



ROBERT BROOKS

STATE REPRESENTATIVE • 60TH ASSEMBLY DISTRICT

Senate Committee on Insurance, Financial Services, Government Oversight and Courts
Thursday, February 20, 2020

Thank you for holding a hearing on Assembly Bills 93, 95, 96, 97, 98, 99, 100, 101, and 102 and allowing me to testify in favor of this legislation.

Last session, I served as the Chair of the Study Committee on Child Placement and Support. Senator Lena Taylor was the committee's vice chair.

The committee was tasked with reviewing current standards for determining physical placement and child support obligations.

The committee was composed of 5 legislators and 8 public members, including a judge, court commissioner, private family law attorney, domestic violence advocate, fathers' rights activists, and county child support agency directors.

The diverse membership of the committee allowed us to hear from multiple stakeholders. It was important for us to receive feedback from both practitioners and parents that would be directly impacted by policy change – both of which were represented on the committee.

Each of the bills before you today received bipartisan support in the Assembly Committee on Family Law and was passed via voice vote on the Assembly floor in January.

Assembly Bill 93

Assembly Bill 93 is a piece of Uniform Law Commission legislation, which has already been enacted in 14 states. It creates a process and standards for temporary delegation of custodial responsibilities when a parent is deployed in military or national service. During deployment, that parent may grant his or her custodial responsibilities or visitation to stepparents, grandparents, great-grandparents, or adults who have a parent-like relationship with the child. The bill also establishes a timeframe for termination of these temporary custodial responsibilities when the deployed parent returns. The timeframe depends on the length of deployment.

The study committee heard testimony that temporary custody and placement arrangements are challenging for military families during deployment. This bill would help give these families a sense of certainty during deployment.

Assembly Bill 95

Assembly Bill 95 allows courts to approve contingency placement agreements. These would lead to modifications to legal custody or physical placement based upon future events that are certain to occur within two years' time. For example, a change in a child's school or extra-curricular activities.



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Based on feedback during the study committee process, contingency placements cannot be based on anticipated parental behavior modification, such as, completion of domestic violence or AODA treatment.

The study committee heard testimony regarding the value of encouraging parents to engage in advance discussion about anticipated issues and changes in the family and to attempt to resolve those issues together.

Current limitations on modifying orders favor the status quo on placement arrangements, but these limitations are not realistic in situations when change in life events and a child's need can be anticipated in the near future.

Assembly Bill 96

Assembly Bill 96 updates current DCF administrative rules relating to child support formulas to reflect that shared physical placement arrangements are now very common and should not be considered special circumstances.

This is a technical cleanup bill that codifies current practice in statute. Statute should be updated to reflect that shared physical placement arrangement are no longer "special circumstances." This bill will help avoid switching to a new methodology for calculating child support payments. It is important to note that formulas used to calculate child support amounts are not changed.

The committee heard testimony that the modern focus of child support is on a child's right to share in both parents' income as if the family was intact, and is based on national studies of family expenditures. Assembly Bill 96 makes updates to reflect current practice.

Assembly Bill 97

Assembly Bill 97 adds a new statement to the general principles for child custody and placement. It states that any order presumes that the involvement and cooperation of both parents regarding the physical, mental, and emotional well-being of the child is in the best interest of the child.

The study committee wanted to emphasize that cooperation in parenting and involvement by both parenting parties is usually in the child's best interest.

Assembly Bill 98

Assembly Bill 98 specifies that if a court grants less than 25% physical placement to a parent, a finding of fact must be entered as to the reason greater placement with said parent is not in the best interest of the child.

Currently, parents have no understanding of why they are not being awarded placement. This bill allows parents to have clear knowledge of which factors they are not meeting. This allows them



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to work on these issues. Given the trend in shared and substantially equal placement arrangements, the committee found value in having a court explain the reasoning when physical placement with one parent is limited.

In addition, Assembly Bill 98 reorders statutory best-interest factors, but specifies that the factors are not necessarily listed in order of importance. The study committee heard testimony suggesting that the factors be rearranged for easier application. This bill eliminates two considerations: the stability in placement and availability of child care services. Study committee members thought these considerations were already covered in other factors. These two factors kept placement in place without allowing for parents to adjust to a new way of life after divorce.

Assembly Bill 99

Under current law, divorcing parties are required to file a parenting plan with the court only after mediation fails or if mediation is waived. Assembly Bill 99 requires parents to submit proposed parenting plans to family court services or the mediator at least 10 days before mediation. Parents are not required to exchange parenting plans with each other prior to mediation.

The parenting plans must include more focus on co-parenting, rather than financial arrangements. The study committee heard testimony that co-parenting proposals are effective in helping parents focus on a child's need and determining arrangements that work best for the family, without litigation. The effectiveness of the current parenting plan process is largely lost and this bill remedies the current system's failure.

Assembly Bill 100

This bill would allow courts in a family law action involving minor children to take judicial notice of records for specific convictions and restraining orders. The convictions must involve crimes subject to domestic abuse surcharge, crimes against the convicted individual's child, or restraining orders that were ordered by the other parent.

The study committee heard testimony that the court is frequently unaware if a family has a history of domestic violence, even when a parent has a conviction or injunction that is publicly available in court records. Judges do not always ask a party about possible history of domestic violence, unless prompted by something in the case file. Additionally, victims of domestic violence are often hesitant to speak up about past instances, so judges would be able to look at records themselves.

This bill would allow judges to have all of the relevant information when determining periods of physical placement of a child.

Assembly Bill 101



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Currently, family support combines portions of child support and maintenance into a single payment. For tax purposes, family support payments are considered to be maintenance payments, so the payment is deductible to the payor-spouse and taxable to the recipient-spouse.

Under the federal Tax Cuts and Jobs Act of 2017, maintenance payments, such as family support, are no longer deductible for the payor and not included as income to the recipient.

Due to this tax change at the federal level, the study committee introduced Assembly Bill 101. This bill eliminates new family support orders in order to ensure that these payments are consistent with current state and federal tax laws.

Assembly Bill 102

Under Assembly Bill 102, DCF would no longer be able to include variable housing costs for determining gross income for child support. The department would continue to calculate gross income using veterans' disability compensation benefits and military basic allowance for subsistence and housing.

The study committee heard testimony that using variable housing costs, rather than base housing costs, leads to an increased number of court actions for a revision of child support upon each military move. The use of base housing costs would create stability and better reflect the variable housing costs purpose.

Thank you for your time and attention and I ask that you support these bills. I would be happy to answer any questions.

FAMILY LAW SECTION

To: Members, Senate Insurance, Financial Services, Government Oversight and Courts Committee
From: Family Law Section, State Bar of Wisconsin
Date: February 20, 2020
Re: AB 95 – contingent placement

The State Bar of Wisconsin's Family Law Section encourages your support of Assembly Bill 95. AB 95 is a compilation of work by both the Legislative Council Study Committee on Child Placement and Support, chaired by Rep. Rob Brooks, and legislation previously introduced by Rep. Jessie Rodriguez and Sen. Luther Olsen. The legislation allows for the modification of legal custody or physical placement orders contingent upon the occurrence of a specified future event or change in conditions within two years of a finalized placement order.

In custody or placement cases, there are often foreseeable changes, such as the child(ren) aging, starting or changing schools, or the improvement of a parent's or child(ren)'s health that may necessitate changes in a placement schedule. Current law prohibits changes to custody or placement orders within two years of a final judgement, even if the court determines a likelihood of foreseeable events within a two year timeframe that would necessitate a change in placement or custody, or if the child(ren) would benefit from the change in arrangement. Even an agreement between the parties regarding such events is unenforceable.

AB 95 would allow parents and the court to incorporate anticipated life events of the adult parties or child(ren) or developmental/educational needs of the child(ren) in an order without the necessity of returning to court after the changes occur. Attorneys are encountering more and more situations in which families would benefit from this allowance, including job changes, health issues, and caretaking for aging/elderly parents. Incorporating contingent changes in a placement schedule would be particularly helpful for parents of young children because infants and toddlers need a different type of schedule than older children. As the child ages, the placement schedule could modify to accommodate the child's development without the need to return to court.

The Family Law Section supports this legislation because the provisions are likely to reduce post-judgment custody and placement litigation. This proposal also allows greater flexibility for the parents to negotiate and allows the court to issue orders that can be more adaptable as families go through predictable changes. This will benefit children greatly by reducing the frequency and intensity of litigation. Studies have clearly documented the damaging effect of parental conflict on their children. This legislation is a significant improvement in helping avoid that damage by providing parents and the court with an important tool to reduce litigation and tailor provisions specific to the individual family.

AB 95 was unanimously supported in the Assembly Family Law Committee and on the Assembly floor. Previous iterations of this legislation received unanimous support from Assembly and Senate committees and passed out of the Assembly unanimously as well. The Family Law Section respectfully requests your support of AB 95 so that families throughout Wisconsin can find a workable solution to a situation far too many encounter with growing frequency.

For more information, please do not hesitate to contact our Government Relations Coordinator, Lynne Davis, ldavis@wisbar.org or 608.852.3603.

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.

The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.



STATE BAR OF WISCONSIN

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LEGALAction

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TO: Members of the Senate Committee on Insurance, Financial Services,
 Government Oversight and Courts
FROM: Abby Bar-Lev Wiley, Legislative & Compliance Director, Legal Action WI
RE: Impact of AB 95 on Legal Action's Clients
DATE: February 20, 2020

My name is Abby Bar-Lev Wiley, and I am the Legislative & Compliance Director of Legal Action of Wisconsin. Legal Action of Wisconsin (LAW) is a nonprofit law firm that provides free civil legal aid to low-income people in Wisconsin's 39 southern counties. One of our priority areas is serving low-income, domestic abuse victims with their family law needs; we work to help victims become safe. Our Family Law attorneys may handle a variety of types of cases for domestic abuse victims, including domestic abuse and child abuse injunctions; divorce cases; maintenance and child support; child custody and placement; paternity, and modification of divorce, paternity, custody, placement, maintenance, or child support judgments, among other types of cases.

Legal Action is concerned that AB 95 will negatively impact our clients. The Assembly amendment, which prohibits modifications to stipulated agreements based on the completion of certain behavioral programs or a term of incarceration, does improve the bill, but we are still concerned that allowing *conditional* events into stipulations could lead to chaos.

The bill would allow courts to approve stipulated agreements between parties based on conditional events occurring within the next two years. State case law is clear that courts cannot make conditional custody or placement orders based on events which may or may not occur at some unknown point in the future (see, for example, *Koeller v. Koeller*, 195 Wis. 2d 160 (1995); *Culligan v. Cindric*, 2003 WI App 180). Courts like certainty, and they do not like to speculate. Trying to speculate about *conditional events* can be difficult and dangerous, as there will always be unknown variables. This is particularly true for Legal Action's clients, for whom there is often a history of violence, control, and manipulation.

For example, imagine that Mom gets sole placement of Tim. At the time of the stipulation, Dad just got a new job, is going to anger management, and seems like he's doing well. Optimistic, and hoping to encourage Dad's progression, Mom and Dad agree in stipulation that when Tim graduates from middle school next June, Tim will spend one week a month with Dad. Tim completes middle school, but now Dad is now drinking four times a week. Mom is worried about Tim's safety and well-being during their visits, but Dad is making threats if she goes to court to try to alter the conditional arrangement.

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Exacerbating the concern, the court does not have a process for checking in after the conditional event has occurred to make sure that the new arrangement is going well or as expected. Any modification to a stipulated agreement must be initiated by a party going to court.

Mom would not be in this situation if the agreement was based only on the current circumstances at the time of the stipulation, and if they just waited to make any changes until the event/time arose to change the stipulation. Although it is true that AB 95 may appear to save a trip to the courtroom, for our clients AB 95 would often make the process more complicated. If parents agree to a conditional stipulation and then need to make changes, now they need to go back to the court to try to amend the conditional stipulation, rather than just maintaining an original stipulation based on current circumstances. Again, AB 95 may not pose a problem for many people whose lives are relatively uncomplicated, but those are not our clients. AB 95 has the potential to make our clients' lives more difficult and more complicated.

Thank you for your consideration. Please do not hesitate to contact me at abw@legalaction.org or (414) 274-3425 if I can be of further assistance as you evaluate this bill.

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