36 involvement with the business or organization.

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

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

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

12 NEW SECTION. Sec. 6. A new section is added to chapter 26.10 RCW
13 to read as follows:

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

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

25 NEW SECTION. Sec. 7. A new section is added to chapter 26.10 RCW
26 to read as follows:

27 (1) Every petition filed in proceedings under this chapter shall
28 contain a statement alleging whether the child is or may be an Indian
29 child as defined in 25 U.S.C. Sec. 1903. If the child is an Indian
30 child as defined under the Indian child welfare act, the provisions of
31 the act shall apply.

32 (2) Every order or decree entered in any proceeding under this
33 chapter shall contain a finding that the Indian child welfare act does
34 or does not apply. Where there is a finding that the Indian child

1 welfare act does apply, the decree or order must also contain a finding
2 that all notice requirements and evidentiary requirements under the
3 Indian child welfare act have been satisfied."

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4 On page 1, line 2 of the title, after "petitions;" strike the
5 remainder of the title and insert "amending RCW 13.50.100, 26.10.030,
6 and 43.43.830; adding new sections to chapter 26.10 RCW; and adding a
7 new section to chapter 26.50 RCW."

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