ROBERT BROOKS

STATE REPRESENTATIVE • 60TH 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.

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Memo

To: Assembly Family Law Committee
Date: June 4, 2019
From: Chase Tarrier, Public Policy Coordinator
Re: Bills from Legislative Study Committee on Child Placement and Support

End Domestic Abuse
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Dear Chairperson Rodriguez and Members of the Assembly Committee on Family Law,

Thank you for the opportunity to provide testimony today regarding several proposals that were recommended by the Legislative Council Study Committee on Child Placement and Support. End Abuse is the statewide voice for survivors of domestic violence and the membership organization representing local domestic violence victim service providers throughout the state. Before I begin, I would like to thank Rep. Brooks, Sen. Taylor and the rest of the Study Committee for their diligent work on these proposals. While we do not support all the bills before you today, we recognize the challenges of finding common ground for reform on issues that have to do with such personal matters. We would also like to thank the Study Committee for paying particular attention to the experience of victims of domestic abuse in the Family Law system, who face unique obstacles to safe outcomes in their custody and placement decisions.

End Abuse's 2017/2018 Family Law Research Project

For nearly forty years, the policy work of End Domestic Abuse WI has been grounded in the experience of survivors and the advocates who serve them. Throughout that period, survivors and advocates have consistently reported that one of the main challenges survivors face is navigating the often unfriendly, rigorous, and officious family law system to keep themselves and their children safe. Over the years, horror stories about survivors' experiences in court have driven us to search for innovative solutions to inspire the Family Law system to become more victim-friendly.

Therefore, we set out to collect data to better understand how courts apply current law, such as 2003 WI Act 130[1], in family law cases with a history of domestic violence, taking great care in selecting which cases to review. We examined a period from 2008-2015, matching parties in criminal cases with domestic violence-related criminal convictions no less severe than misdemeanor battery with subsequent family law cases to determine child custody and placement between the victim and the criminal defendant. Using the Wisconsin Circuit Court Access Platform (WCCA, also known as CCAP), we identified the matches in a random selection of twenty counties from all ten judicial districts across the

[1] Wisconsin State Legislature. *2003 Wisconsin Act 130.* March 12, 2004. https://docs.legis.wisconsin.gov/2003/related/acts/130.

state. Small, medium, and large counties were all included in the sample, from the smallest, Ashland County, to the largest, Milwaukee County.

One of our key findings in this study was that many judges, and court personnel in general, do not recognize domestic abuse in family court. We know this because of the 361 cases reviewed, all with a criminal history of domestic abuse, the court made formal domestic violence findings in only 8% (29) of these cases. When we looked closer at the individual case files to see if there was any mention of domestic violence at all, the percentage increased, but not by much, to 27% of cases. We expected domestic violence findings in more than half of all the cases we reviewed, so this statistic was alarming. We also expected to find that the custody and placement outcomes in these cases would favor the victims about 75% or more of the time, but that was not the case. Placement decisions were the most favorable to victims (sole or primary placement awarded to the victim), but even that percentage was lower than we expected, at about 65% of all the cases reviewed.

The results of this study provide the backdrop for our general position on the need for reform to the family law system, as well as our specific positions on the legislation before you today. The fact that the court often fails to take domestic violence into account when making placement and custody determinations, even when there has been a criminal conviction of a domestic violence crime, is a troubling trend that must be addressed if we are ever to ensure that family law decisions are really in the best interest of children. With these considerations in mind, here is a brief description of our position on several of the bills before you today:

AB 94 – Support

End Abuse supports the elimination of child support for incarcerated parents. Saddling incarcerated parents with a backlog of child support payments is unhelpful for both the incarcerated parent as well as the non-incarcerated parent. In domestic violence cases, continuing child support for an incarcerated abuser is not only unhelpful but has the potential to ignite unhealthy dynamics in the family while doing nothing to support the child and non-abusive parent. Abusers are skilled at manipulating their victims and continuing their controlling behavior even while incarcerated. As their child support debt continues to grow, they are likely to blame and target the victim for their increasingly precarious financial situation. We see this bill as a commonsense reform that will help formerly incarcerated people be better parents who are less likely to end up back in prison for debt related offenses while also mitigating the potential to enflame already unhealthy dynamics in cases with domestic abuse.

AB 95 – Neutral/Speaking for information

Last session, we expressed concerns about the potential for legislation allowing modifications to placement schedules predicated on a future event to jeopardize the safety of domestic violence victims in the family law system. We would like to make it clear that as an organization, End Abuse recognizes that there are cases in which custody or placement modifications predicated on a future event are appropriate and helpful for parents. In theory, these stipulations would only apply to parents with a healthy co-parenting dynamic who are making a well-informed decision that suits the best interests of both the child and the two parties involved in the case. However, the reality of the family law system is such that contingent placement plans are likely to be used by abusers, and the court system by extension, to coerce victims of domestic violence into agreeing to stipulations that are not actually in their best interest nor the best interest of their children. Specifically, we expressed the following concerns:

1. **Victims are Isolated** – Domestic violence survivors are overwhelmingly unrepresented in the family court system. Operating pro se increases the extent to which non-abusive parents are vulnerable to coercion, even in cases that may appear normal to the judges, GALs and other attorneys involved in the case.

2. **Domestic Abuse is Ignored by the Courts** – Interpersonal violence is routinely ignored by the courts, even in cases in which there has been a previous criminal conviction of domestic violence.
    a. A review of 361 Wisconsin family law cases with a criminal history of domestic violence revealed that the court made formal domestic violence findings in only 8% of cases and mentioned the abuse at all in fewer than 20%.
    b. Additionally, the court rarely ordered sole placement to the victim (14 out of 328 cases with documented placement orders).

3. **Victims Cannot Oppose** – In an overwhelming majority of cases, victims of domestic violence are subjected to extreme levels of coercion, manipulation and control, meaning their ability to meaningfully oppose the actions of an abuser are fundamentally limited. The typical abuser is adept at using intimidation and deceit to coerce their victims into all sorts of behavior that may appear contrary to the victim's best interest or that of their children.
    a. Additionally, many victims who attempt to oppose potential placement plans and custody arrangements are viewed as uncooperative, a designation that further damages their credibility in the eyes of the court.

After expressing these concerns to the bill's authors and representatives of the family law system, they graciously agreed to work with us on an amendment to this legislation that would limit the ability of courts to use these contingent placement plans in specific situations that present the highest risk to victims and their children. We are pleased to report to this committee that we have completed our collective work on this amendment and are no longer opposing this legislation. We would like to once again thank the bill's authors, the Family Law Section of the WI State Bar and other stakeholders that were kind enough to consider the unique barriers to safety faced by victims in this situation. We look forward to continuing our work with them to improve the family law system's response to domestic violence in the future.

AB 97 – Oppose

End Abuse oppose this legislation because of its potential to further entangle non-abusive parents with their abusers, ignoring important factors related to domestic abuse. Implying that because a parent has "any allocation of physical placement," the maximum involvement and cooperation of both parents is in the best interest of the child goes against the currently existing best interest factors and will coerce victims into increased contact and communication with abusers. It also has the potential to create confusion as it can be interpreted to provide an alternative definition of the best interest of the child separate from the current definition determined by the factors. Obviously, we want parents to be encouraged to get along and cooperate, but simply because an abuser has any allocation of placement (which happens frequently), maximum involvement and cooperation of both parents is often not appropriate nor in the best interest of the child. Abusers are highly adept at using the court system and their children as tools of control and manipulation. Providing them with a statutory reason to argue that their victim must communicate and collaborate with them more is simply not in the best interest of

children. Courts need increased flexibility to determine what is safe for children and non-abusive parents, not broad statements about how parents should behave that ignore the realities of cases with domestic abuse as a factor.

AB 98 – Oppose

End Abuse oppose this legislation because while the intent may be good, it is based on two fundamentally misguided ideas. The first is that judges are not awarding physical placement to able bodied, non-abusive parents enough and need to be directed to account for the cases in which they limit placement to one of the parents. In fact, as the study committee heard from various experts, courts award equalized placement regularly and increasingly as time goes on (often in cases in which it is clearly not appropriate given the history of domestic violence). Limiting the courts discretion to make placement decisions will only discourage Judges and Commissioners from making decisions based solely on the best interest factors, rather than some notion of what amount of placement parents deserve. The second is that rearranging the order of the factors is a meaningful change that will result in better outcomes for families. At this time, we see no evidence that this change will result in anything but increased confusion, especially for pro se litigants. This is particularly true given that the language states that the order of the factors has no bearing on their importance. The court system is already extremely confusing for pro se litigants, and we want judges and commissioners to utilize all the factors appropriate in any given case.

AB 103 – Oppose

End Abuse oppose this legislation because the recovery of birth cost in cases with already involved fathers unproductive and does little to help the new parents be successful. Additionally, it is potentially dangerous in cases with domestic violence or other unhealthy family dynamics as it has the tendency to enflame already existing tensions in the relationship. Often, when abusive fathers are forced to pay the cost of birth, they blame the victim for financial instability that follows garnished wages or tax returns, making them even less likely to support the victim and child moving forward. Rather than encouraging child support offices to collect birth costs from fathers who are already supporting their children in order to keep a percentage of the recovered funds, we encourage the legislature to adequately fund child support offices directly so that there is no need for this practice for fathers who are already supporting their children.

Thank you for your consideration of our views on these proposals. We appreciate the committee's focus and attention on the experience of victims of domestic abuse in the family law system. If you have any questions about End Domestic Abuse WI's position on these issues, please contact me at 608.237.3985 or chaset@endabusewi.org.