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Testimony before the Senate Committee on Human Services, Children and Families

Senator André Jacque

February 22, 2021

Fellow Committee Members,

Senate Bills 104, 105, 107 and 108 were recommended by the 2018 Legislative Council Study Committee on Child Placement and Support. Each of these proposals passed 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.

SB 104

Currently, military service members receive allowances to help with housing costs. A variable component may be added to the base housing allowance to cover expenses in states with a higher cost of living. For example, service members receive a higher variable housing allowance when stationed in Hawaii, as opposed to Wisconsin.

The Department of Children and Families currently includes variable housing costs when calculating child support payments. When service members are transferred to a state with a lower cost of living, their variable housing allowance is subsequently reduced. Their child support payments are not altered to reflect their reduction in income, unless service members return to court to seek a modification.

Under SB 104, DCF would no longer be able to include variable housing costs for determining gross income for child support payments. Instead, DCF would utilize base costs to calculate child support. The department is supportive of this legislation.

The current use of 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.

SB 104 is identical to 2019 Assembly Bill 102, which originated in the Legislative Council Study Committee on Child Placement and Support. The bill previously passed the Assembly on a voice vote.

SB 105

Under SB 105, 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, SB 105 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



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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.

SB 105 is identical to 2019 Assembly Bills 96 and 101, which originated in the Legislative Council Study Committee on Child Placement and Support. Both bills previously passed the Assembly on a voice vote. They have been combined into one bill, as they make purely technical changes.

SB 107

Under current law, divorcing parties are required to file a parenting plan with the court only after mediation fails or if mediation is waived. SB 107 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. 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.

SB 107 is identical to 2019 Assembly Bill 99, which originated in the Legislative Council Study Committee on Child Placement and Support. The bill previously passed the Assembly on a voice vote.

SB 108

SB 108 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.

Temporary custody and placement arrangements are often challenging for military families during deployment, and this legislation would help give these families a sense of certainty during deployment.

SB 108 is identical to 2019 Assembly Bill 93, 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 Senate Bills 104, 105, 107 and 108.



ROBERT BROOKS

STATE REPRESENTATIVE • 60TH ASSEMBLY DISTRICT

**Senate Committee on Human Services, Children, and Families Hearing
Monday, February 22, 2020**

Thank you for holding a hearing on Senate Bills 104, 105, 107, and 108 and allowing me to testify in favor of this legislation.

These bills 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, each of 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.

Senate Bill 104

Currently, military service members receive allowances to help with housing costs. A variable component may be added to the base housing allowance to cover expenses in states with a higher cost of living. For example, service members receive a higher variable housing allowance when stationed in Hawaii, as opposed to Wisconsin.

The Department of Children and Families currently includes variable housing costs when calculating child support payments. When service members are transferred to a state with a lower cost of living, their variable housing allowance is subsequently reduced. Their child support payments are not altered to reflect their reduction in income, unless service members return to court to seek a modification.

Under Senate Bill 104, DCF would no longer be able to include variable housing costs for determining gross income for child support payments. Instead, DCF would utilize base costs to calculate child support.

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



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military move. The use of base housing costs would create stability and better reflect the variable housing costs purpose.

Senate Bill 105

Senate Bill 105 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.

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. Senate Bill 105 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, Senate Bill 105 eliminates new family support orders to ensure that these payments are consistent with current state and federal tax laws.

Senate Bill 107

Under current law, divorcing parties are required to file a parenting plan with the court only after mediation fails or if mediation is waived. Senate Bill 107 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.

Senate Bill 108

Senate Bill 108 is a piece of Uniform Law Commission legislation, which is already law in 14 states. It creates a process and standards for temporary delegation of custodial responsibilities



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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.

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



TO: Honorable Members of the Senate Committee on Human Services,
Children and Families

FROM: Amanda Merkwae, Legislative Advisor

DATE: February 22, 2021

SUBJECT: 2021 Senate Bill 104; 2021 Senate Bill 105

Chair Jacque, Vice Chair Ballweg, and Members of the Committee:

Good Morning. My name is Amanda Merkwae, and I am the Legislative Advisor for the Department of Children and Families (DCF). DCF is responsible for administering the Child Support program in Wisconsin. I am here to testify in support of SB 104 and SB 105.

Senate Bill 104

Variable housing costs would not be considered income for military service members. Senate Bill 104 amends the definition of income in DCF's administrative rule related to the calculation of child support. Under current administrative rule (DCF 150), military allowances and veteran's disability compensation benefits are considered income when calculating child support. Under SB 104, DCF 150 would be amended to specify that the definition of income includes basic allowances for subsistence and housing, but does not include variable housing costs.

Military service members receive allowances to assist in the cost of housing. A variable component may be added to the basic housing allowance to reflect the higher cost of living in some states. A service member who is stationed in a high cost of living state receives a higher allowance. If the variable component of their housing allowance is included in their income when child support is calculated and they are subsequently transferred to a lower cost of living state, their housing allowance will be reduced. However, their child support order will not be reduced to reflect the reduction in their income unless they go back to court to seek a reduction.

Support to avoid disparity for military service members in Wisconsin. DCF recognizes the disparities in housing allowances across the country, as well as the increased burden on service members to seek modifications of their support orders when they are transferred to another state. For these reasons, DCF supports this legislation. We are hopeful that similar legislation will be enacted in all states so that consideration of a service member's housing allowance in calculating income available for child support will be consistent across the country.

Senate Bill 105

Restructuring the calculation of child support to use shared placement formula. Senate Bill 105 amends DCF's administrative rule related to the calculation of child support. Although it does not change any of the calculations, it restructures the administrative rule to make the formula that applies in a shared physical placement arrangement, the primary method of calculating support in Wisconsin. The shared placement formula applies when each parent has at least 25% overnight placement with the child(ren). It is an income shares model, which means that the calculation of support factors in the incomes of both parents. Wisconsin's current formula, the Percentage of Income Standard, looks only at the income of the noncustodial parent, although it presumes that the other parent is sharing a comparable percentage of their income with the child(ren).

Expanding application of income shares formula used in majority of cases. SB 105 addresses an issue that affects parties' perception of the child support program. Income shares models are perceived as being fairer and Wisconsin's shared placement formula is an income shares formula that is currently used in the majority of cases. This change would create a greater perception of fairness in Wisconsin's child support guidelines without requiring the adoption of a new methodology.

By recognizing the existing shared placement formula as the primary method of establishing support, while retaining the use of the Percentage Standard in sole placement cases, this bill retains Wisconsin's current calculations and years of case law supporting it. For these reasons, DCF supports SB 105.

Eliminating family support orders. Following the changes made under Federal Tax Cuts and Job Act of 2017, DCF does not have any concerns with the elimination of new family support orders. DCF suggests an amendment to Section 28 of SB 105 to repeal Section DCF 150.03(7) regarding the calculation of family support to align with the statutory change eliminating family support.

Thank you for the opportunity to testify on this important legislation.