



ROBERT BROOKS

STATE REPRESENTATIVE • 60TH ASSEMBLY DISTRICT

Assembly Committee on Judiciary
Thursday, April 15, 2021

Thank you for holding a hearing on Assembly Bill 102 and allowing me to testify in favor of this legislation.

This bill originated in the Study Committee on Child Placement and Support, which I chaired.

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.

Last session, this bill passed via voice vote in the Assembly and received unanimous support during the Senate committee process. Unfortunately, due to COVID-19, it was not scheduled for a full Senate vote.

Assembly Bill 102 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.

Under current law, certain aspects of family law proceedings are modified if a court finds that a parent has engaged in a pattern or serious incident of interspousal battery or domestic abuse. If a guardian ad litem is appointed for a child in an action affecting the family, the guardian ad litem is required to investigate whether there is evidence that either parent engaged in interspousal battery or domestic abuse and must report the results of the investigation to the court.

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. In addition, victims of domestic violence are often hesitant to speak up about past instances, so judges would be able to look at records themselves.

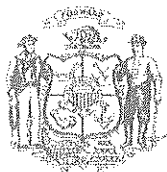


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STATE REPRESENTATIVE • 60TH ASSEMBLY DISTRICT

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

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



ANDRÉ JACQUE

STATE SENATOR • 1ST SENATE DISTRICT

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Madison, WI 53707-7882

*Testimony before the Assembly Committee on Judiciary
State Senator André Jacque
April 15, 2021*

Chairman Tusler and Members of the Assembly Committee on Judiciary,

Thank you for holding this hearing and the opportunity to testify before you today in support of Assembly Bill 102.

Assembly Bill 102 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 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. In addition, victims of domestic violence are often hesitant to speak up about past instances, so judges would be able to look at relevant records themselves.

Assembly Bill 102 would allow judges to have all pertinent information when determining periods of physical placement of a child.

Assembly Bill 102 is identical to 2019 Assembly Bill 100, which originated in the Legislative Council Study Committee on Child Placement and Support. The bill previously passed the Assembly on a voice vote.

Thank you for your consideration of Assembly Bill 102.

Schaefer, Christopher

From: Flemming, Darla
Sent: Wednesday, April 14, 2021 3:54 PM
To: Rep.Rob.Brooks
Subject: FW: Judicial notice - comment from judge

From: Lynne Davis <ldavis@wisbar.org>
Sent: Wednesday, April 14, 2021 3:29 PM
To: Flemming, Darla <Darla.Flemming@legis.wisconsin.gov>
Subject: FW: Judicial notice - comment from judge

Hi Darla,
Below is Comm. Fremgen's response to the judge's comment to Rep. Kerkman. I asked if he'd mind if I shared and he said go ahead. ☺

Lynne Davis
Government Relations Coordinator
State Bar of Wisconsin
www.wisbar.org
(608) 852-3603

From: Mark Fremgen [mailto:Mark.Fremgen@WICOURTS.GOV]
Sent: Wednesday, April 14, 2021 2:47 PM
To: Lynne Davis <ldavis@wisbar.org>
Cc: 'Jared M. Potter' <jpotter@staffordlaw.com>
Subject: RE: Judicial notice - comment from judge

So the deal is this: half the judiciary believes that 902.01 (2)(b) allows a judge to consider CCAP as an "accurate source" that cannot be reasonably challenged. The other half is a stickler to SCR 60.04 (1)(g)(fn1) which states that a court may not initiate an independent investigation of a matter before the court. This was from an informal poll or survey of judges and commissioners for a judicial conference in 2017 or 2018. The case that this judge cites does not give a court any authority to view CCAP records....the COA simply reviewed the CCAP entries of the record of that particular case before it. That is, they referenced CCAP records in the case on appeal versus the intent of this bill that would allow a judge or commissioner to look at a litigants criminal record outside the presence of the parties.

From: Lynne Davis <ldavis@wisbar.org>
Sent: Wednesday, April 14, 2021 1:40 PM
To: Mark Fremgen <Mark.Fremgen@WICOURTS.GOV>
Subject: [E] FW: Judicial notice - comment from judge

[E] CAUTION: This email originated from outside the Wisconsin Judicial Branch. Do not click links or attachments unless you recognize the sender and know the content is safe. If this email appears suspicious, or is asking you to provide sensitive information, contact the CCAP Call Center for further guidance.

Hi Comm. Fremgen,

Darla passed along a comment that Rep. Samantha Kerkman received from a judge in her district. Rep. Kerkman is the vice-chair of A-Judiciary. Rep. Kerkman's district is SE Wisconsin, excluding Kenosha - <https://maps.legis.wisconsin.gov/?asm=61&single=y>.

AB 102 for Thursday seeks to allow judges to take Judicial Notice of CCAP. Under Wis. Stat. 902.01 Courts can already take Judicial Notice of any case on CCAP. There is also a case on point. Kirk v. Credit Acceptance Corp 2013 WI App 32. Judges are able to see most records (not Juvenile cases in other counties) from around the state via our dashboard which provides the documents not only the wcca.wicourts.gov record. It may not be a necessary change in law.

Lynne Davis
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FAMILY LAW SECTION

To: Members, Assembly Judiciary Committee
From: State Bar of Wisconsin Family Law Section Board
Date: April 15, 2021
Re: AB 102 – judicial notice of court records

The State Bar of Wisconsin's Family Law Section Board supports AB 102, legislation originally from the Legislative Council Study Committee on Child Placement and Support and now sponsored by Rep. Rob Brooks and Sen. Andre Jacque, related to judicial notice of court records.

The proposed changes to section 767.135 would allow courts to take judicial notice of certain criminal convictions and injunctions involving domestic violence and child abuse when issues of child custody and placement are subjects of litigation in family law actions.

Currently, under the judicial ethical code issued by the Wisconsin Supreme Court, judges are prohibited from independently investigating facts in a case, but Wisconsin Statute Section 902.01 permits courts to take judicial notice of facts capable of accurate and ready determination from sources whose accuracy cannot reasonably be questioned. As proposed, AB 102 eliminates the potential conflict between those directives.

All too often, unrepresented litigants in family law actions are not aware of the importance a history of domestic abuse and child victimization plays in the court's determination of issues of custody and placement of minor children. In addition, victims of such offenses may be unwilling to recite that history in front of their abuser in open court.

Permitting judges to review existing court records they can access from the bench for prior incidents of domestic abuse, child abuse, child neglect and exploitation enables judges to make decisions on custody and placement consistent with the legislative directive that courts act in the best interests of minor children.

This legislation previously received unanimous support from Assembly and Senate committees and passed out of the Assembly unanimously as well. The Family Law Section respectfully requests your continued support of AB 102, and expresses gratitude to Rep. Rob Brooks, Sen. Andre Jacque, and the members of the Child Placement and Support Study Committee for their efforts on this legislation.

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