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STATE REPRESENTATIVE • 60<sup>TH</sup> ASSEMBLY DISTRICT

**Assembly Committee on Family Law  
Tuesday, June 4, 2019**

Thank you for holding a hearing on Assembly Bills 93, 94, 95, 96, 97, 98, 99, 102, and 103 and allowing me to testify in favor of this legislation.

During this past 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.

### 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-life 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 94

Assembly Bill 94 specifies that courts may not consider incarceration to be voluntary employment in determining a parent's earning capacity, which reflects a change in federal law.

Under the bill, child support will be automatically suspended with no arrears, if the follow criteria are met:

- The sentence is more than 180 days
- The parent doesn't have income or assets from which child support could be collected



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- The other parent or any child is not the victim of a crime for which the parent is incarcerated
- The parent is not incarcerated for nonpayment of child support.

Child support obligation will be reinstated 60 days after incarceration ends.

According to NCSL, 36 states already allow for child support modification or suspension during incarceration. The Milwaukee Prison Project, conducted by UW-Madison's Institute for Research on Poverty, concluded that arrears tended to be lower among fathers whose child support orders had been modified while incarcerated. The likelihood that the custodial parent would receive payments following the payer parent's release increased. There was evidence of improvement in child support outcomes, such as, lower arrears and higher child support payment amounts.

According to the U.S. Department of Health and Human Services Office of Child Support Enforcement, the accumulation of substantial arrears discourages a parent's presence and makes it less likely that the parent can begin to provide for the child after leaving prison.

The data is clear – states that still impute income for the incarcerated are ineffective in getting obligors to pay during or post-incarceration. Assembly Bill 94 would reverse this trend and lead to more involved parents upon release.

## 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.

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



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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 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.

Additionally, 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



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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 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.

### Assembly Bill 103

In July 2018, DCF changed an administrative rule and would no longer collect birth costs from cases where the father is a member of an "intact family." DCF views an "intact family" one in which the unmarried mother and father live in the same household.

Assembly Bill 103 reverses the DCF rule and would allow for collection of birth costs from this group of fathers. The DCF rule change has unintended consequences, as fathers from "intact families" typically have higher incomes and the ability to repay birth expenses than those from "non-intact families." The rule change disproportionately benefits fathers who are most able to repay their debt to the state.

Under the Birth Cost Recovery program, the father may be ordered to pay back up to one-half of the birth expenses. The order must not exceed 5% of three years' income. The Birth Cost Recovery program takes the father's ability to pay into account. The court may use a reduced sliding scale that limits the father's contribution to a lower percentage. Additionally, no interest or penalties accrue on these orders.

Some opponents argue that the Birth Cost Recovery program leads to increased poverty to low-income families. This is completely unfounded. For example, in Milwaukee County, 25% of



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fathers on new paternity cases are not asked to pay anything. The most common expense order is \$500, which is payable at a rate of \$1 per week for fathers earning between \$1000-2000 monthly.

Eighty-five percent of Birth Cost Recovery funds are used to reimburse the BadgerCare Program for Medicaid-funded births and fifteen percent are distributed to county child support programs. Additionally, there are federal matches on these funds. Some of the study committee members that are here today will be able to speak more to the funding breakdown.

Like the child support program itself, the Birth Cost Recovery program stems from the notion that parents should be the ones responsible for their children, not the taxpayers, when they have the ability to pay.

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