Testimony - September 1, 1999

Good Morning. My name is Jean Buschke and I am the Executive Director of PAVE in Beaver Dam, which is a domestic violence and sexual assault program that serves all of Dodge County and the surrounding areas. I am here to **strongly oppose** the proposed changes to child custody procedures and physical placement determinations.

I have been in my position at PAVE for almost three years. I have worked with over three hundred children...I see them not for one or two hours...but they live at our shelter...and because I am there 70 to 80 hours a week...I get to know them...their fears and their dreams.

I am someone who works every day with children who are in danger and I will tell you these proposed changes will not help keep children safe and as adults I believe that is one of our fundamental responsibilities. And I personally resent that these proposed changes would make that responsibility for me even harder. Because quite frankly in my work...every day is hard enough. I work round the clock assuring children that people care about them...these proposed changes say just the opposite. These changes say no matter what a parent's behavior...they have some absolute rights in regards to their children and that makes no sense to me.

I do not work with men and women who are having reasonable divorcees...if there are such things. I work with families who are ripped apart by violence and almost in every case the children are in the middle looking for safety...

I cannot believe in anyway that a parent who attacks another parent in the presence of their children should have any **assured absolutely right** to equal say in the major decisions of those children's lives. The idea that those children **would be automatically** forced to spend equal time with someone **they fear**... strikes at the heart of everything my agency and I personally believe in. That is that people of all ages, sizes and sexes have a right to live with some peace in their lives. They have a right to believe their homes are a place where they should be safe and unafraid to walk in the door and while that is not a reality for folks who come to my agency, we hope it is goal they can achieve once they leave.

These proposed changes could make that goal impossible for children. **I want things to stay the same**. I want the best interest of the child to be the bench mark...if a parent put the best interest of their child in the forefront to begin with we would not have all the violence

we have now. Instead of folks ending up in jail for domestic violence, they would be lining up for help to deal with their own issues for their sake and the sake of their children.

But that is not the real world. In the real world it is easier to strike out then to learn how to do things differently. And if you doubt that...I invite you to spend some time...some real time in my world.

You be called in to work in the middle of the night because a child is hysterical because they thought they saw their dad's car drive by our shelter. You be the one that they won't let go of because they are afraid to go outside. I will still be the one to crawl under the table to tell them they are safe...cause well I will still fit better under the table...then you will. But you be there backing me up to hear their fears. A few days with me and you'll will try to move heaven and earth to make adults accountable and responsible for their own behavior while at the same time assuring children that people really do care about their safety.

I try to live my life doing the best I can. Sometimes because situations are so complicated and mixed up I can

only pray that I don't make things any worse. If you live by that same benchmark...you also will oppose these proposed changes. Thank you.

PAVE inc.

People Against a Violent Environment
"a community for change"

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MEMORANDUM

DATE: 8/12/99

TO: Interested Persons

FROM: Dan Rossmiller, Chief of Staff
Office of State Senator Gary R. George

RE: Summary of 1999-2001 State Budget Bill Revisions to Family Law Child Custody, Physical Placement, Paternity etc.)

Background

The proposed budget language includes provisions suggested by the State Bar of Wisconsin Family Law Section, the Wisconsin Family Court Commissioner's Association, and various divorced parents' advocacy groups, among others. It stems from a proposal initially put forward by the State Bar's Family Law Section and subsequently modified as the result of consultations with various groups and individuals.

The proposed changes to the standards for determining legal custody and physical placement of children in actions affecting the family and related matters were included in Senate Amendment 1 (as amended by Senate Amendments 40 and 41) to Senate Substitute Amendment 1 to 1999 Assembly Bill 133 (State Budget Bill). As of this writing these proposed changes are included among items the Budget Conference Committee has approved for inclusion in its final report.

Legal Custody

The proposed budget provisions change how legal custody is determined in an annulment, divorce, legal separation or custody action and require paternity orders to determine legal custody and physical placement. Under the proposed budget language, the court must base its decision on the best interest of the child (as under current law) after considering the specified factors, but the court shall presume that joint legal custody is in the child's best interest. [s. 767.24(2)(am)]

Under the proposed budget language the court may give sole legal custody to one party only if both parties agree to it or if at least one party requests it and the court finds two or more of the following: 1) that one party is not capable of performing parental duties and responsibilities or does not wish to have an active role in raising the child; 2) that one or more conditions exist that would substantially interfere with the exercise of joint custody; or 3) that the parties will not be able to cooperate in future decision making required for joint legal custody. [s. 767.24(2)(b)]

Note: It is likely that the language requiring a court to find that two or more of the enumerated factors to overcome the presumption of joint custody will be amended to permit a finding of any of the three enumerated factors to overcome the presumption to take into consideration allegations or proof of domestic violence, etc.

Under the proposed budget language evidence of abuse of the child or interspousal battery or domestic abuse still creates a rebuttable presumption that the parties will not be able to cooperate in future decision making, but the proposed budget language removes the current language specifying that the presumption may be rebutted by clear and convincing evidence that the abuse will not interfere with the parties' ability to cooperate, leaving it to the judge to determine what evidence rebuts the presumption. [s. 767.24 (2)(b) 2.c.]

In addition, the proposed budget language provides that the court may not give sole custody to a party who unreasonably refuses to cooperate with the other party. [s. 767.24(2)(c)]

Physical Placement

Under the proposed budget language, the court, when allocating physical placement, considers the same factors that the court considers for a legal custody determination; however, the court is required to "set a placement schedule that allows the child to have regularly occurring, meaningful periods of physical placement with each parent and that maximizes the amount of time that a child may spend with each parent, taking into account geographic separation and accommodations for different households."

The proposed budget language adds the following new factors for the court to consider:

1) the right of the child to spend the same periods of time or substantial amounts of time with each parent [s.767.24 (5) (bm)];
2) the amount and quality of time that each parent has spent with the child in the past, any necessary changes to each parent's custodial roles, and any reasonable life-style changes that a parent proposes to make to be able to spend time with the child in the future [s.767.24 (5) (cm)];
3) the age of the child and the child's developmental and educational needs at different ages [s. 767.24 (5) (dm)];
4) the need for regularly occurring and meaningful periods of physical placement to provide predictability and stability for the child [s. 767.24 (5) (em)]; and
5) the cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party [s. 767.24 (5) (fm)].

The proposed budget language amends the existing factor for the court to consider in s. 767.24 (5) (a), Stats., to read as follows: "The wishes of the child's parent or parents as shown by any stipulation, proposed parenting plan or legal custody/physical placement proposal submitted to the court."

The proposed budget language encourages the parties to reach a voluntary agreement with respect to physical placement by providing that the court shall presume that any proposal with respect to physical placement that has been voluntarily agreed to by the parties is in the best interest of the child. [s. 767.24 (4)(a)3.]

Guardians Ad Litem

The proposed budget language provides that the court is not required to appoint a guardian ad litem under certain circumstances in actions to revise or modify legal custody or physical placement. The court is not required to appoint a guardian ad litem if all of the following apply:

1) legal custody or physical placement is contested in an action affecting the family to modify legal custody or physical placement;
2) the modification sought would not substantially alter the amount of time that a parent could spend with his or her child; and
3) the court determines that either: a) the facts or circumstances make the likely determination so clear that the appointment of a guardian ad litem would not assist the court or b) that a party seeks the appointment of a guardian ad litem solely for a tactical purpose or for delay, and not for a purpose that is in the best interest of the child. [s. 767.045 (1) (am)]

Application of the Changes in 767.24 to Temporary Orders and to Revisions of Custody and Temporary Orders

The proposed budget language requires that all temporary orders regarding legal custody or physical placement and all revisions of legal custody and physical placement orders be consistent with 767.24, Stats. [ss. 767.23 (1) (a) and (am)]

The proposed budget language further requires that the factors under s. 767.24 (5), Stats., be applied in all actions to establish temporary orders regarding legal custody or physical placement and in all actions to revise legal custody and physical placement orders. [s. 767.23 (1n)] (See sections above for a discussion of the changes to the factors the court must consider and to the changes affecting the setting of physical placement schedules.)

The proposed budget language provides that a judge or family court commissioner may make a temporary order before a guardian ad litem is appointed or before a guardian ad litem has made a recommendation to the court, if the court determines that the temporary order is in the best interest of the child. [s. 767.045 (1) (e)]

Parenting Plans

The proposed budget language creates new language to provide that in an action for annulment, divorce or legal separation or paternity or custody or acknowledgement of paternity, a party seeking sole or joint legal custody or periods of physical placement shall file a parenting plan before any pretrial conference. A party who does not timely file a parenting plan waives the right to object to the other party's parenting plan. [s. 767.24 (1m)]

The parenting plan must provide the following information/address the following questions:

- What legal custody or physical placement the parent is seeking.
- Where the parent lives currently and intends to live for the next two years.
- Where the parent works and the hours of employment.
- Who will provide any necessary child care when the parent cannot, and who will pay for it.
- Where the child will go to school.
- What doctor or health care facility will provide medical care for the child.
- What the child's religious commitment will be, if any.
- Who will pay for the child's medical care—insurance and uninsured medical expenses.
- Who will make decisions about education, medical care, and choice of child care providers and extracurricular activities.
- How the holidays will be divided.
- What the child's summer schedule will be.
- Whether and how the child will be able to contact the other parent when the child has

- physical placement with the parent providing the parenting plan.
- How the parent proposes to resolve disagreements related to matters over which the court orders joint decision making.
- What child support, family support, maintenance or other income transfer there will be.

Note: It is likely that the parenting plan language will be amended to provide that where there is evidence of interspousal battery or domestic abuse, the specific home or work address need not be indicated and the parties will be required to propose how the child will be transferred between the parties for the exercise of physical placement to ensure the safety of the child and the parties.

The proposed budget language also provides that in post-judgment modification actions, the court may require any person seeking the modification an existing order to file a plan before the court hears evidence on the motion. [s. 767.325 (6m)]

Separation Adjustment Class [s. 767.115 (4)]

The proposed budget language creates new language to provide that the court or family court commissioner may, at any time during the pendency of a divorce or paternity action, require parties to a divorce or paternity action attend a court-approved class regarding child development, family dynamics and how parental separation affects a child's development and what parents can do to make raising a child in a separated situation less stressful for the child. [s. 767.115 (4)(a)]

The court or family court commissioner may not require the parties to attend a separation adjustment class as a condition to the granting of a final judgment or order in the divorce or paternity action; however, the court or family court commissioner may refuse to hear a legal custody or physical placement motion of a party who refuses to attend the class, if ordered to do so. [s. 767.115 (4) b)]

The parties shall be responsible for any cost of attending the class unless the court or family court commissioner finds that a party is indigent. If a finding of indigency is made, any costs that would be the responsibility of the indigent party shall be paid by the county. [s. 767.115 (4)(c)]

Enforcement of Placement Orders [s. 767.242]

The proposed budget language establishes additional mechanisms for the enforcement of physical placement orders. It provides that a parent who has been awarded periods of physical placement may file a petition to enforce the award to physical placement if any of the following applies: 1) the parent has had one or more periods of physical placement denied by the other parent; 2) the parent has had one or more periods of physical placement substantially interfered with by the other parent; or 3) the parent has incurred a financial loss or expenses as a result of the other parent's intentional failure to exercise one or more periods of physical placement under an order allocating specific times for the exercise of periods of physical placement. The petition must be served on the other parent (the respondent), who may respond to the petition either in writing, before or at the hearing, or orally at the hearing. [s. 767.242 (4)]

The proposed budget language to accept any legible petition [s. 767.242 (3)(c)] and requires a judge or family court commissioner to hold a hearing on the petition no later than 30 days after the petition has been served, unless the time is extended by a mutual agreement of the parties or upon the motion of a guardian ad litem and approval of the judge or family court commissioner.

[s. 767.242 (5)(a)] A judge or family court commissioner may, on his or her own motion or the motion of any party, order that a guardian ad litem be appointed for the child prior to the hearing. [s. 767.242 (5)(a)]

Enforcement of Placement Orders--Remedies

"Mandatory Make-up Time"-- If, at the conclusion of the hearing, the judge or family court commissioner finds that the respondent has intentionally and unreasonably denied or interfered with one or more of the petitioner's periods of physical placement, the judge or family court commissioner shall do the following: 1) issue an order granting additional periods of physical placement to replace those denied or interfered with; and 2) award the petitioner a reasonable amount for the cost of maintaining an action under this section and for attorney fees. [s.767.242 (5) (b) 1.]

Optional/Discretionary Remedies--If, at the conclusion of the hearing, the judge or family court commissioner finds that the respondent has intentionally and unreasonably denied or interfered with one or more of the petitioner's periods of physical placement, the judge or family court commissioner may do any of the following:

1) issue an order specifying times if the original order or judgment does not provide for specific times for the exercise of periods of physical placement; [s.767.242 (5) (b) 2.a.]
2) find the respondent in contempt of court under chapter 785; [s.767.242 (5) (b) 2.b.]or
3) grant an injunction ordering the respondent to strictly comply with the judgment or order relating to the award of physical placement. [s.767.242 (5) (b) 2.c.]

Except as provided in s.767.242 (5) (b) 1.a. (i.e., "mandatory make-up time") and s.767.242 (5) (b) 2.a.(i.e., optional order specifying the times for the exercise of periods of physical placement), the judge or family court commissioner may not modify an original order of legal custody or physical placement in an action to enforce a physical placement order. [s.767.242 (5) (d)]

Financial Compensation – If, at the conclusion of the hearing, the judge or family court commissioner finds that the petitioner has incurred a financial loss or expenses as the result of the respondent's failure, intentionally and unreasonably and without adequate notice to the petitioner, to exercise one or more periods of physical placement under an order allocating specific times for the exercise of periods of physical placement without adequate notice to the petitioner, the judge or family court commissioner may issue an order requiring the respondent to pay a sum of money sufficient to compensate the petitioner for the financial loss or expenses. [s.767.242 (5) (c)]

Injunctive Relief -- Under the proposed budget language, any injunction issued ordering the respondent to strictly comply with the judgment or any order relating to the award of physical placement is effective for not more than two years. [s.767.242 (5) (c)]

Enforcement Assistance-- The court or family court commissioner, upon request by the petitioner, must order the sheriff of assist the petitioner to execute or serve the injunction by personal service in the same manner as a summons is served. Within 24 hours after the petitioner's request, the clerk of court must send a copy of the injunction to the sheriff or to any other local law enforcement agency that is the central repository for orders and that has jurisdiction ver the respondent's residence. If the respondent resides outside of Wisconsin, the clerk of court must send a copy of the injunction to the sheriff of the county in which the court is located. The sheriff must make available to other law enforcement agencies, through a verification system, information on the existence and status of any injunction issued. [s.767.242 (6)]

Arrest -- The proposed budget language also provides that a law enforcement officer may arrest and take a person into custody if the petitioner presents a law enforcement officer with a copy of the injunction and the law enforcement officer has probable cause to believe that the person against whom the injunction is issued has violated the injunction. A violation of the injunction is punishable by a fine of not more than $10,000 or imprisonment for not more than two years or both. [s.767.242 (7)]

"**Use It or Lose It** "--The proposed budget language also authorizes a court, in an action to modify an order of legal custody or physical placement, to modify periods of physical placement if the court finds that a parent has, without giving reasonable advance notice to the other parent, repeatedly and unreasonably failed to exercise periods of physical placement awarded under an order of physical placement that allocates specific times for the exercise of periods of physical placement. [s. 767.325(2m)]

Moving a Child

The proposed budget language adds (in s. 767.327 (5m), Stats.) a new factor that the court may consider, in determining whether to grant a modification of legal custody and physical placement or whether to issue an order prohibiting the move. The court may consider "the child's adjustment to the home, school, religion and community." (Note: The wording of this factor is identical to the wording of the factor in s. 767.24 (5) (d), Stats.)

Child Support

The proposed budget language reduces the interest rate on child support arrearages from the current 1.5% per month to 1% per month. [s. 767.25(6)] The proposed budget language also makes a number of changes regarding child support in paternity cases. Those changes are described below.

Paternity

Temporary Orders--The proposed budget language requires that temporary orders issued as the result of a genetic testing contain certain provisions which currently are optional and further requires that such orders provide for the custody and physical placement of the child. Under the proposed budget language, if at any time during the pendency of an action to establish the paternity of a child, genetic tests show that the alleged father's percentage is 99.0% or higher, on the motion of a party, the court shall make appropriate temporary orders for the payment of child support, assigning responsibility for and directing the manner of payment of the child's health care expenses and for custody and physical placement of the child. [s. 767.477(1)]

Contents of Paternity Judgments or Orders or Orders When Paternity Acknowledged --The proposed budget language establishes new requirements regarding what must be contained in a paternity judgment or order or an order when paternity is acknowledged. [s. 767.51(3)] In the case of a judgment or order determining paternity under s. 767.51, the judgment or order shall contain all of the following:

(a) an adjudication of the paternity of the child;
(b) an order for the legal custody and periods of physical placement with the child determined in accordance with s. 767.24;

(c) an order requiring either or both of the parents to contribute to the support of any child of the parties who is less than 18 years old, or any child of the parties who is less that 19 years old if the child is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent pursuant to s. 767.25;
(d) a determination as to which parent, if eligible, shall have the right to claim the child as a exemption for purposes of state income tax returns and for the purposes of federal income tax returns to the extent permitted by federal law;
(e) an order requiring the father to pay or contribute to the reasonable expenses related to the mother's pregnancy and the child's birth, based upon the father's ability to pay or contribute to such expenses;
(f) an order requiring either party to pay or contribute to the costs of genetic tests as provided in 767.48(5), guardian ad litem fees, and other costs; and
(g) an order requiring either party to pay or contribute to the attorney fees of the other party.

In the case of a voluntary acknowledgement of paternity, [see s. 767.62(4)] if the persons who signed and filed the statement acknowledging paternity as parents of the child had notice of the hearing, the court or family court commissioner shall make an order that contains the following:
(a) orders for the legal custody and physical placement with the child determined in accordance with s. 767.24;
(b) an order requiring either or both of the parents to contribute to the support of any child of the parties who is less than 18 years old, or any child of the parties who is less that 19 years old if the child is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent pursuant to s. 767.25;
(c) a determination as to which parent, if eligible, shall have the right to claim the child as a exemption for purposes of state income tax returns and for the purposes of federal income tax returns to the extent permitted by federal law;
(d) an order that the father pay or contribute to the reasonable expenses related to the mother's pregnancy and the child's birth, based upon the father's ability to pay or contribute to such expenses;
(e) an order requiring either party to pay or contribute to the costs of guardian ad litem fees, and other costs; and
(f) an order requiring either party to pay or contribute to the attorney fees of the other party.

Child Support Provisions Consolidated under Section 767.25 --The proposed budget language repeals current sections 767.51 (4g) through (5p), Stats., which relate specifically to the determination of child support payments in paternity orders or judgments under s. 767.51. The proposed budget language also repeals current sections 767.62 (4) (d) through (g), Stats., which relate specifically to the determination of child support payments in orders when paternity is acknowledged under s. 767.62. Under the proposed budget language, child support is determined by applying the provisions in 767.25 regarding child support to all support judgments and orders in paternity cases under 767.51 or orders when paternity is acknowledged under s. 767.62.

(Currently, the provisions in 767.25 regarding child support are applicable only to judgments of annulment, divorce or legal separation, orders or judgments for child support or for period family support payments, child support stipulations or actions to compel support. The proposed budget language makes the provisions in 767.25, with the exception of s. 767.25(5), Stats., applicable to all support judgments and orders issued under s. 767.51 or orders issued under s. 767.62. (*Note: s. 767.25 (5), Stats., limits liability for past support to the period after the birth of the child.*))

Liability for Past Support -- Under the proposed budget language, liability for past support in paternity actions shall be limited to the period after the date on which an action is commenced under ss. 767.51 or 767.62 unless a party can show, to the satisfaction of the court, all of the following:

1) that he or she was induced to delay commencing the action by any of the following:
   (a) duress or threats;
   (b) actions, promises or representations by the father upon which the mother relied, which caused the mother to delay filing; or
   (c) actions taken by the father to evade paternity proceedings, and
2) That after the inducement for delay has ceased to operate, the party did not unreasonably delay in commencing the action. [see ss. 767.51(4) and 767.62 (4m)]

The proposed budget language provides that in no event may liability for past support of the child be imposed for any period before the birth of the child. [see ss. 767.51(4) and 767.62 (4m) (b)]

The proposed budget language creates a new provision, which provides that, subject to 767.19, the records of any past proceeding in which paternity was established are open to public inspection. [s. 767.53(3)]

Guardian Ad Litem—Status Hearings

Note: It is likely that the proposed budget language will be amended to add language providing that at any time 120 days after a guardian ad litem is appointed, a party may request that the court schedule a status hearing related to the actions taken and the work performed by the guardian ad litem in the matter. A subsequent status hearing would be available to the parties but could not be requested until at least 120 days after the first status hearing.

Legislative Council Study—Non-Statutory Provisions

1. The proposed budget language provides for a Legislative Council Study on the "Reform of the Guardian Ad Litem System in Actions Affecting the Family" to examine the following topics:

--The appointment of guardians ad litem, including the questions of whether: a) the appointment of guardians ad litem should be mandatory in all cases where the legal custody or physical placement of the child is contested; and b) non-attorney professionals such as child psychologists, child psychiatrists, or child therapists with specialized training and expertise regarding the emotional and developmental phases and needs of children should be allowed to serve as guardians ad litem.

--The role of guardians ad litem;
--The supervision of guardians ad litem;
--The training of guardians ad litem; and
--The compensation of guardians ad litem.

The study committee shall include legislators, attorneys, judges and court commissioners, mental health professionals and lay persons and will be charged with creating recommendations and a petition to the Supreme Court for reform of the guardian ad litem system.

Delayed Effective Date

These provisions would take effect six months after the bill is signed into law. This is intended to allow judges, family court commissioners and attorneys to familiarize themselves with the new law and to develop courses as well as forms and other materials to implement the new provisions.

AB133

WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701–2536
Telephone: (608) 266–1304
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Email: leg.council@legis.state.wi.us

DATE: August 23, 1999

TO: SENATOR GARY R. GEORGE

FROM: Ronald Sklansky, Senior Staff Attorney

SUBJECT: 1999 Senate Bill 107 and 1999 Assembly Bill 133

This memorandum, prepared at your request, describes the major substantive provisions of: (a) 1999 Senate Bill 107, generally relating to the treatment of certain actions affecting the family; and (b) a substitute proposal contained in Senate Amendment 1, as amended, to Senate Substitute Amendment 1 to 1999 Assembly Bill 133 (the Executive Budget Bill, hereafter referred to as the "Budget"). Senate Bill 107 was introduced on March 31, 1999 and was referred to the Senate Committee on Judiciary and Consumer Affairs. The Budget proposal was introduced and adopted by the Senate on June 30, 1999.

A. CUSTODY AND PHYSICAL PLACEMENT

1. Current Law

Section 767.24 (2), Stats., provides that, based on the best interest of a child, a court may grant joint legal custody or sole legal custody of a minor child in various actions affecting the family. However, a court may grant joint legal custody only if it finds either that both parties agree to joint legal custody or, if the parties do not agree, that one party requests joint legal custody and the court specifically finds all of the following:

a. Both parties are capable parents and wish to have an active role.

b. No conditions exist that would substantially interfere with joint legal custody.

c. The parties will be able to cooperate.

Evidence that either party engaged in abuse of the child, interspousal battery or domestic abuse creates a rebuttable presumption that the parties will not be able to cooperate. The

presumption may be rebutted by clear and convincing evidence that abuse will not interfere with the ability to cooperate.

Under s. 767.24 (3), Stats., a court may find that neither parent is able or fit and may transfer custody to a relative, a county department or a licensed child welfare agency.

With respect to allocation of physical placement, s. 767.24 (4), Stats., generally provides that a child is entitled to periods of physical placement with both parents, unless a court finds that physical placement with a parent would endanger the child's physical, mental or emotional health.

2. Senate Bill 107

Senate Bill 107 provides that there exists a rebuttable presumption that both parents in custody matters are fit and have the ability to rear their children, that both parents are qualified to determine what is best for their children and that joint legal custody and equal periods of physical placement are fundamental rights of each parent and child. The "best interest" standard is removed as a basis upon which a custody decision is made. Instead, a court must grant joint legal custody if both parties request it or, if only one party requests joint legal custody, an "abuse presumption" is not created or is rebutted. The "abuse presumption" provides that if a party has been convicted of a crime involving abuse of a child or convicted of battery against the other party, a rebuttable presumption is created that the parties will not be able to cooperate. The presumption may be rebutted by clear and convincing evidence that the abuse or battery will not interfere with the parties' ability to cooperate.

A court may grant sole legal custody if the parties agree to sole legal custody or if the parental rights of one parent have been terminated.

Senate Bill 107 also repeals the ability of a court, under s. 767.24, Stats., to declare a child to be in need of protection or services and transfer the legal custody of a child to a relative, county department or a licensed child welfare agency.

Regarding the issue of physical placement, Senate Bill 107 provides that if the parties agree to sole legal custody, or if joint legal custody is ordered when the "abuse presumption" is not created or is rebutted, a court must approve any written schedule for physical placement that the parties agree to and submit to the court. If the parties do not agree on a schedule, the court must require each party to submit its own placement proposal. The court is required to approve the proposal submitted that sets forth the most equal allocation of periods of physical placement. If the parties do not propose substantially equal periods of physical placement and each demands a greater period of physical placement, the court must allocate equal alternating periods of physical placement.

3. The Budget

The Budget provides that in certain actions affecting the family in which legal custody or physical placement is contested, a party seeking sole or joint legal custody or periods of physical placement must file a parenting plan before any pretrial conference. A party failing to timely

file such a plan waives the right to object to the other party's parenting plan. The plan must address many issues including current living and working conditions, child care, schooling, medical care, religion, division of holidays and summer schedules, methods to resolve disagreements and child support, family support, maintenance or other income transfers.

With respect to custody, the Budget proposal presumes that joint legal custody is in the best interest of the child. A court may give sole legal custody only if it finds that doing so is in the child's best interest and that either of the following applies:

a. Both parties agree to sole legal custody with the same party.

b. The parties do not agree to sole legal custody with the same party, but at least one party requests sole legal custody and the court specifically finds two or more of the following:

(1) One party is not capable of performing parental duties and responsibilities or does not wish to have an active role in raising the child.

(2) One or more conditions exist at the time that would substantially interfere with the exercise of joint legal custody.

(3) The parties will not be able to cooperate in future decision-making. A rebuttable presumption of noncooperation is raised if there is evidence that either party has engaged in child abuse, interspousal battery or domestic abuse. (Again, current law provides in a related provision that the presumption may be rebutted by clear and convincing evidence. The Budget removes this language and leaves the standard by which the presumption may be rebutted to the court.)

In addition, the Budget provides that a court may not grant sole legal custody to a parent who refuses to cooperate with the other parent if the court finds that the refusal to cooperate is unreasonable.

The Budget creates a new standard for a court to meet when allocating periods of physical placement. The Budget provides that a court must set a placement schedule that allows a child to have regularly occurring, meaningful periods of placement with each parent and that maximizes the amount of time the child may spend with each parent, taking into account geographic separation and accommodations for different households. In addition, a court must presume that any proposals submitted to it regarding periods of physical placement that has been voluntarily agreed to by the parties is in the child's best interest.

Finally, the Budget amends the current factors used by a court to determine legal custody and periods of physical placement. The new or revised factors follow:

a. The wishes of the child's parent or parents, as shown by any stipulation between the parties, any proposed parenting plan or any legal custody or physical placement proposals submitted to the court at trial.

b. The right of the child to spend the same amount of time or substantial periods of time with each parent.

c. The amount and quality of time that each parent has spent with the child in the past, changes to the parents' custodial roles made necessary by the divorce and any reasonable life-style changes that a parent proposes to make to be able to spend time with the child in the future.

d. The age of the child and the child's developmental and educational needs at different ages.

e. The need for regularly occurring and meaningful periods of physical placement to provide predictability and stability for the child.

f. The cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party.

g. Whether each party can support the other party's relationship with the child, including encouraging and facilitating frequent and continuing contact with the child.

(The Budget makes no change to the current statutory provision that allows a court to forego physical placement with both parents in order to protect the physical, mental or emotional health of a child.)

B. TEMPORARY ORDERS

1. Current Law

Section 767.23, Stats., generally provides that during an action affecting the family, a court or a family court commissioner may make just and reasonable temporary orders. The orders may include granting joint custody, custody to one party or custody to a relative, county department or licensed child welfare agency. An order also may include a grant of periods of physical placement to a party. A court or a family court commissioner also may allow a party to move with, or remove, a child after a notice of objection has been filed.

2. Senate Bill 107

Senate Bill 107 requires that a court or family court commissioner, during an action affecting the family, make just and reasonable temporary orders. However, included in these orders must be an order granting legal custody of the minor children to the parties jointly and an order granting equal periods of physical placement to the parties, unless the parties agree to a different physical placement allocation or unless there is a conflicting order regarding the disposition of certain children or juveniles. A temporary order may not allow a party to move with, or remove, a child.

3. The Budget

The Budget generally provides that a court or family court commissioner, when entering a temporary order, must do so in a manner consistent with the provisions of s. 767.24, Stats., relating to custody and physical placement judgments. Specifically, when making a determination regarding custody or physical placement, the standards contained in s. 767.24 (5), Stats., must be considered.

The Budget also provides that at any time during the pendency of a divorce or paternity action, a court or family court commissioner may order the parties to attend a class addressing such issues as child development, family dynamics, how parental separation affects a child's development and what parents can do to make raising a child in a separated situation less stressful for the child. Attendance is not a condition to the granting of a final judgment, but a court or family court commissioner may refuse to hear a custody or physical placement motion of a party who refuses to attend the class. Unless indigent, the parties are responsible for the costs of attendance.

C. GUARDIAN AD LITEM

1. Current Law

Section 767.045, Stats., provides the general regulatory framework for the appointment of a guardian ad litem for a minor child in an action affecting the family. A court must appoint a guardian ad litem if any of the following conditions exist:

a. The court has reason for special concern as to the welfare of a child.

b. The legal custody or physical placement of the child is contested.

A court also may appoint a guardian ad litem if a child's custody or physical placement is stipulated to be with any person or agency other than the parent or, if at the time of the action, the child is in the legal custody of, or physically placed with, a person or agency other than the child's parent by prior order or by stipulation. A guardian may also be appointed in certain support enforcement and paternity proceedings.

A guardian ad litem, a Wisconsin licensed attorney, must be an advocate for the interests of a minor child and function independently.

2. Senate Bill 107

Senate Bill 107 repeals and recreates s. 767.045, Stats., to create the general rule that a court may not appoint a guardian ad litem for a minor child in an action affecting the family. However, if the court has reason for special concern as to the welfare of the minor child, the court must order a parent or the parents to file a petition to initiate a proceeding for the child alleged to be in need of protection or services under s. 48.13, Stats. If the court takes jurisdiction over this matter, the court may appoint a guardian ad litem. Finally, as in current law, a guardian ad litem may be appointed in certain support enforcement and paternity proceedings.

3. The Budget

The Budget amends current law by providing that a court is not required to appoint a guardian ad litem when the legal custody or physical placement of a child is contested if all of the following apply:

a. Legal custody or physical placement is contested in an action to modify legal custody or physical placement.

b. The modification sought would not substantially alter the amount of time that a parent may spend with the child.

c. The court determines any of the following:

(1) That the appointment of a guardian ad litem will not assist the court in the determination regarding legal custody or physical placement because the facts or circumstances of the case make the likely determination clear.

(2) That a party seeks the appointment of a guardian ad litem solely for a tactical purpose, or for the sole purpose of delay, and not for a purpose that is in the best interest of the child.

D. MEDIATION

1. Current Law

Section 767.11, Stats., generally provides that, in any action affecting the family in which it appears that legal custody or physical placement is contested, the parties must attend at least one session with a mediator. However, a court may dispense with mediation if it will cause undue hardship or endanger the health or safety of one of the parties. In making this determination, the court must consider evidence of child abuse, interspousal battery, alcohol or drug abuse or any other evidence indicating that a party's health or safety would be in danger. A mediator must be guided by the best interest of the child and a court may approve or reject an agreement of the parties regarding legal custody or physical placement based on the best interest of the child. If no agreement is reached, a court must appoint a guardian ad litem and refer the matter for a legal custody or physical placement study.

2. Senate Bill 107

Senate Bill 107 provides that a court must hold a trial or hearing without requiring attendance at a mediation session if the court finds that attending the session will cause undue hardship or would endanger the health or safety of one of the parties. The exception to the general referral for mediation in a contested case applies only if the court considers whether a party has been convicted of a crime involving abuse, whether a party has been convicted of battery against the other party and whether clear and convincing evidence exists indicating that a party's health or safety will be endangered by attending the session. Evidence of significant

problems with alcohol or drug abuse are not to be considered. Neither the mediator nor the court in considering a mediation agreement is to be guided by the best interest of the child.

3. The Budget

The Budget makes no change to current law.

E. MOVING A CHILD

1. Current Law

Sections 767.085 and 767.087, Stats., in part provide that, during an action affecting the family, the parties may not do any of the following without the consent of the other party or an order of the court or family court commissioner:

a. Establish a residence with a minor child outside the state or more than 150 miles from the residence of the other party within Wisconsin.

b. Remove a minor child from the state for more than 90 consecutive days.

c. Conceal a minor child of the parties from the other party.

An act in violation of these restrictions is not a contempt of court if the court finds that the action was taken to protect a party or minor child from physical abuse by the other party and there was no reasonable opportunity for the other party to obtain an appropriate order.

Section 767.327 (1), Stats., provides that after a court grants physical placement to more than one parent, it must order a parent with legal custody of and physical placement rights to a child to provide not less than 60 days written notice to the other parent if the parent intends to establish legal residence with the child outside the state, establish legal residence with the child at a location that is 150 miles or more from the other parent or remove the child from the state for more than 90 consecutive days. The other parent may object to one of these actions and seek a modification of legal custody or physical placement or an order prohibiting the move or removal.

2. Senate Bill 107

Senate Bill 107 amends that statutes to provide that one party, without the consent of the other party, may not do any of the following:

a. Establish a residence for a minor child outside the school district in which the child resided on the 180th day before the commencement of the action affecting the family, or since birth if the child is less than six months old, or other school district agreed upon by the parties.

b. Remove a minor child of the parties from this state for 14 consecutive days or more without the written approval of the other party.

c. Conceal a minor child from the other party.

If a parent wishes to establish legal residence beyond these restrictions, he or she must provide not less than 60 days written notice to the other parent. Either party may seek a modification of the physical placement order. If the parties agree to a change and file a stipulation, a court must approve the agreement and incorporate the terms of the stipulation into a revised order. However, if the parties do not agree after a legal proceeding has begun, the court may modify the physical placement order subject to all of the following:

a. The parent not proposing the move must be awarded periods of physical placement that include weekdays and weeknights when school is in session, at least one weekend per month, at least four weeks during the summer months when school is not in session and alternating holidays.

b. The parent proposing the move must be awarded the maximum amount of physical placement that is reasonable under the circumstances.

c. The party proposing the move must be responsible for the transportation costs of exercising his or her physical placement rights.

Further, a court may allow a move outside of the appropriate school district if the parent desiring to establish the new legal residence can show by clear and convincing evidence that for a period of at least one year the other parent has exercised physical placement rights for less than 10% of the amount of time that was awarded to the party by the court. If both parents wish to establish legal residences outside of the current school district and cannot agree on a new school district, the court may designate the child's legal residence while maximizing the amount of time each parent may spend with the child. If one parent resides out of state or more than 150 miles from the current school district, the court may allow the other parent to establish a child's legal residence outside of the current school district if the move does not increase the distance between the child and the other parent and the other parent does not wish to move back to the child's school district. Finally, unless the parties agree otherwise, a parent with legal custody and physical placement rights must notify and obtain the written approval of the other parent before removing the child from Wisconsin for a period of 14 days or more.

3. The Budget

Current s. 767.327 (3) (a), Stats., provides in part that if a parent proposing the move or removal of a child has sole legal custody or joint legal custody of the child and the child resides with that parent for the greater period of time, the parent objecting to the move or removal may file a petition, motion or order to show cause for modification of the legal custody or physical placement order affecting the child. The Budget proposes that, in making a determination regarding moving or removal, a court may consider the child's adjustment to the home, school, religion and community.

F. VISITATION AND CHILD SUPPORT

1. Current Law

Section 767.245, Stats., generally provides that a court is to consider the best interest of a child when determining visitation rights of a grandparent, great-grandparent, stepparent or person who has maintained a relationship similar to a parent-child relationship with the child. Similarly, s. 767.25, Stats., generally provides that the best interest of a child is a factor to be considered when a court modifies a child support order.

Section 767.25 (6), Stats., generally provides that a party ordered to pay child support must pay interest on amounts in arrears at a rate of 1.5% per month. [See also ss. 767.51 (5p) and 767.62 (4) (g), Stats.]

2. Senate Bill 107

Senate Bill 107 removes the best interest of the child as a factor in making a decision regarding the visitation rights of certain persons and modifying a child support order.

3. The Budget

The Budget provides that interest must be paid on amounts of child support in arrears at a rate of 1.0% per month.

G. REVISION OF LEGAL CUSTODY AND PHYSICAL PLACEMENT ORDERS

1. Current Law

Section 767.325, Stats., regulates the procedure for the revision of legal custody and physical placement orders. In part, the statute provides that within the first two years after the initial order, a modification of legal custody or a substantial modification of physical placement may not take place unless good cause is shown. After the two-year period, a court may modify an order of legal custody or physical placement with a modification that would substantially alter the time a parent may spend with a child if a court finds all of the following:

a. The modification is in the best interest of the child.

b. There has been substantial change in circumstances since the entry of the last order affecting legal custody or the last order substantially affecting physical placement.

It is presumed that continuing custody and physical placement is in the best interest of the child. In certain circumstances, an order providing for substantially equal placement may be modified in the first two years of the order, again with the best interest of the child as a factor to be considered. Finally, a court may deny a parent's physical placement rights at any time if the court finds that the rights would endanger the child's physical, mental or emotional health.

2. Senate Bill 107

Senate Bill 107 replaces current law with the provision that a court must modify an order of physical placement in a way that alters the time a parent may spend with a child or an order of legal custody if any of the following applies:

a. A parent requests a modification and the current order is not in conformity with the provisions of amended s. 767.24, Stats., relating to custody and physical placement. That is, following enactment of Senate Bill 107, parties complying with arrangements directed under current law will be entitled to modifications as prescribed in Senate Bill 107.

b. The parental rights of a parent have been terminated.

c. The parties agree to a modification.

3. The Budget

The Budget provides that a court may modify an order of physical placement at any time with respect to periods of physical placement if it finds that a parent has repeatedly and unreasonably failed to exercise periods of physical placement awarded under an order of physical placement that allocates specific times for the exercise of periods of physical placement. Further, in all actions to modify legal custody or physical placement orders, the court must act consistently with s. 767.24, Stats., relating to custody and physical placement judgments. Finally, a court may require a party seeking modification to file a parenting plan as described under Part A. 3. of this memorandum.

H. PATERNITY

1. Current Law

Section 767.458 (1m), Stats., provides that in an action to establish the paternity of a child born to a woman while she was married, a party may allege that a judicial determination that a man other than the husband is the father is not in the best interest of the child. A court or court commissioner may decide that a judicial determination is not in the best interest of the child and dismiss the action. A similar decision may be made in any other paternity action if it is concluded that a determination of alleged fatherhood is not in the best interest of the child. [See s. 767.453, Stats.] Section 767.51 (4), Stats., provides that if a man has been determined to be the father of a child, the father's liability of past support must be limited to support for the period after the birth of the child and that, in considering modification of support, a factor to be considered is the need and capacity for education, including higher education. [See also s. 767.62 (4) (d) 3. and (e) 6., Stats.]

2. Senate Bill 107

Senate Bill 107 does not allow a court or court commissioner to avoid a determination of paternity in the best interest of a child. Further, a man whose action has been dismissed under previous statutes for this reason may commence a new paternity action.

Senate Bill 107 also provides that a father's liability for past support of a child is limited to support for the period after paternity has been adjudicated. In addition, in determining support following an adjudication of paternity, the factors to be considered no longer include the need for higher education.

Finally, Senate Bill 107 provides that the records of any past proceeding in which any paternity was established are open to public inspection under Wisconsin's Open Records Law.

3. The Budget

The Budget consolidates certain provisions of the statutes regarding judgments or orders following a paternity action or a voluntary acknowledgement of paternity. In addition, the Budget augments the items that must be addressed in a judgment or order by providing the following:

a. Orders for the legal custody of, and periods of physical placement with, the child must be determined in accordance with s. 767.24, Stats., the section of the statutes dealing with custody and placement decisions.

b. An order requiring either or both of the parents to contribute to the support of a child must be determined in accordance with s. 767.25, Stats., the section of the statutes dealing with child support.

c. A determination must be made as to which parent, if eligible, has the right to claim the child as an exemption for federal tax purposes or as an exemption for state tax purposes.

d. A determination must be made as to whether either or both parties must pay or contribute to the costs of guardian ad litem fees.

The Budget also provides that liability for past support of a child in a paternity action will be limited to support for the period after the day on which the action is commenced unless a party shows all of the following:

a. That he or she was induced to delay commencing the action by any of the following:

(1) Duress or threats.

(2) Actions, promises or representations by the other party upon which the party relied.

(3) Actions taken by the other party to evade paternity proceedings.

b. That after the inducement to delay ceased to operate, he or she did not unreasonably delay in commencing the action.

In no event may liability for past support of the child be imposed for any period before the birth of a child.

(The Budget proposal makes no change to the statutory provisions authorizing a proceeding to be dismissed in the best interests of the child.)

I. ENFORCEMENT OF PLACEMENT ORDERS

1. Current Law

Generally, under current law, if a parent interferes with the other parent's periods of court-ordered physical placement with the child, three primary legal remedies are available:

a. Contempt of court.

b. Criminal prosecution for interference with the custody of a child.

c. Referral to family court counseling services.

2. Senate Bill 107

Senate Bill 107 makes no change to current law.

3. The Budget

The Budget creates s. 767.242, Stats., for the enforcement of physical placement orders. Under the provision, a parent who has been awarded periods of physical placement may petition a court under any of the following circumstances:

a. The parent has had one or more periods of physical placement denied by the other parent.

b. The parent has had one or more periods of physical placement substantially interfered with by the parent.

c. The parent has incurred a financial loss or expenses as a result of the other parent's intentional failure to exercise one or more periods of physical placement under an order allocating specific times for the exercise of periods of physical placement.

Following a hearing on the petition for enforcement, if the judge or family court commissioner finds that a parent has intentionally and unreasonably denied the other parent one or more periods of physical placement or that a parent has intentionally and unreasonably interfered with

one or more of the other parent's periods of physical placement, the court or family court commissioner:

a. Shall do all of the following:

(1) Issue an order granting additional periods of physical placement to replace those denied or interfered with.

(2) Award the petitioner a reasonable amount for the cost of maintaining the action and for attorney fees.

b. May do one or more of the following:

(1) Issue an order specifying the times for the exercise of periods of physical placement.

(2) Find the uncooperating party in contempt.

(3) Grant an injunction ordering the uncooperative party to strictly comply with a physical placement judgment or order.

The Budget proposal also provides that if, at the conclusion of a hearing, it is found that the petitioner has incurred a financial loss or expenses as a result of the other party's failure, intentionally and unreasonably and without adequate notice, to exercise one or more specific periods of physical placement, an order may be issued requiring the uncooperative party to pay to the petitioner a sum of money sufficient to compensate the petitioner for the financial loss or expenses.

Violation of an injunction may result in the arrest of the violator and in a fine of not more than $10,000 or imprisonment for not more than two years, or both.

J. STUDY OF THE GUARDIAN AD LITEM SYSTEM

The Budget proposal requests the Joint Legislative Council to establish a committee to study a reformation of the guardian ad litem system as it applies to actions affecting the family. The study must examine the following items:

1. The appointment of guardians ad litem, including whether the appointment of a guardian ad litem should be required in every case in which legal custody or physical placement of a child is contested and whether professionals with specialized training and expertise in the emotional and developmental phases and needs of children, such as child psychologists, child psychiatrists and child therapists, should be appointed to act as guardians ad litem.

2. The role, supervision, training and compensation of guardians ad litem.

If the Joint Legislative Council establishes a committee, the committee must prepare a report with its recommendations and petition the Supreme Court to consider rules for the reform of the guardian ad litem system on the basis of the recommendations.

K. MISCELLANEOUS PROVISIONS

Senate Bill 107 makes the following additional changes:

1. Section 767.05 (1m), Stats., provides that no action to affirm or annul a marriage may be brought unless at least one of the parties has been a resident of the county in which the action is brought for not less than 30 days. Senate Bill 107 increases this period to six months.

2. Section 767.081 (2) (a), Stats., provides that, in an action affecting the family, a family court commissioner must, with or without charge, provide a party with written information on various procedures and matters that may occur in the proceeding. Senate Bill 107 mandates that this information be given without charge.

3. Section 767.10 (1), Stats., provides that the parties in an action for annulment, divorce or legal separation may, subject to the approval of the court, stipulate for division of property, maintenance payments, support of children, periodic family support payments or legal custody and physical placement. Senate Bill 107 proves that the stipulation is not subject to the approval of the court.

4. Section 767.14, Stats., provides that a family court commissioner may appear in an action affecting the family when appropriate and must appear when requested to do so by a court. Senate Bill 107 amends the statute to provide that a family court commissioner must appear in a proceeding when requested to do so by a party.

RS:tlu:jal;wu

Statement on Senate Substitute Amendment 1 to Assembly Bill 133
Related to proposed changes in legal custody and physical placement of children
September 1, 1999

My name is Kitty Kocol, and I am the Director of the Wisconsin Department of Justice's Office of Crime Victim Services. Our mission is to ensure that people affected by crime are treated with fairness, dignity and respect, and to that end, we fund nearly 100 programs in communities across the State of Wisconsin to provide direct assistance to crime victims. We administer the Crime Victim Compensation program that covers the medical and funeral expenses of victims; we administer the Victim/Witness program that work in the District Attorneys' offices in 68 Wisconsin Counties, and we respond directly to calls and letters from victims who need help.

I also speak on behalf of Wisconsin's Crime Victims Council, an independent group of professionals and volunteers who focus on improving public policy with respect to its impact on crime victims.

Finally, I bring experience with the issue of domestic abuse, having served as the Executive Director of the Task Force on Family Violence in Milwaukee.

I am here to register a belief that victims of domestic violence will be harmed by this proposed change in the law.

I would like to briefly what I perceive to be the issues for both children and adult victim of domestic violence. I'd like to talk about children first.

1. In families where domestic violence is taking place, it is harmful to children for the state to presume that joint legal custody is in their best interests.
Children who witness domestic violence are profoundly damaged by the experience. They are learning this behavior directly from a battering parent.

- In married couples, both men and women who grew up witnessing partner violence in their homes are 3x as likely to hit their own spouses.[1]

- Boys from violent homes are 4x more likely to abuse girlfriends, 25x more likely to commit sexual assault and 1000x more likely to be violent with their adult partners or children than boys from nonviolent homes.[2]

- 60% of boys from abusive homes grow up to be batters.[3]

We must remember that domestic violence is the most reported crime of all crimes, and that a significant number of cases are never reported. How prevalent a problem is children

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[1] Straus et al, 1980
[2] American Psychological Association study.
[3] Maguire, Robert, "Witness to Rage," Milwaukee Magazine, July 1999

witnessing domestic violence? We know that one in four households will experience family violence, and that

- as many as one in five adults have witnessed domestic abuse as children.[4]

- A study by the American Psychological Association (which included Milwaukee in its sample), found that 75% of the homes to which police are called for domestic violence had children in them.

Not only is witness domestic abuse harmful to children, but the eventual cost to our communities is huge.

- Children from abusive homes are more likely than other children to commit crimes. They are 50% more likely to be arrested as a juvenile, 40% more likely to be arrested for a violent crime as an adult.[5]

People who batter their spouses often batter and abuse their children.

- There is at least a 30-40% overlap between witnessing family violence (as a child) and suffering physical and sexual abuse in the home.[6]

The dissolution of a marriage does not mean the violent behavior will stop. We know that, in the absence of successful intervention and treatment, it tends to continue, and a batterer's subsequent partner or partners are likely to be victims of domestic abuse.

So, in divorce cases where violence has governed a home, it is wrong and potentially harmful to the children to presume that those children should ~~spend half of their~~ be forced to spend time with an abusive parent.

2. This proposal would cause the State of Wisconsin to put domestic violence victims in harm's way.

- The proposal assumes two parties are able to sit down and negotiate a parenting plan -- that they sit down and "negotiate." The problem is, domestic violence is about an unequal power relationship. That's why there are domestic violence advocates. Victims can't negotiate with someone they're afraid of, and it is absurd for the State of Wisconsin to presume equality in a relationship that is unequal by definition.

- Under this proposal, the State of Wisconsin is forcing two people to have contact with one another, and for a victim of domestic abuse, the consequences can be dangerous and even deadly. About 75% of victims killed by their batterers are killed when they're trying to leave.

- It is common for a batterer to threaten to take the children away from the victim if the victim tries to leave. By passing this proposal, the State of Wisconsin would be

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[4] Henning, Leitenberg, Coffey, Turner and Bennett, 1996; J.L. Jansinski, 1996; Straus et al, 1980; Straus and Smith, 1990)

[5]

[6] Hughes, Parkinson and Vargo, 1987; Straus Gelles and Steinmetz, 1980

institutionalizing a legal crowbar – a tool to use as leverage on the victim to get that person to stay in the abusive relationship, or to continue to maintain some level of control over their victims. This dynamic is as common as ripping the phone out of the wall or kicking the door in.

In conclusion, we must not force adult victims of domestic violence to negotiate with abusers when they simply cannot, and when it is actually dangerous for them to have continued contact with an abuser.

We must not force children to automatically spend half their life with someone who is teaching them to hurt other people, or who may also, in 30-40% of cases, be beating or sexually abusing them.

I do not see an easy fix to this proposal that would address the very real and prevalent problem of domestic abuse. The court should have the ability to grant sole custody to the non-offending parent if they believe it to be in the best interests of the child or children.

I would be please to answer any questions you may have.

State of Wisconsin

GARY R. GEORGE
SENATOR

MEMORANDUM

TO: Members, Senate Committee on Judiciary and Consumer Affairs

FROM: Senator Gary R. George, Chair
Senate Committee on Judiciary and Consumer Affairs

DATE: August 31, 1999

RE: Background Information for September 1, 1999 Hearing--
Proposed Amendment to Child Custody and Placement Provisions
(LRBb1703/2)

In response to concerns raised by persons who work with issues of domestic violence, we have prepared an amendment to address those concerns. Please find a copy of this proposed amendment (LRBb1703/2) attached.

Please also find attached a memo prepared by our Legislative Council Attorney, Ron Sklansky, describing the provisions of this proposed amendment.

P.O. Box 7882, Madison, Wisconsin 53707-7882; 608/267-9695

Rossmiller, Dan

From: Templeton, Carrie
Sent: Thursday, August 12, 1999 1:58 PM
To: Rossmiller, Dan
Subject: Hearing on Sept 1

Dan-

Thanks for the info you gave me earlier. Alice would appreciate it if the hearing could be scheduled on Sept 1 for as late in the morning as possible. She has an event in the district the evening before that will end late.

Thanks for accommodating our request.

Carrie

Carrie Templeton
Legislative Aide
Senator Alice Clausing

Having worked with hundreds of divorcing/ separating families in 12 1/2 years as a Family Court Counselor, I submit that a presumption of equal placement between the parents is contrary to the best interests of a majority of children, particularly those under 8 years of age. School personnel have advised me that school attendance from 2 homes typically leads to missed assignments, loss of school work, and significantly decreased grade reports. Also, children experiencing any health or attention problems are severely impaired by attending school from 2 residences.

I believe that a presumption of 50/50 placement ignores the welfare of children and focuses on the rights of parents.

Assembly

JOINT INFORMATIONAL PUBLIC HEARING

COMMITTEE ON CHILDREN & FAMILIES & COMMITTEE ON FAMILY LAW

September 2, 1999

Family Law
Rep. Carol Owens, Chair
Rep. Bonnie Ladwig, (Vice Chair)
Rep. Phil Montgomery
Rep. Mike Huebsch
Rep. Mark Pettis
Rep. Tony Staskunas
Rep. Terese Berceau
Rep. Peggy Krusick
Rep. John Lehman

Children & Families
Rep. Bonnie Ladwig, Chair
Rep. Sue Jeskewitz (Vice Chair)
Rep. Rob Kreibich
Rep. Steve Freese
Rep. Glenn Grothman
Rep. Steve Kestell
Rep. Mark Miller
Rep. Spencer Coggs
Rep. Pedro Colon
Rep. Christine Sinicki

Hearing: On the proposed changes to the standards for determining legal custody and physical placement of children in actions affecting the family and related matters.

Statement: This was written in the hope it will help improve the lives of children of divorce. If the committee finds any part of my proposal acceptable, others can translate it into rules & law.

Objectives

1. To focus on the "rights" of children and their needs.
2. To develop a proposal for the majority of divorcing parents - those who want to work together in planning for their children.
3. To shift the emphasis from a formal evaluation of families to educating parents about how to minimize the adverse effects of divorce on children.
4. To treat both parents with fairness and respect.
5. To allow parents flexibility in planning for their children versus State mandates.
6. To provide protection for children in those cases where safeguards are needed.

"BILL OF RIGHTS"
FOR CHILDREN OF DIVORCE

I propose that the Joint Committee on Children and Families & Family Law establish a set of basic rights that would apply to all children of divorce. Further, I suggest that these "rights" become the foundation upon which divorcing parents' prepare a **"plan"** for their child.

My proposal assumes the parents we are talking about are "good people." More importantly, my proposal can empower fathers and mothers to make **"plans"** for their children rather than focusing on themselves and their conflict. My intent is to highlight parenthood and to put responsibility where it should be - on the moms and dads rather than the State.

The parents and their attorneys would submit the **"plan"** to the guardian ad litem for review. However, if someone believes either parent will harm the safety & welfare of the child they should submit a separate report to the guardian showing the reasons for their concern.

Child's Bill Of Rights

(The committee may wish to study and expand on these "rights.")

1. Children of divorce have a right to a secure "home base." This should be with the parent (father or mother) whose circumstances & lifestyle makes them best suited to be the primary caregiver.

2. Children of divorce have a right to a relationship with both parents. A good relationship is desirable with both parents and the frequency of contact should be part of the "parents plan."

3. Children of divorce have a right to a "living plan" that is considerate of their safety & welfare.

Parent Education

Information about how divorce affects children & ways of assisting them is helpful to parents and children alike. Child and health care professionals could provide training in parent groups before they prepare their **"plan."** This focuses on educating parents rather than studying families. Doing it in a group streamlines the process and is less costly. A separate family study, which is time consuming, is still possible if a report is filed with the guardian saying either parent may cause harm to the child.

Importance of a secure home base

The human need for a place to call home is universal. It is the most basic of all human instincts.

Children are comforted by feelings of "home." It is best if the child's "home base" remains in a familiar neighborhood & near the same school. A child's bed, friendships & daily routine are vital. Changes that affect the stability in a child's life should err on the side of being cautious.

Importance of a relationship with both parents

Divorce makes it difficult for children to be close to both parents and maintain a secure home base too. The parents with the help of childcare professionals - not the State - should weigh a child's contrasting needs when making these decisions. Either of the following plans may be appropriate:

1. Visitation plan with the parent not living in the child's home. Things to consider are the child's age, school attendance, a parent's lifestyle, others living in the home, care and safety standards. Overnight visits before school days are best kept to a minimum or avoided entirely. *

2. A "shared placement" plan. It is best if this is used sparingly rather than as a preference. It disrupts children's lives and is emotionally unhealthy for them to be moved around this way.

   When language like "equalize" (50/50) or "maximize" is used concerning child placement issues the State is dictating a plan. The State should not infringe on the rights of parents in this way. Parents must be allowed enough flexibility to develop a **"plan"** that is best for their child.

Importance of a living plan that guarantees a child's safety & welfare

The phrase, "in the best interest of the child" should be used generously in laws and rules effecting the welfare of children. Bouncing children around is harmful.

Closing Plea: The "Shared Placement" amendment retains the impression that children are possessions to be divided between divorcing parents. We must do better! Ask Governor Thompson to veto it. Then, appoint a committee of professionals to examine research & programs and to make recommendations that will put Wisconsin at the forefront in helping parents minimize the adverse effects of divorce on children.

Respectfully,

Jim Gardner
School Social Worker & School Psychologist (retired)
N37 W6989 Wilson Street
Cedarburg, WI 53012
(414) 377-7518

* See attached letter "Child custody issue doesn't belong in budget bill," The Capital Times, July 20, 1999 - section about "little things that disrupt children's lives."

Consultants: Larry, a divorced father who raised his daughter
Donna, a divorced mother who raised her children
Maryann, an aspiring state representative

Voice of the People

Child custody issue doesn't belong in budget bill

Dear Editor: One of the worst cases of the smell test being violated occurred when Sens. Gary George, Robert Welch and others "quietly tucked (SB107) into the proposed state budget," as reported in state newspapers.

Sen. Alberta Darling is absolutely correct when she says the bill should stand alone and be debated solely on its own merits.

SB107 effectively eliminates all child protective measures from state law in cases of divorce. It removes the provision "in the best interest of the child" from existing law and requires custody and placement of children to be split equally between both parents regardless of parental fitness or ability to care for the child. It is blatantly unfriendly to children.

Most people understand that it is vitally important for children to maintain a close relationship with both parents.

Yet, when divorce makes it necessary, child placement should be based solely on what is best for the children rather than attempting to appease the parents.

The most important step is guaranteeing a secure "home base" with the parent best suited to be the primary caregiver. A child's own bed, friendships, the neighborhood and daily routine are a vital part of their security.

Time spent with a parent away from the home base, I believe, should be limited to daytime visits and overnight stays on alternate weekends, holidays and summer vacation. Overnight visits before school days are especially disruptive for little children and should be kept to a minimum or avoided entirely.

Children of divorce long for both parents and often fantasize they will someday be magically reunited. Disrupting their lives with shared placement never resolves this issue, and it only adds to the problems they already have.

As a former school social worker, I heard many stories about the "little things" that disrupted children's lives when they had to live in two households.

Homework assignments, projects, sports activities, return of library books and other activities requiring daily coordination are more likely to suffer. Clothing, toothbrushes, a favorite book or toy and endless other things get lost or left at the "other house."

Friendships are especially important for children of divorce, and it's tough to make or keep friends when you're busy moving in and out of the neighborhood.

SB107 would also reduce or eliminate child support payments because the child is split equally between the parents. Children already living in poverty will be even worse off if this bill is passed. Child support issues are undoubtedly one of the major reasons George, Welch and others have been lobbied so effectively by so-called "father's right's" groups.

Changes that dramatically impact the lives of children and their financial and emotional welfare should err on the side of being cautious.

At the very minimum, SB107 deserves to be debated on its own merits rather than being hidden underhandedly in the state budget where it may pass without consideration of the harm it will have on children and society.

Jim Gardner
Cedarburg

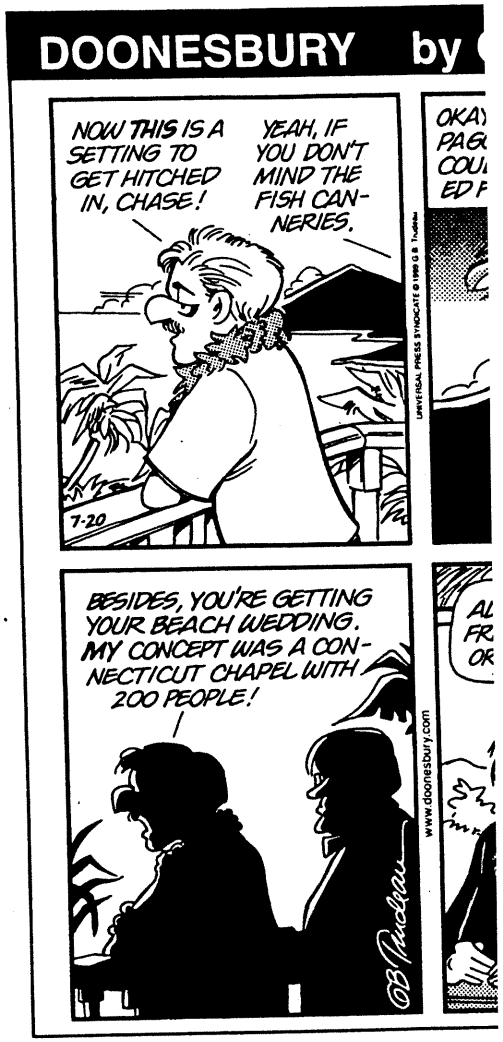
Evjue donation hits right note

Dear Editor: I am delighted to once again be writing you to thank The Evjue Foundation for support of the "Tunes at Monona Terrace" for the fall 1999 season.

This gift that you provide to the citizens of Madison and Dane County has become a tradition here at Monona Terrace with an enthusiastic and loyal following.

It is so gratifying to hear the comments of those attending the concerts and their appreciation of your support of them. We look forward to continuing this collaboration to provide top-notch musical experiences for the citizens in our community.

Joan A. LeMahieu
director
Monona Terrace



UW Hospital drives

Dear Editor: We had to respond to Greg Kramp's stated opinion that the reason UW Hospital is having such difficulty attracting

were quit. who We

State leaders giving their support for this proposal

(In order received – letters attached)

1. Dr. Chuck Meseck, Psy.D., Executive Director, Lutheran Counseling & Family Services.
2. Elliott Lubar, Executive Vice President, Jewish Family Services.
3. Sharon Rader, Bishop, United Methodist Church of Wisconsin.
4. Karl Hertz, Ph.D., President American School Administrators 1997-98 and Superintendent of the Mequon-Thiensville Schools (retired).
5. Bernie Stumbras, Division Administrator of Children & Families, State of Wisconsin (retired). *
6. David L. Hoffman, President, Family Service of Milwaukee.
7. Jack C. Westman, M.D., Professor Emeritus of Psychiatry, University of Wisconsin-Madison, Medical School. **
8. Perry Huyck, Executive Director, United Methodist Children's Services of Wisconsin.
9. Frank Newgent, Director, Wisconsin Division of Children & Youth from 1960 to 1983.
10. Pastor Robert H. Michel, Executive Director, Wisconsin Lutheran Child & Family Service Inc.
11. Lamar Cosby, 40 years experience in Child Welfare in Wisconsin.
12. Pat Costello, MSW, ACSW, North Shore Counseling Service, Milwaukee.
13. Jack DeWitt, DeWitt, Ross & Stevens Law Firm, Madison.
14. Joyce Degenhart, Ph.D., Clinic Director, Covenant Behavioral Health, Racine.
15. Karen Schudson, M.S., American Association of Marriage & Family Therapists, Director, "Bridges for the Kids' Sake," first Wisconsin court approved parent education program.
16. Anthony D. Meyer, M.D., Director, Division of Child & Adolescent Psychiatry, Medical College of Wisconsin. ***
17. Gerald E. Porter, M.D., Pediatrician, Marshfield Clinic, retired in 1997. ****
18. Jo Hawkins Donovan, President, Hawkins-Donovan & Associates, Ltd.

(The above persons could be the nucleus for a committee to study this in greater depth)

Attached letters

I urge you to read all of the attached letters. What they say and the years of combined wisdom behind what is said should give pause to anyone favoring the "Shared Placement" bill.

* Bernie Stumbras – study of divorcing couples. Fifty percent were placed in "family reconciliation" & the other 50% had education that taught them family changes to expect after divorce. Most in reconciliation divorced – more of those in education did not.

** Dr. Jack Westman offers insights from 40 years of experience with families during & after divorce. His letter to the committee says, "I would be pleased to discuss this matter further with you."

*** Dr. Anthony Meyer brings the "full support" of the entire faculty of the Division of Child and Adolescent Psychiatry of the Medical College of Wisconsin.

**** Dr. Gerald Porter reports healthy psychosocial development in children requires stability. He refers to Dr. Judith Wallerstein, leading researcher on the effect of divorce on children and states "one-size fits all" legislation is improper for children.

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Lutheran Counseling & Family Services of Wisconsin

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8-12-99

To: Representative Bonnie Ladwig
From: Dr. Chuck Meseck, Psy.D.

I've been asked by Jim Gardner to review the Bill of Rights for Children of Divorce. Since 1985 I have been a therapist for children and adolescents in the following types of treatment settings: Locked psychiatric units, residential treatment and outpatient mental health settings. I was trained/supervised by two child and adolescent psychiatrists for four years in addition to my normal degree pursuits.

After reviewing the "Bill of Rights" I would like to inform you that I support this endeavor. The idea of parents having to help formulate a "plan" might reduce much of the normal turmoil that is otherwise seen during separations and divorces. I believe that the emphasis does need to focus on the needs of the child or children in families. From working with families I would venture to say that the quality of visits with parents is far more important than quantity. Children have told me for years that they have had visits, but that much of the time they felt that they were not paid attention to. They have said that they felt that they were with a parent just because it was mom or dad's turn to have them. This type of report from children would seem to point to the fact that the parents needs were met, but questions as to whether the children's needs were adequately addressed. Once again, hopefully the "plan" would help alleviate this type of situation.

If I can be of any assistance to you please feel free to contact me at any time. Phone number - 414-536-8333.

Lutheran Counseling & Family Services

LCFS

DR. CHUCK MESECK, PSY.D.
Executive Director

3800 N. Mayfair Road
Wauwatosa, WI 53222-2200
Toll Free: (800) 291-4513
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Website: www.lcfs.com

Jewish Family Services

August 16, 1999

Main Office:
1360 N. Prospect Ave.
Milwaukee, WI 53202
tel: 414/390-5800
fax: 414/390-5808

We gratefully acknowledge the generous support of the Milwaukee Jewish Federation Inc., the Jewish Community Foundation and the United Way of Greater Milwaukee, Inc.

Children and Families Committee
Representative Bonnie Ladwig, Chair

Dear Bonnie,

Jewish Family Services is in support of Jim Gardners' proposal entitled, "Bill of Rights for Children of Divorce". His well thought out proposal will empower both fathers and mothers to be more responsible, and consequently, more in control of their children's welfare when going through the difficult process of divorce. The state should rely on the parents' good judgment, as well as their knowledge of their children to come up with a plan which can work for their individual family. Gardner's proposal is a most workable solution to this difficult problem.

Jewish Family Services, a 5013C agency,which has a wide variety of program services, including family counseling. Please do not hesitate to contact me if you have any questions.

Sincerely,

Elliot Lubar

Elliot Lubar
Executive Vice President

North Shore Office:
6300 N. Port Washington Rd.
Milwaukee, WI 53217
tel: 414/390-5800

Habush House:
5303 & 5307 N. Mohawk Rd.
Milwaukee, WI 53217
tel: 414/390-5800

Lee Apartments:
1535 N. Van Buren
Milwaukee, WI 53202
tel: 414/390-5800

Child Development Center:
6255 N. Santa Monica Blvd.
Milwaukee, WI 53217
tel: 414/963-9380

Resettlement/Volunteer Depts:
1442 N. Farwell Ave.
Milwaukee, WI 53202
tel: 414/289-0133

THE UNITED METHODIST CHURCH
WISCONSIN AREA
750 WINDSOR STREET, SUITE 303
SUN PRAIRIE, WISCONSIN 53590

SHARON ZIMMERMAN RADER
RESIDENT BISHOP

ARLENE M. KRAUSE
EXECUTIVE SECRETARY

TELEPHONE: (608) 837-8526
FAX: (608) 837-0281

August 19, 1999

TO: Children and Families Committee
Representative Bonnie Ladwig, Chairperson

Care for the children of our society is everyone's responsibility. Every child needs to feel safe, have adequate housing and food, and know the love of adults who care for them.

Mr. Jim Gardner is offering you reasonable and caring suggestions for appropriate care for children of divorcing parents.

I urge you to hear his proposal and to work to provide adequate child protective measures for the children of this state.

Thank you for your positive response to this request.

Sincerely,

Sharon Z. Rader

Sharon Z. Rader

SZR:amk
cc

Dictated by Bishop Rader
Signed in her absence

LEADERSHIP FOR LEARNING

American Association of School Administrators

Karl V. Hertz

President
1997-1998

August 20, 1999

Dear Representatives Owens and Ladwig,

This letter is written to challenge the appropriateness of SB107. Kindly let me address three concerns.

- The bill should not be part of the budget bill. It should be debated completely separately.
- Clearly, children should live in one home. They may spend time with both parents, but they need the security of one setting.
- The desire for split custody is actually a financial issue. Often one parent is attempting to avoid paying child support.

Please be very cautious when considering this topic. There are many hidden issues.

Sincerely,

Karl V. Hertz

505 Alta Loma Drive • Thiensville, Wisconsin 53092
(414) 242-1201 • khertz@omnifest.uwm.edu
(Retired school superintendent in Nequon-Thiensville)

Dear Mr. Jim Gardner

Thank you for alerting me to the Senate Budget which contains language that will make a sick divorce system into a deadly system of public child abuse for children of families who divorce.

For those who want to know there is very good research on the massive problems for each person in the family after a divorce. In California they documented the unexpected changes in all relationships in each persons life after divorce. With this knowledge basis they took 50% of those who were filing for divorce and put 50% of the parents in family reconciliation consulting. The other 50% were taught about the changes that they will experience during and after the divorce. Most of those going to family reconciliation divorced, and most of those who understood what is going to happen to their family in a divorced stopped the divorce process.

Our divorce process today is barbaric, *and if we have the will to change it do it in a open process with real facts, and improve the lives of parents and children in family trouble.*

You have some go points to make divorce better, but we can also help parents before the divorce and save many families from divorce. This is a problem that should be worked on carefully and with full study and hearings so we help, not make it worst..

Sincerely,

Bernie Stumbras

Bernie Stumbras

Retired WI. Division Administrator of Children & Family, and AFDC & Child Support.
1906 Capital Ave. Madison WI. 53705
608-238-4584, stumbras@midplains.net

Family Service of Milwaukee

Aurora HealthCare

3200 West Highland Boulevard
P.O. Box 080440
Milwaukee, WI 53208-0440
Fax (414) 345-3094
Tel (414) 342-4560

August 20, 1999

Mr. Jim Gardner
School Social Worker & School Psychologist (retired)
N37 W6989 Wilson Street
Cedarburg, WI 53012

Dear Jim:

Thank you for promoting a "Bill of Rights" for Children of Divorce. Your volunteer leadership on this important issue is admirable.

Family Service of Milwaukee is the largest and oldest, nonsectarian family service agency in Wisconsin. We counsel thousands of distressed families a year, including families going through a divorce. Our counsel includes the reminder to the parents that they are divorcing one another, they can not divorce themselves from their children. Unfortunately adults can be very selfish and vindictive and the children are often used as pawns in power plays. Your suggested Bill of Rights will help focus divorced parents on their responsibility to act in the best interest of their children.

Thank you for your advocacy on behalf of these vulnerable children.

Sincerely,

David L. Hoffman
President
Family Service of Milwaukee

DLH/dh

UNIVERSITY OF
WISCONSIN-MADISON
MEDICAL SCHOOL

August 19, 1999

Representative Carol Owens, Chair
Assembly Committee on Family Law
Madison, Wisconsin 53708-8953

Dear Representative Owens:

I am writing to express my concern about the intent and language of Senate Bill 107 regarding custody and visitation provisions for children in divorce actions. My concern is based on forty years of experience with families during and after divorce.

Because of the great impact that legislation regarding divorce has on the lives of parents and children, I believe that the current proposals warrant careful study and full public debate. All too often legislation is proposed from the points of view of mothers or fathers in an adversarial context and pushed through legislative bodies in response to passions of the time.

The emphasis on the interests of children in these matters that was central in past divorce legislation has been displaced by the viewpoints of parents who disagree. This has led to an effort by lawmakers to mandate criteria for settling parental disputes, sometime erroneously expressed in terms of the rights of children. The most recent example is that children have a right to spend equal time with each of their parents. Children have a right to a relationship with each of their parents, not to prescribed time periods.

James Gardner has developed a thoughtful analysis of Senate Bill 107. I strongly support his conclusions and recommendations. They place the interests of children first and recognize that joint custody is not a panacea. Most importantly they place the responsibility for working out arrangements for their children with parents (possibly professionally assisted) rather than on a judge. All too often parents seek to use the law to impose their points of view on their spouses. The law would be better used to promote mediation between the parents. Insuring that outcome should be a primary responsibility of a *guardian ad litem*.

I would be pleased to discuss this matter further with you.

Sincerely yours,

Jack Westman

Jack C. Westman, M.D.
Professor Emeritus of Psychiatry
1234 Dartmouth Road
Madison, Wisconsin 53705
(608) 238-0858; (608) 238-4053
jwestman@facstaff.wisc.edu

United Methodist Children's Services
of Wisconsin Incorporated

Perry G. Huyck
Executive Director

August 23, 1999

TO: Children & Families Committee
Representative Bonnie Ladwig, Chair

Re: "Bill of Rights" for Children of Divorce

I have two concerns regarding SB107. First, SB107 has been inserted into the proposed State budget rather than standing alone and being debated solely on its merits. The bill deals with some of the most basic, highly sensitive issues impacting the lives of children whose parents find it necessary to divorce. I believe it is in the best interest of children to propose and debate such legislation separately, rather than simply adding a bill to a proposed State budget which compromises a thorough debate process.

Children need stability, security, continuity and a sense of "home". When parents divorce the best interests of the affected children must be the most important consideration in child placement and custody decisions. SB107 requires custody and placement of children to be split equally between both parents. Such a decision removes mothers and fathers from the responsibility of developing a placement and custody plan and instead prescribes a State mandate. While this arrangement may be expedient to the divorce process and child support considerations, it clearly is not in the best interest of children.

I encourage the committee to remove SB107 from the proposed State budget debate; to debate SB107 solely on its own merits; and to require all decisions regarding custody, placement and visitation to be based on what is in the best interest of the child.

Sincerely,

Perry G. Huyck
Executive Director

3940 West Lisbon Avenue Milwaukee, WI 53208-1868 phone 414.344.1818 facsimile 414.344.2489

W4088 County U
Portage, WI 53901
Aug. 24, 1999

dear Jim:

This letter is to show support
you and the state legislature for
the approach to the children in
a divorce settlement.

For too long the de facto
attitude of many lawyers has been
to see children ~~and~~ as a piece
of property, whose rights are
secondary to those of the natural
parents. I have personally seen
evidence in my 34 years in the
field of child welfare from caseworker
to administrator. I was the state's
child welfare director from 1960 to
1983.

We must all not just say
we are for the "best interests
of the child" but in fact make
that our practice in all ways. I
support the changes you propose for
SB 107. I am also a constituent of
one of the authors of that bill,
Senator Bob Welch. You may quote
or show this letter to anyone.

Sincerely,

Frank Keegan

WLCFS WISCONSIN LUTHERAN CHILD & FAMILY SERVICE INC.

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Mailing Address: P.O. Box 245039 • Milwaukee, WI 53224-9539
E-Mail Address: wlcfs@execpc.com
(414)353-5005 • 1-888-685-9522 • Fax: (414) 353-5506

August 24, 1999

Representative Bonnie Ladwig
PO Box 8952
Madison, WI 53708

Dear Representative Ladwig:

On behalf of the family counseling division of Wisconsin Lutheran Child and Family Service, I have been able to discuss with Mr. Jim Gardner the concerns which he is presenting to the "Children and Families Committee."

As an organization of professional therapists dealing constantly with issues of family, marriage, children, divorce, and related issues, we wish to state that we are supportive of his viewpoint toward the necessary establishment of a base of children's rights, especially in cases of parental divorce; the best interests of a child is primary.

Your committees serious consideration of his proposal will be appreciated.

Sincerely,

Pastor Robert H. Michel
Executive Director

RHM:kf

211 N. Comanche La.
Waukesha, Wi 53188

August 24, 1999

Mr. James Gardner
N37 W6989 Wilson St
Cedarburg, Wi 53012

Dear Mr. Gardner:

I am writing as an individual in opposition to provisions contained in Senate Bill 107 and the process by which it is attached the State Budget currently under consideration by theWisconsin Legislature. My opinions are based on 40 years of child welfare experience in Wisconsin.

All to often serious proposals having far reaching implications for the safety and well being of children are advanced through, and yes, even burried in the budget process. Senate Bill 107 is a classic example of such misuse of the process. Proposals like those found in SB 107 which impact children in the divorce court need careful and thoughtful consideration as well as a thorough opportunity for public testimony and input.

A child's best interest, as interpreted by a family or juvenile court has always been part of the way we determine a child's future in Wisconsin. A proposal taking away a Judge's perrogative in this area is totally repugnant. While parents do have certain rights, those of a child to a safe and permanent home must always take precedence.

Thanks for letting me know about SB 107 and giving me an opportunity to comment.

Sincerely,

Lamar Cosby