



ROBERT BROOKS

STATE REPRESENTATIVE • 60TH ASSEMBLY DISTRICT

Assembly Committee on Family Law
Tuesday, March 9, 2021

Thank you for holding a hearing on Assembly Bill 101, 104, and 107 and allowing me to testify.

These bills originated in the Study Committee on Child Placement and Support, which I chaired.

The study 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, these bills passed via voice vote in the Assembly and received unanimous support during the Senate committee process. Unfortunately, due to COVID-19, they were not scheduled for a full Senate vote.

Assembly Bill 101

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 101 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 study committee heard testimony that co-parenting proposals are effective in helping parents focus on a child's needs 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 existing system's failure.

Assembly Bill 104

Assembly Bill 104 makes two technical changes. First, it 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 bill codifies current practices and helps 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.



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The study 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 104 makes updates to reflect current practice.

In addition, this bill makes changes to family support orders. Currently, family support combines portions of child support and maintenance into a single payment. For tax purposes, family support payments are considered 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, Assembly Bill 104 eliminates new family support orders to ensure that these payments are consistent with current state and federal tax laws.

Assembly Bill 107

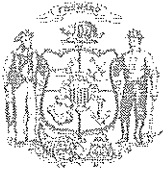
Assembly Bill 107 specifies that if a court grants less than 25% physical placement to a parent, a finding of fact must be entered as to the reason greater placement with said parent is not in the best interest of the child.

The committee chose 25% placement for the finding of fact requirement because it is the threshold for shared placement in Wisconsin.

Currently, parents have no understanding of why they are not awarded placement. This bill allows parents to have clear knowledge of which factors they are not meeting. Parents can then work on these issues. Given the trend in shared placement arrangements, the study committee found value in having a court explain the reasoning when physical placement with one parent is limited.

In addition, Assembly Bill 107 reorders statutory best-interest factors, but specifies that the factors are not necessarily listed in order of importance. This component originated in an informal State Bar Family Law working group that convened prior to the study committee. Some of the working group's members also served on the study committee. The goal of rearranging the factors is easier application when determining placement schedules. This bill eliminates two considerations: the stability in placement and availability of child care services. The informal working group and subsequent study committee thought these considerations were already covered in other factors.

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



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*Testimony before the Assembly Committee on Family Law
Senator André Jacque
March 9*

Chair Magnafici and Committee Members,

Thank you for the opportunity to present testimony in support of Assembly Bill 104, which I am happy to join Rep. Brooks in bringing forward this session. This legislation is identical to 2019 Assembly Bills 96 and 101, two of the items recommended by the 2018 Legislative Council Study Committee on Child Placement and Support chaired by Rep. Brooks. They have been combined into one bill, as they make purely technical changes. Both of those bills passed Assembly Committee unanimously and the full State Assembly late last session and passed out of committee unanimously in the State Senate, but were not taken up before the session adjourned. This session the Senate companion to AB 104 has already unanimously passed the Senate committee I chair and is likely to be on Senate's March floor calendar.

Under Assembly Bill 104, the formula that applies in a shared physical placement arrangement will be the primary method of calculating child support in Wisconsin. This is a technical cleanup bill that codifies current practice to reflect that shared physical placement arrangements are now very common, and should no longer be deemed "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. DCF supports this change.

In addition, AB 104 makes changes to family support orders. 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, this proposal eliminates new family support orders to ensure that these payments are consistent with current state and federal tax laws.

Thank you for your consideration of Assembly Bill 104.