



ROBERT BROOKS

STATE REPRESENTATIVE • 60TH ASSEMBLY DISTRICT

Senate Committee on Insurance, Financial Services, Government Oversight and Courts
Thursday, February 20, 2020

Thank you for holding a hearing on Assembly Bills 93, 95, 96, 97, 98, 99, 100, 101, and 102 and allowing me to testify in favor of this legislation.

Last session, I served as the Chair of the Study Committee on Child Placement and Support. Senator Lena Taylor was the committee's vice chair.

The committee was tasked with reviewing current standards for determining physical placement and child support obligations.

The committee was composed of 5 legislators and 8 public members, including a judge, court commissioner, private family law attorney, domestic violence advocate, fathers' rights activists, and county child support agency directors.

The diverse membership of the committee allowed us to hear from multiple stakeholders. It was important for us to receive feedback from both practitioners and parents that would be directly impacted by policy change – both of which were represented on the committee.

Each of the bills before you today received bipartisan support in the Assembly Committee on Family Law and was passed via voice vote on the Assembly floor in January.

Assembly Bill 93

Assembly Bill 93 is a piece of Uniform Law Commission legislation, which has already been enacted in 14 states. It creates a process and standards for temporary delegation of custodial responsibilities when a parent is deployed in military or national service. During deployment, that parent may grant his or her custodial responsibilities or visitation to stepparents, grandparents, great-grandparents, or adults who have a parent-like relationship with the child. The bill also establishes a timeframe for termination of these temporary custodial responsibilities when the deployed parent returns. The timeframe depends on the length of deployment.

The study committee heard testimony that temporary custody and placement arrangements are challenging for military families during deployment. This bill would help give these families a sense of certainty during deployment.

Assembly Bill 95

Assembly Bill 95 allows courts to approve contingency placement agreements. These would lead to modifications to legal custody or physical placement based upon future events that are certain to occur within two years' time. For example, a change in a child's school or extra-curricular activities.



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Based on feedback during the study committee process, contingency placements cannot be based on anticipated parental behavior modification, such as, completion of domestic violence or AODA treatment.

The study committee heard testimony regarding the value of encouraging parents to engage in advance discussion about anticipated issues and changes in the family and to attempt to resolve those issues together.

Current limitations on modifying orders favor the status quo on placement arrangements, but these limitations are not realistic in situations when change in life events and a child's need can be anticipated in the near future.

Assembly Bill 96

Assembly Bill 96 updates current DCF administrative rules relating to child support formulas to reflect that shared physical placement arrangements are now very common and should not be considered special circumstances.

This is a technical cleanup bill that codifies current practice in statute. Statute should be updated to reflect that shared physical placement arrangement are no longer "special circumstances." This bill will help avoid switching to a new methodology for calculating child support payments. It is important to note that formulas used to calculate child support amounts are not changed.

The committee heard testimony that the modern focus of child support is on a child's right to share in both parents' income as if the family was intact, and is based on national studies of family expenditures. Assembly Bill 96 makes updates to reflect current practice.

Assembly Bill 97

Assembly Bill 97 adds a new statement to the general principles for child custody and placement. It states that any order presumes that the involvement and cooperation of both parents regarding the physical, mental, and emotional well-being of the child is in the best interest of the child.

The study committee wanted to emphasize that cooperation in parenting and involvement by both parenting parties is usually in the child's best interest.

Assembly Bill 98

Assembly Bill 98 specifies that if a court grants less than 25% physical placement to a parent, a finding of fact must be entered as to the reason greater placement with said parent is not in the best interest of the child.

Currently, parents have no understanding of why they are not being awarded placement. This bill allows parents to have clear knowledge of which factors they are not meeting. This allows them



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to work on these issues. Given the trend in shared and substantially equal placement arrangements, the committee found value in having a court explain the reasoning when physical placement with one parent is limited.

In addition, Assembly Bill 98 reorders statutory best-interest factors, but specifies that the factors are not necessarily listed in order of importance. The study committee heard testimony suggesting that the factors be rearranged for easier application. This bill eliminates two considerations: the stability in placement and availability of child care services. Study committee members thought these considerations were already covered in other factors. These two factors kept placement in place without allowing for parents to adjust to a new way of life after divorce.

Assembly Bill 99

Under current law, divorcing parties are required to file a parenting plan with the court only after mediation fails or if mediation is waived. Assembly Bill 99 requires parents to submit proposed parenting plans to family court services or the mediator at least 10 days before mediation. Parents are not required to exchange parenting plans with each other prior to mediation.

The parenting plans must include more focus on co-parenting, rather than financial arrangements. The study committee heard testimony that co-parenting proposals are effective in helping parents focus on a child's need and determining arrangements that work best for the family, without litigation. The effectiveness of the current parenting plan process is largely lost and this bill remedies the current system's failure.

Assembly Bill 100

This bill would allow courts in a family law action involving minor children to take judicial notice of records for specific convictions and restraining orders. The convictions must involve crimes subject to domestic abuse surcharge, crimes against the convicted individual's child, or restraining orders that were ordered by the other parent.

The study committee heard testimony that the court is frequently unaware if a family has a history of domestic violence, even when a parent has a conviction or injunction that is publicly available in court records. Judges do not always ask a party about possible history of domestic violence, unless prompted by something in the case file. Additionally, victims of domestic violence are often hesitant to speak up about past instances, so judges would be able to look at records themselves.

This bill would allow judges to have all of the relevant information when determining periods of physical placement of a child.

Assembly Bill 101



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Currently, family support combines portions of child support and maintenance into a single payment. For tax purposes, family support payments are considered to be maintenance payments, so the payment is deductible to the payor-spouse and taxable to the recipient-spouse.

Under the federal Tax Cuts and Jobs Act of 2017, maintenance payments, such as family support, are no longer deductible for the payor and not included as income to the recipient.

Due to this tax change at the federal level, the study committee introduced Assembly Bill 101. This bill eliminates new family support orders in order to ensure that these payments are consistent with current state and federal tax laws.

Assembly Bill 102

Under Assembly Bill 102, DCF would no longer be able to include variable housing costs for determining gross income for child support. The department would continue to calculate gross income using veterans' disability compensation benefits and military basic allowance for subsistence and housing.

The study committee heard testimony that using variable housing costs, rather than base housing costs, leads to an increased number of court actions for a revision of child support upon each military move. The use of base housing costs would create stability and better reflect the variable housing costs purpose.

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

ADMINISTRATIVE OFFICE

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LEGALAction

OF WISCONSIN

TO: Members of the Senate Committee on Insurance, Financial Services,
 Government Oversight and Courts
FROM: Abby Bar-Lev Wiley, Legislative & Compliance Director, Legal Action WI
RE: Impact of AB 99 on Legal Action's Clients
DATE: February 20, 2020

My name is Abby Bar-Lev Wiley, and I am the Legislative & Compliance Director of Legal Action of Wisconsin. Legal Action of Wisconsin (LAW) is a nonprofit law firm that provides free civil legal aid to low-income people in Wisconsin's 39 southern counties. One of our priority areas is serving low-income, domestic abuse victims with their family law needs; we work to help victims become safe. Our Family Law attorneys may handle a variety of types of cases for domestic abuse victims, including domestic abuse and child abuse injunctions; divorce cases; maintenance and child support; child custody and placement; paternity, and modification of divorce, paternity, custody, placement, maintenance, or child support judgments, among other types of cases.

Legal Action is concerned that AB 99, regarding parenting plans, would negatively impact our clients. The bill would add an extra burden on our clients by requiring them to create parenting plans *before* the initial required mediation plan. The clients we see are in high-conflict situations. Preparing a plan before mediation is not likely to save them any time nor serve any benefit. It could, however, be a fodder for abuse if one party is attempting to coerce the other party into putting something into their plan that they would otherwise not choose on their own. In turn, it could foreseeably turn out that a mediator gets two parenting plans that look similar and thinks it's a simple case, when in reality there was underlying coercion. Without a mediator working with them at the initial drafting of the parenting plans, there's a significant gap in the mediator's understanding of the situation. For many divorcing or separating couples in low-conflict situations, this does not represent be a problem. But for the clients that we see at Legal Action, AB 99 could open an avenue for further manipulation and control.

Moreover, *requiring* the creation of parenting plans before mediation takes power away from local courts. Currently, local courts across Wisconsin are able to order the schedule of parenting plans based on their calendars and taking into consideration the context of the cases before them. AB 99 would unnecessarily take away power from courts that are doing this work day in and day out.

Thank you for your consideration. Please do not hesitate to contact me at abw@legalaction.org or (414) 274-3425 if I can be of further assistance as you evaluate this bill.

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