

11hr_AC-He_ab0271_pt01



(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2011-12

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on Health...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (October 2013)

Assembly

Record of Committee Proceedings

Committee on Health

Assembly Bill 271

Relating to: ordering support for an adult disabled child.

By Representatives Kapenga, Brooks, Thiesfeldt, Craig, Kooyenga and Petersen.

February 17, 2012 Referred to Committee on Health.

March 7, 2012 **PUBLIC HEARING HELD**

Present: (11) Representatives Stone, Severson, Kaufert, Van Roy, Strachota, Petersen, Litjens, Richards, Pasch, Seidel and C. Taylor.

Absent: (0) None.

Excused: (0) None.

Appearances For

- Rep. Chris Kapenga (Author), Delafield — 33rd Assembly District
- Kristen Hildeband, Milwaukee — Self

Appearances Against

- Janet Nelson, Milwaukee — WI Child Support Enforcement Assn

Appearances for Information Only

- None.

Registrations For

- None.

Registrations Against

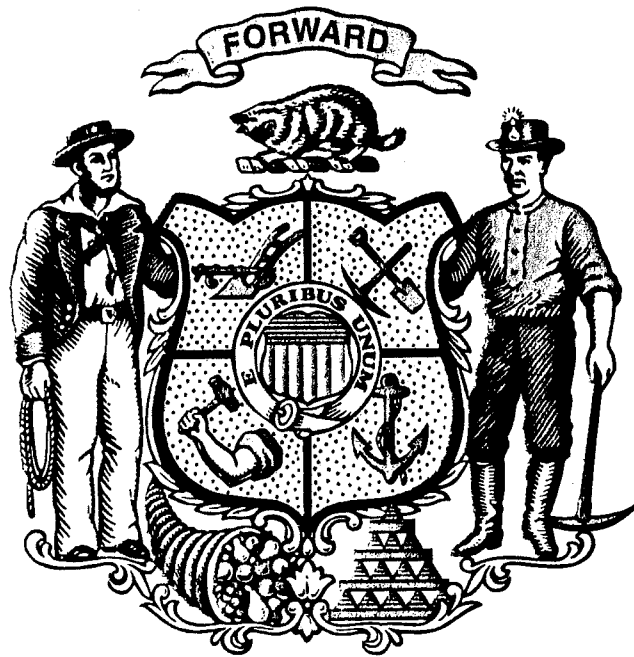
- Tom Masseau, Madison — Disability Rights Wisconsin
- Sandy Lonergan, Madison — Family Law Section - State Bar of WI

Registrations for Information Only

- None.

March 15, 2012 Failed to pass pursuant to Senate Joint Resolution 1.

Marsha Dake
Committee Clerk



March 7, 2012

To: Members Assembly Committee on Health

From: Tom Masseau, Executive Director
Disability Rights Wisconsin

RE: AB-271. Disabled Child Support - Opposed

We write today to express our questions and concerns regarding AB 271. We have recently changed our position on this bill from neutral to opposed as we have had more discussions with our coalition partners and have further reviewed the potential impact of this bill. While the motivation behind the bill may be laudable—that the divorced parent who accepts moral responsibility to continue caring for a child with a disability when that child reaches adulthood should receive financial assistance from the other parent—that motivation has the potential to further stigmatize people with disabilities.

We have seen many individuals, even those with the most significant disabilities, live successfully in the community outside of their parent's homes, therefore we are concerned that this bill could promote a situation which would undermine independent possibilities since it does not specifically address what role the adult with a disability would have in the family court proceedings. There are many adults with disabilities who would fit the description of "disabled" in this bill and also be competent to represent themselves (or be able to choose counsel without the aid of a guardian ad litem). The bill provides no voice for the adult with disabilities to express their wishes.

In addition, there are several practical problems with the bill. Our specific concerns with the bill are:

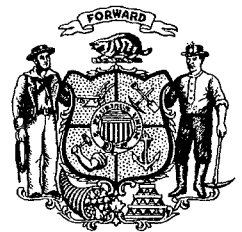
- The bill does not take into account the effect a support payment would have on public benefits the adult with disabilities may be receiving. It could negatively impact the person's social security disability benefits, Medicare or Medicaid assistance, food share, public housing. There are no standards in the child support guidelines for how the court should take these factors into account in determining a child support order. These are benefits that are intended to directly support the individual, while in the bill contains no requirement that child support funds be spent on the adult child with a disability.
- By allowing the support obligation to be "indefinite" the bill raises the specter of an 85 year-old social security recipient continuing to pay child support on his 65 year-old "child." At some point a disabled person's care is principally an obligation of the larger society within which he or she lives. We believe the appropriate point for that to occur is when the child reaches the age of majority—or age 21 if the disabled child remains in high school.

- The bill seems to violate equal protection since no similar support obligation is imposed upon married couples. This bill allows the obligation to be imposed on both divorced parents if neither have “physical custody” of the adult child. By contrast, a married couple’s support obligation ends at 18 or 19 regardless of whether the couple has physical custody of the adult child. This law might encourage couples to stay married (perhaps even when abuse is present) simply to avoid a potentially mutual child support obligation.

Thank you for considering our concerns. Please feel free to contact our agency with additional questions.



WISCONSIN STATE LEGISLATURE



FAMILY LAW SECTION

March 7, 2012

TO: Members, Assembly Committee on Health

FR: Attorney Tom Walsh, Chair
Family Law Section Board

RE: opposition to AB 271

The Family Law Section is comprised of approximately 1,100 attorneys, guardians ad litem, family court commissioners, and judges from around the State who have a special interest or focus in family law. Most members specialize in family law, and work with families involved in separations, divorce, and post-divorce issues. The Section also benefits from the involvement of experts in fields such as psychology, counseling, and social work. As individuals and as a group, when dealing with children's issues, the Family Law Section is driven by the best interests of the child standard.

The Family Law Section opposes AB 271 for the following reasons:

- **The bill would encourage more litigation in the family court system.**
 - Because the support obligation for an adult child would only exist if the child is disabled, it will encourage parents to litigate over whether their adult child meets the definition of "disabled."
 - The current child support guidelines and factors for a court to use in ordering child support are based on the needs of **minor** children. A whole new body of case law will need to establish how these guidelines and factors designed for minor children should be applied to adult children who are disabled. The bill will encourage litigation between the parties over the appropriateness and level of care their child is receiving and how the level of care should impact the support order.
 - It allows any parent who has been involved in a family court action and has a disabled adult child who was disabled when they were a minor to go back to court to ask the other parent to pay support for the adult child. It explicitly says passage of the bill is a substantial change in circumstances. No matter how long ago a couple with an adult disabled child has been separated, this bill will now give them a reason to go back to court and litigate whether one parent should pay support for the disabled adult child. A couple who were divorced thirty years ago and have a disabled adult child would now have a reason to go back to court and litigate over an entirely new legal issue.
- **The bill would impose an obligation only on parents who have separated and have filed a family court proceeding.** The obligation to support a disabled adult child would not exist for intact families. The state cannot force a married couple to support their disabled adult child, and the state should not be able to force only separated parents to support an adult disabled child.
- **The bill does not take into account the effect a support payment would have on public benefits the disabled adult child may be receiving.** It could negatively impact the adult disabled child's social security



STATE BAR OF WISCONSIN

disability benefits, Medicare or Medicaid assistance, food share, public housing. There are no standards in the child support guidelines for how the court should take these factors into account in determine a child support order. The bill will likely result in Wisconsin's disabled population receiving fewer benefits.

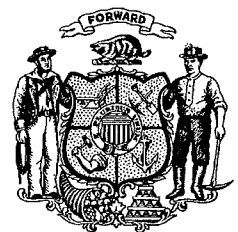
- **The bill does not address what role the disabled adult child would have in the family court proceedings.** There are many disabled adults who would fit the description of "disabled" in this bill and be perfectly competent to represent themselves (or be able to choose counsel without the aid of a guardian ad litem). The bill provides no voice for the disabled adult child to express what their wishes may be (either pro se, through counsel, or through a guardian ad litem).
- **The bill does not address what role a disabled adult's guardian would have in the family court proceedings.** Many disabled adults may have a guardian who is not their parent. The guardian has duties to the disabled child regarding their care and needs which would be spelled out in the guardianship order. The bill provides no role for the guardian of an adult disabled child to play in the family court proceedings.
- **The bill gives broad authority for a court to make any "other orders regarding the rights or duties of the parents with respect" to the adult disabled child.** There are absolutely no standards in the family law statutes for a court to look at to determine what type of "other orders" should be entered. Giving a court broad authority without providing any standards for how the court should exercise this authority will lead to more litigation. It is also possible the family court could enter orders contrary to existing guardianship orders. There are no provisions in the bill for the disabled adult or their guardian to participate in the proceedings, and so these "other orders" could be entered without their input.

Thank you for your consideration of our views. If you have any questions or need additional information, please feel free to contact me or Sandy Lonergan, Government Relations Coordinator.

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.

The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.

If you have questions about this memorandum, please contact Sandy Lonergan, Government Relations Coordinator, at slonergan@wisbar.org or (608) 250-6045.





CHRIS KAPENGA

STATE REPRESENTATIVE • 33RD ASSEMBLY DISTRICT



Chairman Stone and Members of the Committee,

271

Good morning. I would like to thank you for bringing Assembly Bill ~~610~~ in front of your committee for a public hearing.

Under current law in Wisconsin, when a court orders a judgment of divorce the court must order either or both parents of a minor to pay child support until the child reaches the age of majority. In Wisconsin, a child reaches the age of majority on his or her 18th birthday, or if still in school, at graduation from high school or at age 19, whichever occurs first.

Current law does not take into account where the child is disabled, mentally or physically, and unable to support himself/herself upon reaching the age of majority. In these situations the custodial parent is left with the burden of care, and is often put into a distressed financial situation that qualifies them for state assistance thus shifting the burden to the taxpayer.

This bill will authorize a court to order support for an adult disabled child of the parties for a definite or indefinite time if the court finds that the child needs substantial care and supervision because of a physical or mental disability, that the child is not and will not in the future be capable of supporting himself or herself, and that the disability, or the cause of the disability, exists or existed before the child's 18th birthday.

The court would be required to determine the support amount in the same manner and by using the same criteria as the court currently does for a minor child. This will ensure that the needs of an adult-disabled child will continue to be considered and provided for by one or both parents such that the custodial parent is not forced to turn to the state for help.

The potential liability for supporting an adult disabled child falls into three categories. The first category eliminates all liability for the support of a disabled child. The second category imposes liability for a child who becomes disabled before the child reaches the age of majority and the disability is such that the child cannot become self-supporting. The third category imposes liability on the parents for the support of a disabled child, whether the disability began before or after the child reached the age of majority.

The requirement of continued support for an adult disabled child is generally founded on statute or case law, and is based on a compelling moral duty for parents to care for their adult disabled children and public policy that a child should not be a burden on the state.

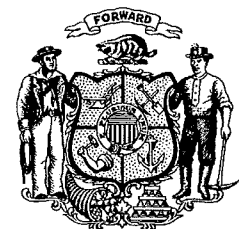
About half of the states currently require parents to contribute to the support of a child who becomes disabled or unable to support themselves if the disability began before the child reached the age of majority.

In eighteen states and the District of Columbia, parents are held liable for the support of their disabled children, whether the disability began before or after the child reaches the age of majority.

Nine states, including Wisconsin, currently relieve the parents of all liability for supporting a child after the child reaches the age of majority.



WISCONSIN STATE LEGISLATURE



Wisconsin Child Support Enforcement Association

The WCSEA, an association of Wisconsin's 71 county child support agencies, opposes AB 271, regarding Child Support for Adult Disabled Children, until further study can be made.

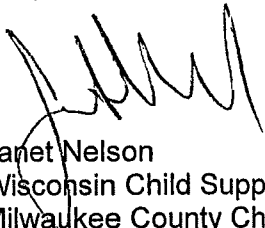
1. Wisconsin's child support agencies would be obligated to provide services for adult disabled children. This would significantly expand the services agencies provide at a time when State funding for CSAs has been cut in half.
2. The language of the statute allows an adult disabled child, whose disability was known prior to emancipation, to apply for IVD services for an Action to Compel Support against married parents (intact families). These are families who are not currently in our caseload.
3. Adding adult disabled children to those whom parents are required support will have an impact on the financial resources available for minor children also supported by parents of adult disabled children. Decreased resources for minor children may increase public assistance caseloads, which further impacts CSA caseloads.
4. CSAs would be responsible for litigating whether an adult child meets the bill's definition of disabled: whether the child requires substantial care and personal supervision because of a physical or mental disability, whether the child is incapable now and in the future to support him or herself, and whether the disability existed or the cause of the disability was known to have existed prior to the child's 18th birthday. Again, a substantial expansion of current duties.
5. CSAs are responsible for reviewing and adjusting support orders throughout the time orders run. Orders for adult disabled children potentially run throughout the lifetime of parents, further increasing CSAs' caseloads.
6. CSAs are substantially funded with federal performance funding. This bill implicates potential performance issues arise in the areas of:
 - Our ability to meet federal timelines for establishing support orders,
 - Collecting current support indefinitely for disabled adult children,
 - Collecting arrears when a current support order runs indefinitely,
 - Closing cases, particularly related to statute of limitation issues.
7. Wisconsin's DCF regulations regarding setting support orders and calculating support for serial families will require review if this bill is passed.
 - Our percentage standards were set based on studies of the needs of minor children and the appropriate contributions from each parent for the support of children who are not in intact families. They may not be appropriate for the support of adult disabled children who may or may not live on their own.
 - Current serial family calculations may not be appropriate when an adult disabled child is involved.
8. The bill does not address the impact of public assistance already available for adult disabled children upon the setting of support orders for those children.

Wisconsin Child Support Enforcement Association

9. The bill includes the requirement of an order regarding health care coverage for the adult disabled child. We don't know how this will work with adult disabled children's Medicare/Medicaid eligibility, or limitations on the length of time parents are able to keep adult children on employer-provided health insurance. Current health insurance orders for minor children include provisions regarding the parents' responsibility to pay for unreimbursed medical expenses for minor children. The bill isn't clear whether the appropriateness of this provision for adult disabled children has been considered.

10. The bill requires the court to determine to whom the support for an adult disabled child is to be paid (a parent, custodian, guardian or the child) and to make any orders regarding the rights and duties of the parents with respect to the child that the court determines advisable. This is a major expansion of traditional family court authority, and its impact on CSAs filing motions for support for adult disabled children is unknown.

Respectfully submitted,



Janet Nelson
Wisconsin Child Support Enforcement Association
Milwaukee County Child Support Services
Room 101 Courthouse
901 N. 9th Street
Milwaukee WI 53233
414-278-5269
Janet.Nelson@milwcnty.com