



**House  
Legislative  
Analysis  
Section**

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## **ALLOW THIRD PARTY PETITIONS FOR CHILD CUSTODY**

**House Bill 4701**

**Sponsor: Rep. David Gubow**

**Committee: Judiciary and Civil Rights**

**Complete to 8-30-95**

### **A SUMMARY OF HOUSE BILL 4701 AS INTRODUCED 4-5-95**

House Bill 4701 would amend the Child Custody Act to expand the circumstances under which persons other than the biological or adoptive parents of a child may petition the court for custody.

Currently, third parties have limited standing to petition the court for custody of a child unless that child is already the subject of a custody dispute incidental to divorce or separate maintenance proceedings, or there has been a finding of parental unfitness, or the petitioning third party has been appointed as a guardian or in some cases a limited guardian. In the case of a limited guardianship, the guardian only has standing to sue for custody where the parent or parents of the child have not substantially complied with a limited guardianship placement plan. Further, a prospective adoptive parent or a biological family member other than the parents may petition the court under certain limited circumstances. For a biological family member to have standing, the child's biological parents have to be unmarried, the custodial biological parent must be missing or dead, and the other biological parent must not have already been granted legal custody of the child. For a prospective adoptive parent to have standing, the child must have been placed with the adoptive parent under a placement order which is in effect at the time the custody action is filed in accordance with the adoption laws of any state, and the child must have resided with the adoptive parent for at least six months.

The bill would allow a third party with whom a child has resided to petition the circuit court for custody of the child under certain circumstances. However, a foster parent under contract with the Department of Social Services would not be able to file a petition seeking custody of a foster child under the provisions of the bill.

The bill would require that an action brought by a third party must include an affidavit listing the facts supporting the custody request. These facts would have to establish the third party's standing to sue for custody based upon the length of time the child resided with the third party, the child's age, the number and nature of the contacts between the parent or parents and the child during the time the child was staying with the third party, and the intent of the parent or parents and the third party in letting the third party care for the child. Within 14 days after the action for custody had been filed the court would be required to hold a hearing on the issue of standing, wherein the party seeking custody would have the burden of proving that he or she should be granted standing based on the factors contained in the affidavit. As part of filing the petition for custody, the third party would

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have to send notice that he or she was suing for custody of the child to each of the parties with legal custody of the child and to any parent of the child who did not have legal custody but who had not had his or her parental rights terminated.

In an action for custody brought under the bill's provisions, at any time during the course of the case, and at the request of either party, the court could order one of the parties to pay a necessary and reasonable sum to the other party's attorney. The party requesting the payment would have to show that he or she was unable to meet the expense of the action without such aid. As part of this process the court could order the disclosure of attorney fees or other expenses already paid.

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