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Testimony before the Assembly Committee on Family Law
State Senator André Jacque
January 7, 2020

Madam Chair Rodriguez and Committee Members,

Thank you for holding this hearing on Assembly Bill 672, relating to legal custody and physical placement factors for a child of a service member.

Under current law, in determining the legal custody of a child, a court may not consider whether a service member has been or may be called into active duty and consequently is or may be absent from his or her home. Service member is defined as a member of the National Guard or a reserve unit of the U.S. armed forces.

Unfortunately, this protection does not currently extend to those active duty service members that are deployed, including in Wisconsin. Family law attorneys have reported several instances where a military service member's deployments, leave time, moves, etc. have been used against them as "inconsistency" in court. For example, an active duty military service member has been assigned to work out of the recruitment office in Green Bay for the next three years. As he will potentially be assigned somewhere else after that, the court said that there was "no point" in changing placement substantially now since the service member will be gone in three years to an unknown location.

Under this bill, "service member," for the purposes of determining legal custody and physical placement of a child, means a member of the National Guard, the U.S. armed forces, or a reserve unit of the U.S. armed forces. This bill also prohibits a court from denying a parent who is a service member periods of physical placement with his or her child based on past or future anticipated variability in his or her schedule, living arrangements, or location due to service in the military.

We should bend over backwards to make sure our servicemen and servicewomen get to see their kids as often as possible especially given their schedules defending our country.

This proposal is supported by the Wisconsin American Legion, the VFW-Department of Wisconsin, the County Veteran Service Officers (CVSOs), and the Wisconsin Vietnam Veterans.

Thank you for your consideration of Assembly Bill 672.

Peterson Berk & Cross

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January 6, 2020

Senator Andre Jacque &
Assembly Committee on Family Law

Re: AB 672

Dear Senator Jacque & Committee Members:

I am a family law attorney located in northeastern Wisconsin, and I have been a family law practitioner in Wisconsin for over 10 years now. In my practice I come across a variety of family law issues, especially in the area of placement and placement modification motions whether in the context of divorce or paternity cases.

Recently, I had the privilege of representing a military member (not actively deployed) who had recently returned to the area and who had a position here that would be for the next 3 years before he was moved elsewhere. Because he had a school-aged daughter who he had only been able to have placement of on leave, he filed a Motion to Modify Placement on the basis that he was now back in the area and would be able to have 50/50 shared placement without any problem getting the child to/from school, appointments, etc. The court official refused to grant the request to expand my client's placement because it was too "inconsistent" for the child since we didn't know where my client would be after his 3 years here. This could be said for anyone going through a placement review—we never know where someone is going to be in the future with 100% certainty!

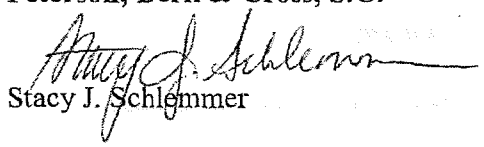
The fact that we knew, for certain, that this military member was going to be in the area for 3 years and could finally have 50/50 shared placement time, yet his service to this country and the fact that he would be moving to an unknown location and likely not be able to have 50/50 placement after that point, was used against him where it would not have been used against a non-military member whose future was unknown.

I have had this issue come up in other cases as well and I could not use Wisconsin Statute 767.41(5)(c) because the statute applies to only "custody" rather than "custody and placement." Not only this, but the statute also addresses times that the servicemember is "absent from the service member's home," but my experiences have been with active duty service members or those working in recruitment offices, for example, who are not "absent from the service member's home," but may simply have to move around the country every few years.

I think some clarification on this issue would be extremely helpful to practitioners in this area of law to better assist our service member clients.

Thank you for your time and consideration in this matter.

Sincerely,
Peterson, Berk & Cross, S.C.



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