SB107

WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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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

Senator Gary R. George
State of Wisconsin
Sixth Senate District

FOR IMMEDIATE RELEASE
AUGUST 23, 1999

CONTACT: DAN ROSSMILLER
(608) 266-2500

PRESS RELEASE

LEGISLATIVE COMMITTEES SCHEDULE HEARINGS ON CHILD CUSTODY AND PLACEMENT PROPOSAL

INFORMATIONAL HEARINGS DESIGNED TO PROMOTE BETTER UNDERSTANDING OF PROVISIONS IN BUDGET BILL

MADISON - State Senator Gary R. George (D-Milwaukee) announced that the Senate Committee on Judiciary and Consumer Affairs will join with the Assembly Committee on Children and Families and the Assembly Committee on Family Law to hold a joint hearing on provisions in the state budget bill relating to child custody and placement. The hearing is scheduled to begin at 9:00 A.M. Thursday morning, September 2, 1999 in Room 417 North of the State Capitol Building in Madison.

This informational hearing is designed to provide the public an opportunity to better understand these proposed family law changes. The budget bill includes language that would, among other things, change the standards used to determine legal custody and physical placement of children in divorce cases, establish new mechanisms for enforcing placement, and harmonize paternity laws with divorce laws. The hearing is expected to last for several hours.

According to Senator George, the provisions in the budget bill are considerably different than those proposed in an earlier bill, Senate Bill 107, and reflect a workable balancing of various considerations.

The budget language retains the "best interest of the child" standard, which had been removed in Senate Bill 107, and ensures that this standard is the primary consideration in child custody matters. The role of the guardian ad litem as the legal representative of the child is also retained virtually unchanged. The equal shared placement language of Senate Bill 107 is eliminated in favor of a more modest change to placement that will favor more equitable sharing in most cases but does not mandate a 50/50 placement. Existing statutory protections for victims of domestic abuse and sexual assault and protections for children of such relationships are maintained.

The Senate Committee on Judiciary and Consumer Affairs, which Senator George chairs, will also hold a separate hearing on the child custody and placement provisions in the state budget bill. That hearing is scheduled to begin at 9:30 A.M. Wednesday morning, September 1, 1999 in Room 201 South East of the State Capitol Building in Madison. Those wishing to testify at this Senate Committee hearing are asked to try to keep their comments brief and are encouraged to submit their testimony in writing.

Testimony on Reformed SB 107 Budget Amendment
Joint Assembly Committees on Family Law and Children and Families
September 2, 1999
9:00 am
State Capitol, 417 North

My name is Jo Ann Gray-Murray and I am Policy Development Coordinator for the Wisconsin Coalition Against Domestic Violence. The Coalition is a statewide membership organization of battered women, formerly battered women, domestic abuse programs and individuals committed to ending domestic violence. Currently made up of over sixty member organizations and more than 200 individuals and other groups representing the state's seventy-two counties and eleven Native American tribes, the Coalition has worked to eliminate domestic violence through education, advocacy, and social action since 1978. Thank you for this opportunity to speak truth to power and ensure that the voices of the victims of the crimes of domestic violence will be heard.

After careful review and consideration of the provisions contained in the reformed version of Senate Bill 107, we conclude that this amendment is overwhelming negative for battered women and their children. We are extremely concerned with 1) the increased risks of physical, psychological and financial harm for battered women and their children, 2) the decreased ability of battered women and children to choose and/or influence proposed options, 3) the decreased safety options for battered women and their children, and 4) the increased potential and opportunities for abusive partners to use this proposed legislation to continue victimization of battered women and their children. More specifically,

- Policy changes of this magnitude should go through the full legislative process.
- Any presumptions in favor of equal legal custody diminish the courts' ability to determine what is in the best interests of children.
- The presumption of joint legal custody requires a court to grant equal legal custody rights in a number of inappropriate cases.
- Providing that a child has a right to "the same amount of time or substantial periods of time with each parent" is likely to result in reduced child support.
- Many women will be discouraged from establishing paternity because this law also applies in paternity cases. This threatens to undermine a key component of welfare reform – increasing the number of cases with child support orders.
- This provision would throw more children into poverty by reducing child support and discouraging the establishment of paternity.
- Because it applies to modifications of current orders, this legislation will open the floodgates for changed orders affecting long-settled custody arrangements, including changes sought by individuals whose sole purpose is to reduce their child support payments.

As a result of our analysis and concerns, the Coalition continues to oppose this proposed budget amendment and currently recommends either its removal from the budget by the Conference Committee or a gubernatorial veto.

WISCONSIN COALITION AGAINST DOMESTIC VIOLENCE

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DOMESTIC VIOLENCE STATISTICS: SEPARATION; DIVORCE AND CHILD CUSTODY/PLACEMENT/VISITATION

SEPARATION STATISTICS

- Filing for a divorce signals her intent to leave the relationship, putting her at high risk of abuse or even death. The pattern is so prevalent that it is refered to as "separation violence". (Meuer, T. and Webster, K. *Effects of Domestic Abuse on Child Witnesses*, Wiley Family Law Update (1997)).

- Although divorced and separated women compose only seven percent of the population in the United States, they account for over 75 percent of all battered women, and report being battered fourteen times as often as women still living with their partners. (P. Klaus and M. Rand, Family Violence, Bureau of Justice Statistics Special Report(1992)).

- Domestic abuse generally escalates when the abusive parent discovers or believes that the victim is about to leave him or has left him. (L.Walker, The Battered Women pg. 25-26(1979)).

- Separated battered women reported being battered 14 times as often as women still living with their partners. (*Victiomology interview: A refuge for battered women: A conversation with Erin Pizzey.* Victimology, 4, 100-112. Harlow, C. W. (1991)).

- Separated women are three times more likely than divorced women and twenty five times more likely than married women still living with their husbands to be victimized by the batterer. (Bachman and Slazman, Violence Against Women: Estimates From the Redesigned Survey 3,4 (construing U.S. Dept. Of Justice Bureau of Justice Statistics (1995)).

DIVORCE STATISTICS

- Approximately half of all divorces in the U.S. follow a history of spouse abuse in the relationship. (Cites, L. and Coker, D., What Therapists See That Judges May Miss: A unique guide to custody decisions when spouse abuse is charged, The Judge's Journal, Spring (1988)).

- FBI statistics indicate that, during the course of their marriages, at least half of all women are abused seriously enough to require medical attention. (R. Geffner & M. Pagelow, Spouse Abuse in Treatment of Family Violence: A Sourcebook (R. Ammerman & M. Hersen eds., 1990); S. Buel, Confronting Violence in the Family, presentation at Conference on Courts and Communities (Apr. 20, 1995); see also M. Rosenberg & B. Russman, The Child Witness to Marital Violence, in Treatment of Family Violence 185 (R. Ammerman & M. Hersen eds., 1990).

- In the first year after divorce, a woman's standard of living drops by 73% while a man's improves by an average of 42%. (National Woman Abuse Prevention Project).

- When fathers fight they win custody 70 percent of the time, whether or not they have been absentee or violent fathers. (Excerpted from the new introduction to the 1991 edition of *Mothers on Trial* by Chesler, P.; (Harcourt Brace Jovanovich, Inc.)).

- Although 80-85 percent of custodial parents are mothers, this doesn't mean that mothers have won their children. Rather, mothers often retain custody when fathers choose not to fight. (Excerpted from the new introduction to the 1991 edition of *Mothers on Trial* by Chesler, P. (Harcourt Brace Jovanovich, Inc.)).

- When the husband was the plaintiff, he was more likely to be awarded custody. (Fox, G.L. and R. F. Kelly, 1995, *"Determinations of Child Custody Arrangements at Divorce."* Journal of Marriage and the Family 57:693-708).

- Father-sole custody may also be increasing: Father-only families with children grew nationally by 42% over the 1980s, whereas mother-only families increased by 15%. (Garasky, S. and D.R. Meyer, 1996, *"Reconsidering the Increase in Father-Only Families,"* Demography 33:385-93).

CUSTODY/PLACEMENT/VISITATION STATISTICS

- Mothers are typically the primary caretakers of the children before and after divorce; batters have nothing to lose by using custody as a bargaining tactic. (Paeglow, M. D, *"Effects of Domestic Violence on children and Their Consequences for Custody and Visitation Agreements"*, Mediation Quarterly, Vol. 7. No. 4, Summer 1990).

- Battering men use custodial access to children as a tool to terrorize battered women or to retaliate for the separation. Custodial interference is one of the few battering tactics available to an abuser after separation; thus it is not surprising that it is used extensively. (Hunt, B., *Gentle Jeopardy: The Further Endangerment of Battered Women and Children in Custody Mediation*, 323, Mediation Quarterly, vol 7, no., Summer (1990)).

- Each year 350,000 children are abducted by parents in this country; that is, 40.4 children are abducted per hour. Fifty-four percent of these abductions are short-term manipulations around orders, but 46% involve concealment the whereabouts of the child or taking the child out of state. Most of these abductions are perpetrated by fathers.(Hunt, B., *Gentle Jeopardy: The Further Endangerment of Battered Women and Children in Custody Mediation,* 323, Mediation Quarterly, vol 7, no., Summer (1990)).

- Custodial solutions must be designed to mitigate against the risks of further violence by the batterer . The more legal access the batterer has to the mother and the more legitimate power he exercises over her daily life, the greater the risk of continued, escalating violence. (Presley, E. and W., "*Wife abuse among Separated Women: The impact of Lawyering Styles.*" Chicago,1986).

- If the product of a custody mediation locks the mother into frequent contact and compulsory consultation with the batterer about every aspect of the children's lives, his continuing use of violence and terroristic controls will preclude the autonomy and safety she sought in leaving the relationship. (Woods, L. *"Mediation: A Backlash to Women's Progress on Family Law Issues."* Clearinghouse Review, Summer 1985, pp.431-436.)

- Visitation should minimize contact between the victim and the abuser, easy access to the victim is not in the children's best interest. (Kuehl, S.J., and Lerman, L.G. *" Mediators' response to abusive men and battered women: guidelines for policy makers and mediators."* May 27, 1988.)

- Fathers who batter the mother are twice as likely to seek sole custody of their children than are nonviolent fathers, and are three times a likely to be arrears in child support. (American Psychological Association Presidential Task Force on Violence and The Family 40(1996)).

- Given that abusive fathers are so likely to fight for custody, it is surprising that a larger proportion of batterers than nonbatterers actually win custody. (Zorza, J. *Protecting the Children in Custody Disputes When One Parent Abuses the Other*, Clearinghouse Review, Vol. 29, April 1996).

- An abusive parent is likely to disrupt court-ordered visitation schedules as a way to continue the abuse of his former partner. (Field, K.J., *Visiting Danger: Keeping Battered Women and Their Children Safe*, 30 Clearinghouse Rev. 295, 303(1996)).

WISCONSIN MODEL CODE PROPOSAL

In January of 1996, the Wisconsin Coalition Against Domestic Violence (WCADV) embarked on a project to compare Wisconsin's domestic violence related statutes to a "model code" developed by the National Council of Juvenile and Family Court Judges (NCJFCJ). The Model Code was crafted to facilitate parallel statutory development with respect to domestic and family violence among the States and the District of Columbia. The enactment of similar codes by all jurisdictions will enhance both the uniformity and quality of justice for victims and perpetrators of domestic and family violence throughout the nation.

Replicating the NCJFCJ process, the WCADV organized a Wisconsin Model Code Committee that consisted of more than thirty representatives of the criminal, family and civil law divisions plus private attorneys, advocates for battered women and law enforcement. The committee held nine day-long meetings reviewing the details of the NCJFCJ Model Code and Wisconsin laws.

The result of this work is the Wisconsin Model Code proposal. It includes changes to Wisconsin family, civil and criminal laws. In some instances the changes are sweeping in restructuring the civil restraining order process. Others are housekeeping in nature, designed to address aged-old problems with Wisconsin laws.

Currently, the WCADV is circulating the proposal throughout the state and nation for review and comment. Presentations have been made to numerous coordinated community response teams in Wisconsin. Input was solicited and incorporated where appropriate. The final version will be introduced during the 1999-2000 Wisconsin legislative session.

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WISCONSIN MODEL CODE PROPOSAL HIGHLIGHTS

FAMILY LAW

- Add a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint custody or joint physical placement with the perpetrator of family violence.
- Add that the court shall consider as primary the safety and well-being of the child and that of the parent who is the victim of domestic violence in all orders.
- In physical placement orders with perpetrators, the court may order conditions to address the safety of the non-abusing parent and the child.
- The family court system shall have the duty to ask about any history of domestic violence.

CIVIL LAW

- Include adult dating relationships to types of relationships that are eligible for a domestic abuse restraining order.
- Maintain confidentiality of petitioner's address in domestic abuse restraining orders.
- Remove two-year limit on duration of domestic abuse restraining orders.
- Remove automatic permanent injunction hearing, replace with option provided to respondent to request a hearing.

CRIMINAL LAW

- Add a structure of accountability when prosecutorial systems use deferred prosecution with domestic abuse offenders.
- Restructure charging and sentencing structure for repeat offenders of domestic abuse-related crimes.
- Make violations of the mandatory 72-hour no-contact a criminal violation.
- Include domestic violence as a "danger to the community" as consideration for release on bail or bond for domestic violence-related crimes where appropriate.

WISCONSIN MODEL CODE PROPOSAL

FAMILY LAW

Current Law

I. Wisconsin identifies two areas in Chapter 767 Family Law regarding the role of domestic abuse in custody and physical placement determinations. Both are weak.

A. Joint Custody - Creates a rebuttable presumption that domestic violence will interfere with future decision making and therefore the parents may not be good candidates for joint custody. The determination may be rebutted by clear and convincing evidence.

B. Physical Placement - States that the courts shall consider domestic violence, along with other factors, when determining allocations of physical placement. There is no rebuttable presumption requirement nor any other guidance about how to consider this factor.

REBUTTABLE PRESUMPTION

It requires the court to presume that the presence of this factor weighs somewhat against awarding custody and placement to the offending parent. It is weighed with other factors. It also places the responsibility of rebuttal or reversing that presumption on the abusing parent. The parent must present clear and convincing evidence to rebut the presumption.

The Proposal

In every proceeding where there is at issue a dispute as to the **custody** and/or physical placement of a child, a determination by the court that domestic or family violence has occurred raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody or joint physical placement with the perpetrator of family violence. This presumption may be rebutted by clear and convincing evidence.

In addition to other factors that a court must consider in a proceeding in which the custody or physical placement of a child is at issue and in which the court has made a finding of domestic or family violence:

The court shall consider as primary the safety and well-being of the child and the parent who is the victim of domestic violence.
The court shall consider the perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily harm, bodily injury, or assault, to another person.

In making an order contrary to the standards listed above the court shall state in writing why its findings are in the best interest of the child.

Factors in determining physical placement schedules

In every proceeding where there is at issue a dispute as to the custody and/or **physical placement** of a child, a determination by a court that domestic or family violence has occurred raises a rebuttable presumption that is in the best interest of the child to reside with the parent who is not a perpetrator of domestic or family violence. This presumption may be rebutted by clear and convincing evidence.
Safety for the custodial parent and child will be a factor in any relocation request.

Conditions of physical placement in cases involving domestic and family violence

A court may award periods physical placement to a parent who committed domestic or family violence only if the court finds that adequate provision for the safety of the child and the parent who is a victim of domestic or family violence can be made.

In a placement order, the court may:
Order an exchange of a child to occur in a protected setting;
Order specific times for placement and exchange of a child;
Order physical placement in a supervised environment; If a court allows a family or household member to supervise visitation, the court shall establish conditions to be followed during visitation.
Order the perpetrator of domestic or family violence to attend and complete, to the satisfaction of the court, a batterers treatment program that has been authorized by a recognized regional batterers treatment review committee.
Order the perpetrator of domestic or family violence to abstain from possession or consumption of alcohol or controlled substances during the physical placement and for 24 hours preceding the placement.
Order the perpetrator of domestic or family violence to pay a fee to defray the costs of supervised visitation.
If a parent is absent or relocates because of an act of domestic or family violence by the other parent, the absence or relocation is not a factor that weighs against the parent in determining custody or physical placement.
Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of domestic or family violence, or other family or household member.

948.20
Current - Abandonment of a child - Whoever, with intent to abandon the child, leaves any child in a place where the child may suffer because of the neglect is guilty of a Class D felony.

Add: If a parent is absent or relocates because of an act of domestic or family violence by the other parent, the absence or relocation is not a factor that weighs against the parent in determining custody or physical placement.

In every proceeding in which there is at issue the modification of an order for custody or physical placement of a child, the findings that domestic or family violence has occurred since the last custody determination constitutes a finding of a change of circumstances.

Confidentiality

Whether or not shared physical placement is allowed, the court may order the address of the child and the victim to be kept confidential.

Add
Family court commissioner; appointment; powers; oaths; assistants (767.13);
Family court commissioners have a duty to ask about any history of domestic abuse.
Temporary orders for support of spouse and children; suit money; attorney fees (767.23);
The court or family court commissioner has a duty to ask about any history of domestic abuse.
Custody and physical placement (767.24);
The court or family court commissioner has a duty to ask about any history of domestic abuse.
Revision of legal custody and physical placement orders (767.325):
The court or family court commissioner has a duty to ask about any history of domestic abuse.
Guardian ad litem for minor children (767.045);
The guardian ad litem as the duty to investigate and inform the court of any history of domestic violence.

Evidence - Judicial notice (901.02) -
OR
Family law

A judge or court may take judicial notice of any circuit court judgements and/or convictions relating to domestic violence when determining that domestic violence has occurred.

Mediation

In order to address the concerns of battered women who wish to have an advocate with them in mediation but do not wish to have a breach of confidentiality the following statutes should be revised:

Communications in Mediation (904.085)

Add service representative's presence during a compromise or offer to compromise in mediation under 767.11 subject to 802.12 (alternative to dispute resolution). This would make evidence of conduct or statements made in compromise negotiations not admissible. This statement would be cross referenced in all three statutes.

Propose an advocate-victim privilege applicable in cases involving domestic or family violence with the language used in the model code.

767.115 - **Educational program on the effects of divorce on children**

Add provision where domestic violence has been identified the parties may not be required to attend the same session.

The issues surrounding the cost of divorce and custody determinations, guardians ad litem and other associated costs that prohibit battered women from securing legal counsel were never resolved.
The issue regarding pro se procedures and accessibility to forms in court actions was not resolved.

In discussing costs of divorce and custody, it was determined that the committee could not statutorily propose solutions to this problem.

We will attempt to include information about domestic violence in any developing legislation regarding the role of GALs' in the children's code.

The committee decided it could not mandate use of supervised visitation centers but wholly support the concept. When possible, visitation centers provide safety, protection, counseling and parent education.

Prepared by:
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CIVIL LAW

Proposed changes to 813.12 - Temporary Restraining Order/Injunction statute

Add

1. An act, word, gesture or any other behavior that may cause the other person to fear imminent engagement in the conduct described in subd 1, 2, or 3.
2. Dating relationship means an adult who is, or has been, in a sexual or otherwise intimate relationship with an adult petitioner.
3. Adult or minor spouse against an adult or minor spouse
4. Adult or minor against adult or minor with whom the person has a child in common

Require automatic no contact with bond with a violation of a restraining order. The violation would require arrest for bail jumping, not a civil forfeiture.

Add confidentiality of address of petitioner.
Language could state:
A petitioner many omit her or his address from all documents filed with the court. If a petitioner omits her or his address, the petitioner must provide the court a mailing address. If disclosure of petitioner's address is necessary to determine jurisdiction or consider venue, the court may order the disclosure to be made:
After receiving the petitioner's consent;
Orally and in chambers, out of the presence of the respondent and a sealed record to be made; after a hearing, if the court takes into consideration the safety of the petitioner and finds such disclosure is in the interest of justice.

Proposed types of Relief

	Procedure		Duration
Enjoin from threats or acts	EX		UFO
Prohibit harassment or contact	EX		UFO
Remove from residence	EX		UFO
Stay away order	EX		
Possession of auto and personal effects, supervised removal of personal effects	EX		UFO
Temporary custody of children	EX		UFO
Specify visitation		**H**	UFO
Pay attorney fees		**H**	UFO
Pay rent/mortgage, medical expenses		**H**	UFO
Relief deemed necessary	EX	**H**	UFO

EX - Ex parte
H - Hearing required
UFO - Until further notice

With expansion of remedies, the law will continue to prohibit courts from changing reliefs requested.
We will continue to research ways to increase access to courts in evening hours and on weekends to file orders and secure temporary relief?

CRIMINAL LAW

Add to mandatory arrest statute

A threat to engage in conduct listed in 968.075.

Use of deferred prosecution

If deferred prosecution is used in cases related to 968.075 the following standards must be used:
notice must be given to victim;
defendant must admit to act;
the defendant must waive right to challenge evidence at a later date;
the defendant must waive right to jury trial;
no deferral without referral to a batterers treatment program as authorized by a recognized regional batterers treatment program review committee;
the court must have monitoring system.

Develop a system where the charge is not adjudicated as guilty but found guilty staying adjudication for one year.
Perhaps a separate statute could be used.

If deferred, the first offense would be noted as a civil **conviction** as in drunk driving to be used as a first offense if violence is repeated.

Add a new classification of misdemeanor to be used for 968.075 related crimes with a sentence of up to 2 years.

A proposed new charging and sentencing structure would include:
First offense related to 968.075 could be a deferred with a civil conviction; OR
First offense related to 968.075 could require jail time if offense warrants it;
Second offense related to 968.075 could be a two year misdemeanor or felony if offense warrants it;
Third offense related to 968.075 would be charged and the batterer could be classified as a habitual batterer if convictions occurred in a five year period. This would add more jail time and/or extend probation or parole.
Criminal records must indicate conviction was 968.075 related.

It must be clarified that the felony enhancer for a second domestic abuse offense will not be altered because of a new charging and/or sentencing structures.

The bail bond schedule should state D.V. is considered a danger to another person.
Revise the bail statute to indicating that arrests under 968.075 require cash bail at the time of arrest.
Require, through statute, that violations of the no contact is a criminal violation as a condition of bond and the no contact remains until the charging decision or 72 hours, which ever comes first.
The civil forfeiture remains in 968.075

Mandatory arrest (968.075)

May seize a weapon discovered pursuant to a lawful search as necessary for the protection of the

officer or other person.

Place current **(3)** b, c, and d pertaining to primary physical aggressor under **(2)** circumstances requiring arrest.

Batterers Treatment Standards

Programs must be certified by a regional team, reviewed and evaluated periodically and use a curriculum.

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SB107

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WOMEN'S CHILD SUPPORT ASSISTANCE
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DATE: September 2, 1999

TO: Senate and Assembly Members

FROM: Nancy Picha-Lawrence

SUBJECT: **WISCONSIN 1999-2001 BUDGET**
1999 SENATE BILL 107 AND 1999 ASSEMBLY BILL 133

This memorandum is to state my opposition to the passing of the above Bill 107 and Bill 133 with the State Budget. The passing of this legislation will have a negative effect on the lives of the children in the State of Wisconsin. The general public needs to be aware of the far reaching effects of this legislation and must be provided an ample opportunity to respond.

This memorandum is to state my opposition to reducing the interest rate on child support arrearages from the current 1.5% per month (18% annually) to 1.0% per month (12% annually). Current interest at 1.5% is SIMPLE interest and if the interest is ultimately lowered to 1.0 % it should then be COMPOUND interest.

I will be submitting a detailed written response following the hearing today.

DR. RICHARD SARNWICK
1072 BIRCH HILL LN.
SHAWANO, WI 54166
4/18/99

Dear Senator George.

I am a family physician in a very small town in northern Wisconsin, called Gillett. I have been in practice here for fourteen years. In my years of medical practice, I have seen the end results of our current system of divorce. I see fathers unwillingly separated from their children. I see children with a host of problems caused by removal of their father, from the childrens lives.

I think that the State of Wisconsin has done a good job at equalizing finances of husband and wife, after a divorce. However, I think our state has

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DR. RICHARD SARNWICK
SHAWANO, WI

not done a good job of providing our children with both a mother and a father. If we really do live in a state which believes in equal rights and responsibilities for both moms and dads, please support the Equal Shared Parenting Bill. (SB 107) I think children deserve both a mom and a dad, after a divorce. Too often, our judges automatically award placement to the mother. Please change our system, and give our Wisconsin dads the same rights our Wisconsin mothers already have.

Sincerely,
Dr. Richard Sarnwick

cc: Representative John Ainsworth
Senator Robert Cowles

Roger C Beers
E3430 Wilkinson Road
La Valle
WI 53941
4/15/99

To Members of the Committee on Judiciary and Consumer Affairs:-

I would have liked to testify at the hearing on Tuesday April 20th but I was not notified in time. I will be there in person, to support the many thousands of heartbroken fathers, who have had their children taken from them by the present laws.

I am a paternity father, I have a 8 year old son, Charlie, his life is being destroyed by WIS 767.51 [3] "The mother shall have sole legal custody of the child"

I lived with his mother prior to his birth, in Chicago. I took her to the hospital, I stayed there with her all day, I delivered my son into the world on January 12th 1991. We moved to Wisconsin, in August 1994 Sometime in 1996 she found out about this law, [I think she spoke to an attorney] She informed me that I was not Charlies legal father.

She admitted I was his biological father, that my name was on the birth certificate, but under Wisconsin law I was not his father. I told her to get the paternity papers, she refused!

I went to Sauk County Child Support and got the nesesary papers I completed my section and gave them to her to complete and sign. She refused, establishing paternity would have cost us $10.00

On December 6th 1997 she left our home with my son there was nothing I could do, how can a father establish paternity if the mother refuses to sign the papers?

Six months later and many thousand dollars in legal fees I filed a paternity action against her, she then admitted that I was the father!

I now have joint custody, but not equal placement, I only see my son 9 days a month. He was a happy little guy, just started school, doing great, we did every thing together, I cooked his meals and looked after him. Four weeks after his mother took him, she went to her psychologist to find out why he was hysterical and out of control!

She had been going to psychologists for most of her life, a fact I was unaware of, until she asked me to go and see him. He would not tell me what her problem was only that "some people never change"

She has attacked me, threatened to kill me, I slept in a locked bedroom for about 6 months for fear she would attack me when I was asleep! Yes Charlie does have a Guardian Ad Litem, she is the worst thing that could have happened to him. She has done nothing in over eight months, she stated that she would not hold his mothers mental illness against her, and has refused to look into her mental health records prior to Charlies birth.

My son has changed, he is failing at school, he is quiet and introverted. His mother has told me I have taken everything you own, I have taken all your money, I have your son, I have child support, I dont have to ever speak to you again!

Please help me and all the other dads by passing this bill, but most of all help my little boy.

Yours Faithfully

R Beers (608) 985-7149

My name is Joseph Marincic . I humbly come before you as a divorced person and father of a wonderful daughter. I have sought for the last three years to have a meaningful and quality relationship with my daughter. I am here before you to tell you that the present system, by defying logic and justice has denied us both the relationship we desire.

I have been called every awful name a father could be called. Three years ago my wife alleged that I broke my daughters leg, that I did not feed my daughter and that I was a stalker. All of these allegations I was able to prove untrue.

More name calling came a couple of days later. My exwife accused me of being a child molester. Again, I was able to either esponge or amend all documents that affirmed my exwife's allegation.

I have been called a lot of awful names but one name that I have never been called throughout this ordeal is a liar.

Most recently, to be more exact two weeks ago the Gal had called me "no tame animal. Furthermore she said that I most be delusional if I think this case will have a new psychological investigation. Please keep in mind that there is no documentation to support these negative personal views the Gal has of me

At present and for the last 4 weeks I have been denied visitation with my daughter. The reasons for this denial has changed 3 times and the Gal reasons contradict each other.

At present my daughters psychologist and both my psychologist and psychiatrist supports visitation between my daughter and I . But the GAL in her power says no.

The same parties said that I should see my daughter last summer but the GAL with held visitation for 10 weeks even though my 7 year old daughter had said she wants to see me every day. Recently my daughter stated that the week that passes between our visits seem like a year and the hour we spend together goes so fast.

The current system in my opinion does not work. It automatically gives the woman the benefit of the doubt to have more quality time with the childeren. Furthermore the current system doubts the father.

A prominent psychologist , Marc Ackerman argues that it is a waste of time and money for the contesting parent to go to court if the GAL and court appointed psychologist are in opposing opinions of the parent.

What Marc Ackerman is really saying is a contesting parent is almost always denied his or her day in court because the judges almost always rules in accordance with the GAL recommendation.

This is fine but the Gal can manipulate what the psychologist reads negating an objective conclusion made by the pychologist.

In my case the Gal did not even tell the Psychologist that an anotomically correct doll was discovered at my childs bedside three days after the allegations were made. This doll was given to my daughter by her mother.

Another example in my case happened when the Court appointed pychologist never concluded whether my daughter was molested or not. I still was denied visitation for one year.

The present system works under the "good old boy" or "good old girl " system. GAL are left unchecked and unchallenged because there power is so great.

I have had also a personal run in with one of the leading critics of Senate Bill 107. 3 years ago this atterney gratuiously counseled my wife to start a fight with me, call the police, get a restraining order and then I would be denied visitation. Well, I was not violent , therefore , no arrest.

Later this same attorney was asked to, and agreed to, be Gal for my case. I of course objected. Her response was that there was only a brief phone conversation between her and my wife.

I heard the argument that a 50/50 split treats children like property. This argument is rediculous because a 70/30 split also treats them as property.

All that I am asking is that the court allows parents to see their children as often as possible. This brings security and a loving atmostphere to the children.

The other arguments the opponents are raising against Bill 107 is this. The current system is equitable between men and women.

Let me comment on this with a quote said by my exwife at the time of our divorce. "If only you would be like other dads and see your daughter every other weekend. Then everything would be fine.

Support For Bill #107

Dear Senator George,

I am writing to let you know of my support for Senate Bill #107, which I understand will be discussed in a public hearing in Madison today. Unfortunately, I will not be able to attend the hearing in person, but I did not want to miss this opportunity to register my opinion about such an important topic.

I was married in Milwaukee County in 1991 and divorced in Milwaukee County in 1994. I have a daughter from that first marriage. I have subsequently remarried, have another daughter, and my wife and I are expecting again in August. My wife heard a radio news report yesterday (on WUWM, Milwaukee) about Senate Bill #107, which really caught her attention. She called for more information and shared that with me, which is why I'm writing now.

My second wife and I have been to court many times about custody and placement issues (among other divorce-related topics) since my divorce. We have been repeatedly dismayed by "the System" and how it seems to be incredibly biased toward moms and against dads. We have heard the term "best interests of the minor child" used and abused repeatedly. It seems to really mean "best interests of the mother", especially if she is the custodial parent (which is the case in my situation). We have learned firsthand that "the System" seems to be more interested in my ability to pay money than the fact that I want to spend time with my daughter and be actively involved in her life. Our experience with a Guardian-ad-Litem has been incredibly poor; she seemed to simply be an extension of my ex-wife's own attorney. I have repeatedly been put in a position where I have had to prove my innocence, instead of my ex-wife having to prove my guilt (regarding my income and associated child support payments).

Please accept this letter as registration of my position in favor of Senate Bill 107. I would very much appreciate it if you or one of your staff members could keep me informed of this bill's progress, as well as the progress of any related legislation which strives to help divorced dads. Thank you very much for your efforts on behalf of all the divorced dads in Wisconsin who really do care about their children and want to be more to them than just figureheads who write the checks.

Sincerely,

Brent A. Miller
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P.S. More divorced dads need to know about this bill and similar efforts. I really think that publicity would be extremely beneficial in passing this type of legislation, especially since there is a common public misconception that all divorced dads are "deadbeats". What is being done to "get the word out"?

P.P.S. On a slightly tangential subject, I have had terrible problems with the computerized child support billing system in Milwaukee County (Wisconsin Support Collection Trust Fund) for the last two years. The computer erroneously keeps saying I'm in arrears and changing the percent withhold. My efforts to correct this myself failed repeatedly, forcing me to file a Motion and return to court to try to correct this. In fact, I will be in Court next week. I have been told that this is happening many divorced dads in Wisconsin. It's really a mess, especially since this has now delayed my ability to file my 1998 tax return. Is the State Legislature aware of this problem, and is there anything you can do to help straighten this out?

Andrew B. Graham
2027 Jackson Street
Stoughton, Wisconsin 53589
(608) 877-8982

April 19, 1999

Senator Gary R. George
Room 118 South
State Capitol
P.O. Box 7882
Madison, WI 53707-7882

RE: Senate Bill 107

Dear Mr. Senator:

I am writing to express my support for Senate Bill 107 which sets standards for determining legal custody and physical placement of children in actions affecting the family.

I currently find myself in a divorce in which physical placement is contested. My wife is seeking a minimum of 70 percent physical placement so that she can receive the maximum child support payment and can eventually move with the children closer to her relatives. Although I can sympathize with her personal need for money, I believe that we should be equal parents with equal placement schedules. I am a fit parent, and my ability to properly care for the children has never been disputed.

Unfortunately, our divorce must be resolved under current law. The court has appointed a Guardian Ad Litem (GAL) for the children who is charged with recommending a placement schedule. This recommendation, which is pending, will be based on 1 hour interviews with my wife and me, a 5 minute discussion with the children in my wife's presence, and reference letters. Apparently there are no provisions for in-home evaluations in Rock County. Therefore, the GAL's recommendation will be based on very little specific information on my family. I just hope that the GAL does not simply decide that, for lack of information, a "traditional" placement schedule where the children reside with the mother and the father has visitation is in the "best interest of the children."

Had Senate Bill 107 been law during our divorce and the presumption was that I would have an equal opportunity to parent my children, I believe that placement would not have been disputed. Therefore, we would not be spending the children's college educations on the lawyer's supposedly working toward their "best interest." I believe that the otherwise amicable separation would have been resolved without the emotional and financial damage to the family. I love my children, and the current situation is <u>not</u> serving their best interests.

Thank you for introducing this bill. I plan on attending the Judiciary and Consumer Affairs Committee meeting on Tuesday, April 20, 1999. I would be happy to provide public comment if you think it would help.

Sincerely - a concerned father,

Andrew B. Graham

H:\sb107.let

April 19, 1999

Testimony of Richard J. Frey in favor of SB107

To Chairperson Gary George, members of the Senate Judiciary Committee:

This is now my eighth year of trying to get some changes made in the current Family Law arena. Many people have questioned my motives in trying to accomplish what some view as impossible. I have more faith in the true spirit of those that have been elected to protect the citizenry of this state through diligent efforts and open minds. This is the start of a journey of saving the next generation of children and allowing children to be exactly that, children.

It is human nature to blame others for hurtful or harmful acts. It is human nature to fault others without considering our own faults. It is human nature to ignore situations if they do not affect us personally. Who do the children of divorce blame for the problems that they are faced with? Do they blame their problems on the law? Do they blame their problems on the judge in their parent's divorce? Do they blame the attorneys representing their parents who apparently are only concerned with doing their best for their respective client while tearing the other parent apart? Do the attorneys and judge realize that they are only perpetuating the problems of the children? I think not.

It is not uncommon in my experiences that sometimes so called professionals put themselves above others in life. This is a sad comment but has been borne out in numerous situations. I am not here to point fingers at anyone but am testifying for the SB107 legislation.

Children are society's biggest assets, they are our future. We, as adults, must demonstrate to them that we are concerned about their well being. This is not being done at the present time. What we are doing is only discussing how the system is not working and not taking action. This hearing today is a step in the right direction however this step has been taken before with no results. Let's look at the facts and not trying to predict the future. If you try building a house with current instructions and the house falls down, would you try to rebuild with the same instructions? I wouldn't. I would look for a new way of building keeping in mind the past failure. Let's look at the current Family Laws as the house that has fallen down and needs to be rebuilt with new instructions. Let's not continue making the same mistakes.

You will hear numerous tales of woe when the father is granted custody of the children. The State Bar Assoc. has requested from their members anecdotal stories relating the horrors of fathers being granted custody or even good stories of the same. These stories will be few and far between. I am not advocating that fathers only be given primary physical placement of their children nor am I advocating that mothers only be given primary physical placement. I am advocating that both parents be given equal opportunity to raise their children after divorce. Divorce should not be the deciding

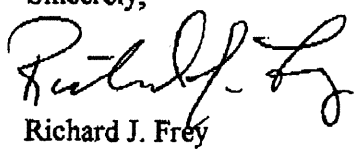
factor in children not having both parents raising them. Why should the court dictate that one parent or the other is excluded from giving their child/ren the benefit of their wisdom and parenting skills? This is not right. Parents have a God given right to raise their children, not just be a financial mealticket. I for one am humiliated by the way the current system perpetuates this thinking.

We have the opportunity to make a difference in the future of today's children. However, do not try to project doom and gloom if changes, drastic changes are made. None of us has that ability. The old system has proven itself to be ineffective and unproductive to too many adolescents and adults. Single parent families are not the way to go and should not be promoted through any means. Kids need both parents.

As an elected county official, it is imperative that I keep an open mind when listening to my constituents regardless of my own personal opinion or feelings, yet I must just as all of you must do today and for your respective terms of office. If we do not keep our minds open and be willing to change, the future will be doom and gloom. Civil unrest is not what we need more of but allowing parents to accept the responsibilities of being parents is. I implore you to keep your minds open and look to making a better future for this generation of children and future generations.

Thank you for allowing me to speak my mind. To let you know, I am the primary placement parent for my son and have been for the past 12.5 years. My son is an honor student and is involved in many sports and other extracurricular activities. Maybe this is an anecdotal situation that the Bar Assoc. wanted. If so, I am proud to be a parent and do not expect anyone else to accept that responsibility. Give other parents this chance without having to spend thousands of dollars to attain it, maybe. It doesn't make sense to make the legal profession wealthier at the demise of children and their future educations. Think about that aspect. No attorneys in divorce situations? Interesting.

Sincerely,



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Circuit Court

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THOMAS R. COOPER
JUDGE

April 19, 1999

Dear Senator George,

I have been given a copy of Senate Bill 107 which has been introduced by you with other agencies. The provisions of that bill involve significant public policy changes and the reallocation of services which would affect the Children's Court and Family Courts in the State of Wisconsin. It would have a particularly dramatic impact on the practice in the courts in Milwaukee County.

The best interest of the child has been a standard that has been followed in the Children's Court and Family Court for many years. The Children's Court judges in Milwaukee County will not support any change that would not make the best interest of the child the major consideration for the court.

The provision providing for a CHIPS proceeding for parents who cannot agree on custody would have a serious, dramatic, and disastrous impact on the Children's Court and the agencies providing services to that court. The first impact would be on the Bureau of Milwaukee Child Welfare and the State of Wisconsin who are responsible for providing CHIPS services for CHIPS kids. They would have to do an intake investigation and a recommendation to the court for all of the divorce-related CHIPS proceedings. I am certain that they do not have enough resources to do this. There would also be a need to significantly alter duties, assignments, and personnel from the Family Court to the Children's Court. And in spite of the fact that we have a new Children's Court Center, we do not have the facilities in our physical plant to provide for additional courts.

If Senate Bill 107 is passed in its present form, it would significantly alter the relationship between the parties in a divorce proceeding. Presently, a divorce involves two parents in dispute where they are concerned about the best interest of their child. If Senate Bill 107 is passed, it will then become the responsibility of the Children's Court and the State Bureau of Milwaukee Child Welfare to define best interest of the child. And the parents would no longer be parties to the action, but would

only be witnesses as to a determination to be made by the Court. It would be a major change in the way that divorce proceedings are practiced in the courts in Wisconsin.

Senate Bill 107 deals with lots of issues that are of major concern and need to be studied for the impact on public policy. It might be a better plan to study this at length in a bipartisan manner to see what changes can be made and what solutions to the problems that Senate Bill 107 identifies. In our opinion, in its present form Senate Bill 107 would create more problems instead of solving them.

Very truly yours,

Thomas R Cooper

Honorable Thomas R. Cooper
Presiding Judge, Children's Court

Supreme Court of Wisconsin

DIRECTOR OF STATE COURTS
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J. Denis Moran
Director of State Courts

April 19, 1999

Senator Gary George
118 South, State Capitol
Madison, WI 53702

RE: SB 107

Dear Senator George:

I am writing in behalf of the Committee of Chief Judges. The purpose of this letter is to share our concerns regarding SB 107. This legislation purports to make many substantial changes in family law litigation. I believe at least two of these policy changes will be detrimental to Wisconsin's long-standing tradition of protecting children in family law litigation: the removal of the best interest standard in custody and physical placement disputes, and the removal of judicial discretion to appoint guardians ad litem in these cases.

This bill proposes to eliminate the "best interest of a child" standard in legal custody and physical placement disputes and replace it with a rebuttable presumption of parental fitness. This standard does not necessarily protect a child. A parent can be fit but unreasonable. The proposed change suggests that divorce has no effect upon children. However, sec. 767.115, Stats. (regarding educational programs for children about the effects of family dissolution) provides a legislative predicate that supports continuance of the present law. Legislative wisdom has always allowed trial judges to provide protection for children in these cases by considering the best interests of the child standard. That should not change. Elimination of the "best interest" standard would abolish consideration of a child's wishes and would relegate a child to nothing more than property.

The other change would eliminate a judge's prerogative to appoint a guardian ad litem in family law cases. Instead, a parent or parents must not only file a petition in juvenile court alleging that a child is in need of protection or services, but also prove

it in court, if contested, before there can be the appointment of a guardian ad litem.

This change would then be procedural as well as substantive, and possibly harmful. If a parent must go into juvenile court and establish that the other parent is unfit, a lot of time may be consumed to bring such a case to resolution. Two common grounds for parental unfitness are abuse and neglect. Therefore, during the course of an ongoing investigation there may be children living with an alleged unfit parent and having no guardian ad litem. This is clearly not in the best interest of children.

I believe the vast majority of trial judges will agree that, particularly in hotly contested custody disputes, the guardian ad litem provides an indispensable service to the court. As the system stands now, two loving and fit parents can agree to disagree and ask the court to decide physical placement. With the new legislation, we are asking parents to accuse each other of unfitness, and this would obviously up the ante of contentiousness.

I believe these are the most dramatic changes for family law cases in SB 107, but they form the basis for other changes that likewise deviate from Wisconsin's traditional public policy of protecting children. I believe the following are examples of proposed changes that are bad public policy:

1) This bill would remove judicial approval of the parties' stipulations under sec. 767.10(1), Stats. Now any stipulations the parties make are subject to judicial review to ensure they are fair. SB 107 would require a judge to simply approve any stipulation, fair or not. For example, a custodial parent might agree to no child support in order to get the other spouse to agree not to contest other issues, or one spouse might agree to give up all equity in a couple's property to get away from an abusive spouse. Such examples could be endless but the conclusion is the same. Unfairness will rule divorce.

2) Under this bill, if one party objects to joint legal custody, the only criteria a judge can use to resolve this issue are twofold: whether one spouse has been convicted of child abuse of the party's child or children, or convicted of battery of their spouse. Because actual conviction under these circumstances is so rare, this bill virtually eliminates any type of legal custody other than joint. Unless the divorce happens to be an amicable one, this legislation is nothing less than a trap for the less

assertive spouse. Elimination of the factors under sec. 767.24(5), Stats., to determine legal custody is unreasonable.

3) This bill also eliminates the factors of sec. 767.24(5), Stats., in deciding physical placement. They are replaced with an inflexible and unreasonable rule that requires a judge to order physical placement based upon an equal allocation of time between the parties. Again, the child's wishes or a parent's mental or physical health and other important factors are not allowed to be considered. In fact, this bill considers them unimportant. Do we want to see a child placed with a parent who is psychotic, a dangerous felon? Under this bill, that's just what could happen.

The philosophy of this bill seems to be that parties should raise their children as if the parents were not divorced. That is unrealistic. Conceptionally, parental control of children after a divorce through joint legal custody and shared physical placement is both worthy and meritorious. However, parties get divorced for endless reasons. In those situations where divorce is based upon hatred or disgust of the other, judicial experience suggests that mutual cooperation between parties, even in the interest of their children, is a fairy tale.

I have tried to set out what I believe are the major flaws of this bill. Conceptionally they are meritorious, but practically they would be disastrous. Wisconsin's long history of protecting children has been supported by allowing judges the discretion to protect children when the need arises, in individual cases. This legislation would remove that judicial discretion. I believe that it continues to be good public policy to allow Wisconsin trial judges to protect the best interest of children in family law litigation.

Very truly yours,

Philip Kirk (SL)

Philip Kirk
Chief Judge
8th Judicial Administrative District

cc: Members of the Senate Judiciary Committee
Committee of Chief Judges

Senate Testimony-Senate Bill 107

by Matt Pipes, 2546 S. Stoughton Rd., Madison, WI 53716 Tel. (608)226-0929

The divorce industry in Wisconsin consumes over 250 million dollars in litigant fees each year. Much of the litigation is adversarial in nature. All too often, persons involved in this system are disempowered. There are several reasons for this, and I would like to shed some light on how I have been disempowered, and why I believe changes are needed in our current system.

Too often, parties in the Family Court system settle their difficulties. Unfortunately, these settlements result by one party financially draining the other with hostile "Barracuda Style" litigation tactics. Lawyers exacerbate situations by sending sniping letters, by extending litigation, and by causing procedural delays. For years, these tactics have been used to abuse the processes of our family court system. When one party is financially ruined, they are forced to concede their rights to the other. The cumulative result is an overload in our Family court system. Parties can wait months for what amounts to five or six hours of actual time spent with a FCCS counselor. The waiting time between intake and seeing an actual FCCS counselor can be months. There are eight counselors in Dane County, and they are swamped with caseloads that need resolution.

According to Dane County Family Court Counseling service, There were 1046 cases referred between September 30, 1997, and August 30, 1998. Many of these cases resolve of their own, but the remainder tend to be long-standing. These cases drain the resources of FCCS.. I, myself, have been victim of this type of legal battle, and can testify honestly that the current process is in need of changes.

SB 107 proposes to fundamentally change the adversarial nature of the current system by removing the incentives for hostile litigation. Many custody disputes could be avoided entirely if there was a standard in place that would say, "Fighting will get you nowhere. " Other states have "Friendly Parent" rules . The rules say the court will tend to side with the party who is least adversarial in a dispute. This is one way to encourage litigants to avoid a hostile dispute. Unfortunately, our current system and its mechanisms themselves promote these sorts of disputes. By setting a standard of parental equality to be adhered to in divorces, parents would not have to waste resources fighting long costly legal battles for these fundamental rights.. Children would be benefit by having an equal relationship with each parent, in spite of a divorce. By eliminating this problem, the Family courts could move ahead with the truly needy cases. The parents could use the money they would have spent fighting in court for their children to provide them a better life. Every dollar spent on a lawyer, GAL, or court fees, is a dollar that will not feed or clothe or provide for a child. My own financial viability has been seriously affected by the financial drain caused by my custody battle.

. The appointment of guardians ad litems are another expense for parties in this situation. I can testify from my own experience, that it is not uncommon for these court appointed guardians to

make decisions for their clients when they have never met them. I was told by my child's GAL that "He was not interested in anything a five year old child had to say." He has not once met my child, but has issued several recommendations about what is best for my son. I am told by other parents in this situation that this is not uncommon. This GAL does not know a thing about my child; how would he be able to make any decision about his best interests? The guardian ad litem will walk away after this litigation and I shall have to be the responsible party who repairs the damage to my child.

The creation of a rebuttable presumption that BOTH parents in a custody dispute are equally fit, and must continue to provide for any child(ren) after a divorce, would provide a service to our family court system. Many of the hostile cases would never make it to clog up the legal system. This would allow family courts to focus its energies on the most seemingly irresolvable cases.

I say that if SB 107 would have been in place, I would not have had to fight for the last year for equal time with my child. If SB 107's provisions had been in place, I would have avoided a three year custody battle in 1994, when I was first divorced. I urge you to support the Equal Shared Parenting bill as empowerment for parents and good public policy for children. It is time our family court standards accurately reflect the current roles of both moms and dads- loving, working for, nurturing and raising their children in our society. It is time that the law empowers divorced parents to maintain a relationship with their children on equal basis. Our children are not suffering from too much parenting either in in-tact families or in divorced families; they suffer from too little parenting. SB 107, the Equal Shared Parenting bill promotes children having the advantage of more parental nurturing from both their mom and dad. This is good public policy.

TESTIMONY IN SUPPORT OF SB 107

THOMAS G. PFEIFFER
4/20/99

Members of the Senate Committee on Judiciary and Consumer Affairs:

Thank you for the opportunity to be heard on this important issue.

Prior to 1996 I knew very little about the issues that bring us here today. I was involved in raising my three children with my spouse and focused on my career with the University of Wisconsin. I have lived and worked in Dane County for 22 years. Living in this liberal stronghold and the seat of state government all of these years, my assumption had been that in situations where the parents could no longer agree to live together and where both were actively involved in the nurturing and rearing of their children, that equal placement and custody would be the norm for those who desired it. It seemed only natural and fitting with the progressive roots that Wisconsinites so often tout to their out of state acquaintances. I thought we had progressed beyond the gender-biased social and political structures that still unfortunately characterize so much of the "outside world".

When my own marriage of 10 years came to an end in 1996, I was confronted with a set of realities that bore little resemblance to my imagined gender neutral equal co-parenting solution to the trauma of a divorce with kids. I have encountered instead a nightmare that has gone on incessantly, a system that speaks to "the best interests of my children", but seems to know nothing of what it speaks. I have become (and so have my children) a citizen without rights in the face of a family court system that seems more interested in protracted litigation and excessive attorney costs than in the basic notion that a parent is best able to decide what is right for his or her children.

It was nearly a month after our separation that a "Temporary Hearing" was held. Here is one of the great oxymorons of this system, like the old joke about "military intelligence". The temporary order lasted from late 1996 to late 1998, nearly two years! In the time between separation and the temporary hearing I was allowed only a handful of visits with my children and maybe one overnight. Why? Because my spouse didn't want me to have time with them. My request at the temporary hearing and throughout the next excruciating two years of legal battles was that I receive equal time with my children. In response to my spouse's opposition to this, the court ordered the "services" of a guardian ad litem to "study our situation". Weeks turned into months without my being able to have other than an occasional visit with my children. The guardian ad litem was a busy man and Christmas was a hectic time in his life, so decisions got put off until further study. My children have had to endure countless hours of meetings with psychologists, which the GAL had to conference with frequently in order to see how they were adjusting. With the help of her lawyer, who was married to one of the psychologists in the same practice that my children, my spouse, and for a while even I was using, the psychologists became the "knights" in an orchestrated chess match where my children were the "pawns".

Even though there was involvement by Family Court Counseling Service and the GAL and three child psychologists in the decision as to how much time each parent should have with the children, these so-called professionals nevertheless saw fit to order a complete psychological evaluation to "supplement"

the voluminous information they had already gathered. On top of the mounting legal bills, this added another $1600 to my costs, more than the amount that I had been able to put away for my young children's college education at that point! The costs for the GAL have already topped $23,000 (split equally) and he seems to have found a way to keep the bills coming even though our case is over. The psychologists involved in this case have probably grossed $26,000 in fees (mostly covered by insurance, thankfully). My separate lawyer costs have been on the order of $50,000 (not including my share of the GAL costs). Nearly all of this carnage came as a result of my holding steadfast to the principle that my children deserved a father in their lives as much as a mother. Never once did I suggest to the court that the children should be taken from their mother. But this same system was more than willing to bleed the financial lifeblood from this already shattered family to allow their mother to do this very thing.

In case you are thinking that I am some sort of molester or pervert that had to show the courts that I was capable of carrying out an appropriate relationship with my children, let me assure that none of this ever was part of this case. I am a dedicated and involved parent who, unlike most fathers confronted with this same process of humiliation and seemingly insurmountable barriers, chose to fight the system rather than back down and either disappear or become another one of the thousands of disenfranchised fathers that this system has created. For my struggle, I have gained nearly 40% time with my children, a strong showing given the odds against it in a contested case. But at what cost and why?

My children have suffered immeasurable damage from this needless litigation. Their financial futures are very much in doubt thanks to the tremendous costs involved. But at least they have both parents in their lives and so I figure they're better off than so many other children from contested divorces where they essentially lose one parent, generally the father. As for me, I now have a lifetime of debt to look forward to. The money I could have used to take my children to interesting places to see other cultures and geographies is going to lawyers. The money for their sports, clothes, gifts, activities, and enrichment will have to come from their mother because I am ordered to pay her rather than spend it on my children directly. Any funding for college goes on the proverbial back burner.

The only people who have gained from this horrendous trauma and waste are the lawyers (GAL included) and the psychologists. The big losers are the children and the parents. I suspect you will be hearing from many lawyers and psychologists about the need to preserve the system as it is currently structured, and on how the interests of children are being served. I am here to tell you, as an educated citizen with a masters degree in counseling and a long career of service to the State of Wisconsin, that this notion is a stinking pile of dung. It is clearly in the best interests of the lawyers, the family court system, and the psychologists who feed around the edges of this carnage to maintain the status quo, a sort of full employment system for our many brethren of the legal persuasion.

I have asked many lawyers throughout this process why this or that aspect of this long struggle had to be the way it was. The routine answer I kept getting is that they don't write the laws; they only "interpret" or follow them. Of course it is often what people don't say that is most revealing, if one can get to that truth. In this case the laws serve those who gain their employment from such seedy matters as aiding a parent in taking away the children from the other parent, or even helping the other parent in regaining time with the children. This is not right. Today we have a chance to be heard on the issue of the law that is so often used as the reason things are the way they are. Today you have a chance to decide between what is best for children and what is best for lawyers. I hope you will weigh this responsibility with great care.

Stop and ask yourselves whether the laws as they are currently configured promote the full involvement of both parents in a divorce or act against it. Does the current system support the parent with lesser time, or simply penalize him (or her) for being in this position? Would the children of this state be better off with a disenfranchised parent and a "single parent" or with two equal parents shouldering parental responsibilities? Is it more important for fathers to be writing checks to the Child Support System or to be working with their kids on homework, going on field trips, or coaching their soccer or baseball team? It would seem that our current laws have come down heavily in favor of the notion that fathers are most important as a source of funding to single mother families. Yet this very phenomenon of single-mother families is the often-cited societal problem that is said to lead to so many of the ills we all say we want to do something about. Teen drug usage, violence, drop outs, pregnancies, emotional maladjustments, and the like are all strongly linked statistically to growing up in single parent (read "single-mother") families. Why then aren't we promoting the active involvement of both parents in the lives of our children in order to actually do something positive to end this cycle?

I am here before you because I am tenacious and persistent. If I were not, I would have my children one, maybe two overnights in a two week period. Think of all of the fathers who weren't so tenacious. In my situation they would have possibly lost interest in their children's lives, feeling unwanted and disenfranchised in their new societal role as "payor". Perhaps they would then turn their attention to a new relationship and starting another family. Perhaps they would have gotten fed up with never having any money to spend on themselves or their kids and fled to another part of the country. Does this sound unthinkable to you? Do you believe that this is happening, even right here in Madison, Wisconsin? You betcha it is. And what about those kids? How will they do the rest of their young lives without Dad around? My guess is that they will end up disenfranchised just like the parent that got relegated to the status of "payor" versus parent.

Look at the problem this way perhaps. Equal parenting is good for the kids and is good for the fathers who would otherwise become disenfranchised. I think a strong argument can be made for it also being a good thing for the mothers of these children, to develop their careers, skills, or other interests. The whole family can benefit. Less litigation means you can trim costs from the child support and family court bureaucracies, saving taxpayer dollars. More involved parents means kids with more of their needs met. This in turn should lead to less costs for schools and the juvenile justice systems to attend to those children who seem to be on an endless roller coaster of school and court-related interventions. Think of how some of the decisions being weighed here today can benefit society as a whole while it benefits the individual children so traumatized by the loss of a parent. We are at the end of the millennium. Isn't it time we address one of the final strongholds of our gender biases? Do this for the kids. The lawyers can find something else to do for a living!

Thank you for the opportunity to make my position on this important issue known to you.

Thomas G. Pfeiffer
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