

SENATE BILL REPORT

HB 1878

As Reported By Senate Committee On:
Children & Family Services & Corrections, April 4, 2003

Title: An act relating to providing the courts access to information in third-party custody petitions.

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

Sponsors: Representatives Dickerson and Pettigrew.

Brief History:

Committee Activity: Children & Family Services & Corrections: 4/4/02 [DPA].

SENATE COMMITTEE ON CHILDREN & FAMILY SERVICES & CORRECTIONS

Majority Report: Do pass as amended.

Signed by Senators Stevens, Chair; Parlette, Vice Chair; Carlson, Deccio, Hargrove, McAuliffe and Regala.

Staff: Edith Rice (786-7444)

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.

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. CPS must determine whether alleged incidents or conditions constitute abuse or neglect. CPS must notify the alleged perpetrator of the allegations, and when CPS completes

the investigation, 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. 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. Agencies and businesses may require certain applicants to undergo background checks.

Summary of Amended Bill: Before hearing a third party custody case, the party seeking custody must establish that the child is not in the physical custody of one of the parents or that neither parent is fit. 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 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 the adult members of the petitioner's household.

Investigation information that 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 or any person aged 16 or older residing in the petitioner's household, was the subject of a founded or currently pending investigation by CPS made after October 1, 1998.

Additional investigation information from 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 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.

Every petition must contain a statement that the child is or is not an Indian child.

Amended Bill Compared to Original Bill: A threshold finding is added before the court will hear a third party custody case, and a statement regarding whether or not the child involved is an Indian child must be included in the petition.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The courts must have as much information as possible before them when they are asked to make a determination regarding third party custody. Both the Department of Social and Health Services and the Washington State Patrol have information useful to the court when making these decisions.

Testimony Against: None.

Testified: PRO: Laverne Lamoureux, Department of Social and Health Services, Children's Administration; Judge Paula Casey, Superior Court Judges Association.