

FINAL BILL REPORT

HB 1878

C 105 L 03

Synopsis as Enacted

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

Sponsors: By Representatives Dickerson and Pettigrew.

House Committee on Juvenile Justice & Family Law
Senate Committee on Children & Family Services & Corrections

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 by 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 contains the names of parties in domestic violence protection orders, and family law proceedings. The JIS also contains 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. A founded– report means it is more likely than not that abuse or neglect occurred. 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 the proceedings. Generally, the ICWA applies to state court custody proceedings that involve 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.

Summary:

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.

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 any adult members of the petitioner's household.

The DSHS may give the court information in which:

- (a) the child in the third party custody petition was an alleged victim of abandonment, abuse, or neglect; and
- (b) the third party custody petitioner or any person aged 16 or older residing in the petitioner's household was the subject of a founded investigation by the CPS made after October 1, 1998 or is the subject of a current investigation.

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 is not a waiver of any confidentiality or privilege, and any recipient of the records or information must 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.

Votes on Final Passage:

House 97 0

Senate 49 0 (Senate amended)

House 97 0 (House concurred)

Effective: July 27, 2003