

# HOUSE BILL REPORT

## HB 1720

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**As Reported by House Committee On:**  
Juvenile Justice & Family Law

**Title:** An act relating to petitions for nonparental custody of a child.

**Brief Description:** Revising provisions for petitioning for nonparental custody of a child.

**Sponsors:** Representatives Upthegrove, Delvin and Dickerson.

**Brief History:**

**Committee Activity:**

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

<p><b>Brief Summary of Bill</b></p> <ul style="list-style-type: none"><li>· Provides a threshold hearing procedure for third party custody proceedings.</li></ul>
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### HOUSE COMMITTEE ON JUVENILE JUSTICE & FAMILY LAW

**Majority Report:** Do pass. Signed by 6 members: Representatives Dickerson, Chair; Pettigrew, Vice Chair; Delvin, Ranking Minority Member; Eickmeyer, Hinkle and Upthegrove.

**Minority Report:** Do not pass. Signed by 1 member: Representative Carrell.

**Staff:** Trudes Tango Hutcheson (786-7384).

**Background:**

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 specify any particular requirements that must be satisfied in order for a nonparent to have standing (the right to bring legal action) to maintain the third party custody 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.

Courts have treated this initial allegation in the petition as a requirement for the nonparent's standing. According to a recent court case, a petition for a child who is in

the physical custody of a parent cannot proceed unless the third party can produce substantial evidence to support the allegation of parental unfitness. *In re Custody of Nunn*, 103 Wn.App. 871 (2000).

The court in that case stated that this threshold inquiry regarding the nonparent's standing should be made as early as is practicable under the circumstances of each case, so as to minimize unwarranted state interference with the integrity of the family. *Nunn*, 103 Wn.App. at 883.

If the nonparent meets this threshold requirement, the case may proceed. The court may award custody to the nonparent if the nonparent proves 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.

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**Summary of Bill:**

A procedure for a threshold hearing, as discussed in case law and similar to hearings used in other family law proceedings, is added to the third party custody statutes.

A party seeking a third party custody order must submit a motion and an affidavit declaring that the child is not in the physical custody of one of its parents or that neither parent is a suitable custodian. The party must give notice, along with a copy of the affidavit, to the other parties, who may file opposing affidavits. The court must deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits.

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**Appropriation:** None.

**Fiscal Note:** Not Requested.

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

**Testimony For:** This bill makes the process consistent with what is already being done in the courts and required by case law. The courts looked at the evolving case law on this issue and made the procedure the same as other family law proceedings. Parents in a third party custody proceeding should not have to wait all the way until a trial before finding out that the case should have been dismissed. This bill allows for an earlier hearing.

**Testimony Against:** None.

**Testified:** (In support) Representative Upthegrove, prime sponsor; and Kimberly Prochnau, Superior Court Judges Association.