



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2003 Assembly Bill 244

Assembly Amendments 1 and 2

Memo published: December 9, 2003

Contact: Anne Sappenfield, Senior Staff Attorney (267-9485)

2003 Assembly Bill 244 makes various changes to laws relating to guardians ad litem (GALs), parent education, and parenting plans in actions affecting the family.

ASSEMBLY AMENDMENT 1

Orders for Income Withholding

Assembly Bill 244 permits the family court to order income withholding in order to pay for a GAL's compensation and fees. The money withheld is then assigned to the GAL or to the county if the county has paid the compensation and fees. The bill directs the court to provide notice of the assignment to the entity or entities that must withhold the income (e.g., an employer) in the manner provided under current law for income withholding to pay child support, maintenance, and family support.

To clarify that these income withholding orders should not be administered through the KIDS system, *Assembly Amendment 1*, provides that the court must send notice of the income withholding and assignment of the income withheld to the last-known address of the entity or entities that must withhold the income instead of cross-referencing current law for notices of income withholding.

Information on Parenting Plans

Under *current law*, in an action affecting the family in which legal custody or physical placement of a minor child is contested, a party seeking sole or joint legal custody or periods of physical placement must file a parenting plan that provides information relating to the party's proposal for custody and placement.

The *bill* requires the clerk of court to provide instructions for completing and filing a parenting plan to each person who files a petition or receives a summons initiating an action affecting the family.

Under the *amendment*, the clerk of court must provide a copy of the statute that requires and describes parenting plans (i.e., is *not* required to provide instructions). Also, the amendment clarifies that this requirement applies only to parties that have a minor child.

Judgment Based on Parent Education Attendance

Under *current law*, at any time when an action affecting the family in which a minor child is involved is pending, and in which the court or a circuit court commissioner (CCC) determines that it is appropriate and in the best interests of the child, the court or CCC may order the parties to attend a program concerning the effects on a child of a dissolution of the marriage.

The *bill* requires the court or CCC to order the parties to an action affecting the family in which a minor child is involved to attend a program that provides instruction on or training in topics including the effects of divorce on a child, current family law, and parenting and coparenting skills.

Under *both current law and the bill*, the court or CCC may require the parties to an action affecting the family in which a minor child is involved to attend a parent education program as a condition to the granting of a final judgment or order in the action.

The *amendment* provides that the court or CCC may not require the parties to a paternity action to attend a parent education program as a condition to the granting of a final judgment or order.

ASSEMBLY AMENDMENT 2

Under *current law*, an income withholding assignment for child or family support has priority over any other assignment, garnishment, or similar legal process.

Under the *bill*, an income withholding assignment for GAL compensation and fees or for fees for mediation and custody and placement studies also has priority over any other assignment, garnishment, or similar legal process.

Assembly Amendment 2 eliminates the provision of the bill giving priority to income withholding orders for various fees and GAL compensation. The amendment also requires such an income withholding order to include a statement that income withholding orders for child or family support have priority over any other withholding or assignment order.

LEGISLATIVE HISTORY

Assembly Amendments 1 and 2 were adopted on a voice vote by the Assembly on November 4, 2003. The Assembly also passed the bill, as amended, on a voice vote on that date.

DLS:ksm:rv:jal;ksm

AB 244

County	Parent Education	Comments
Adams	Yes	Parenting classes are always ordered in divorce cases involving minor children. In Adams County the classes are offered through UW Extension at a very low cost of \$3 per parent per session. Sessions are offered a couple times a month, whenever there are enough parents. The session lasts 1.5 -2 hours, of which the first half hour is a movie. The remainder to the session focuses on how to keep the children out of the divorce and how to co-parent. No classes are currently provided to parents in paternity cases.
Ashland Barron	Yes	Ashland County has a program, run jointly with Bayfield County. Each parent pays \$30 which covers most of the costs.
Bayfield	Yes	Bayfield County has a program, run jointly with Ashland County. Each parent pays \$30 which covers most of the costs.
Brown	Yes	I know Brown and Door counties have programs for CHIPS families, but I am not aware of any specific programs for divorce families, other than the effects of divorce on children (less extensive than what is mentioned). Often NWTC offers a class of some sort, but it often gets canceled because of lack of mandatory attendance.
Buffalo	Yes	Both Buffalo and Pepin counties run the same program entitled "Sandcastles." (Both counties have the same Family Court Commissioner) It is a mandatory 4 hour program. What's interesting about this program is that it is interactive and all children between ages 6-16 are required to attend with their parents. The cost is \$35 per person with a cap per family at \$100. The program is not required in paternity cases.
Burnett Calumet		A class entitled "Children in the Middle" is required in both divorce cases and paternity cases where custody is contested. It is a one time session lasting about 2-3 hours. (Both Burnett and Polk counties have this program. Both counties have the same Family Court Commissioner.)
Chippewa	Yes	Mandatory one-time parenting conference/seminar held for all divorce cases with minor children. No classes required for parents in paternity cases.
Clark	Yes	Classes are also offered in the evening last that I heard. My clients have indicated that it's a pretty good class although some of the information is already common knowledge to the majority of parents who are thinking of their kids interests. They were also offering a session for the children which was well received.

Columbia	Yes	Not mandatory; possibly is handled thru contracts with private social workers A one-time class is required for divorce cases with minor children called "The Effects of Divorce on Children." Nothing is required in paternity cases, although if parents end up going through mediation it is possible they would participate in this class as well.
Crawford	Yes	Group classes with all recently filed cases; power point presentation. Dane County Family Court Counseling Service has been offering a 3 hour Parent Education class since 1995, prior to that time we were offering a 2 hour "Orientation Class", containing similar curriculum. In Dane County attendance is mandatory if you have been referred to FCCS for either mediation or study. Parent Education is seldom waived. Mediation might be waived if the parents have been working with someone in private practice on their child related disputes or if they meet one of the statutory reasons for waiver. The program is done in Power Point, with program handouts and a Dane County Resource Booklet available for the purchase of \$2.00. As of 1-1-04 it costs \$10 per parent, non waivable fee, to attend.
Dane	Yes	Mandatory and lasts about 4 hours with good materials (no final hearing set without attendance);
Dodge	Yes	I know Brown and Door Counties have programs for CHIPS families, but I am not aware of any specific programs for divorce families, other than the effects of divorce on children (less extensive than what is mentioned). Often NWTC offers a class of some sort, but it often gets canceled because of lack of mandatory attendance.
Door	Yes	
Douglas	Yes	One 3-hour class required for all divorce cases involving minor children. It is provided through the local technical college. It may be court ordered in paternity cases if custody is being challenged, but it is not mandatory in these cases.
Dunn	Yes	Classes are provided through a contract with an agency called "Positive Alternatives." Class consists of 3 sessions on 3 weekends. Parties pay the costs which are capped at a certain level. Provisions are made for those unable to pay. No classes are required for parents in paternity cases.
Eau Claire	Yes	In divorce cases there is a 2-hour class which County residents referred for mediation must attend. The cost is \$30.00 which can be reduced or waived dependent on financial status.
Florence	Yes	Program consists of a one-hour taped video that parents must watch if their divorce proceedings go through mediation. This program is also utilized in paternity cases with custody conflicts that are put through mediation.

Fond du Lac	Yes	Fond du Lac County offers and requires a 2 hour PEC in all divorce cases involving children. Sometimes, I require parents in a paternity to attend, but the program doesn't "fit" as well. Most parents comments regarding the program are positive. Currently, I'm in the process of restructuring our class and I'm also putting together a class for children to attend in very high conflict cases
Forest Grant		When the need for parenting classes is brought to the judge's attention the parents are routed to Onieda County for classes
Green	Yes	Green County has had a parenting class for a couple of years now, and requires parents with minor children to attend. They each pay a fee (currently \$45.00), which covers the materials and the cost of the instructor. The only county funding required is for indigent parents, which is generally not a substantial amount. There are budget lines required, as we advance payment to the provider of the materials and to the instructor. We do charge a "late fee" for those who don't pay when ordered, over time this has not amounted to much but does help cover the indigency expenditures. Ours is a small county, and I expect that this system might generate real budget numbers in a larger one. Corporation Counsel pursues those who don't pay under contempt sanctions. Classes are available (and, in fact, required by the judges) The parties pay for the classes (roughly \$45 a piece), vast majority of folks say the classes were worth taking
Green Lake	No	Although Green Lake County has attempted to set up a program for parents going through divorce, nothing is currently utilized
Iowa		A four-hour course is presented for parents in divorce cases by a local volunteer organization called the "Family Resource Center." Parties are notified of the need for parenting education at the time of the hearing on the temporary order.
Iron		No classes are provided for parents in paternity cases, although some efforts to devise such courses are underway locally.
Jackson	Yes	They use the "Children in the Middle Program." It is mandatory in divorce cases, but not for paternity.
Jefferson	Yes	Mandatory. Jefferson County has a program funded entirely by the \$35.00 per person fee.

Juneau	Yes	They require, as a condition of mediation, a brief seminar discussing the affects of divorce on children. The same program is available in paternity cases and it is generally required if there is a custody battle involved.
Kenosha	Yes	
Kewaunee	Yes	Required The UW Extension in Kewaunee county runs a mandatory program for divorce cases entitled "Supporting Children During Divorce." The duration is 2 two hour segments. The same program is available in paternity cases, but not mandatory.
La Crosse	Yes	LaCrosse County has a separate program for divorce and paternity situations. Parents who are divorcing are required to do an orientation in the FCC office and attend Families First. Family law attorneys copresent with mediators/counselors. Runs about 3 hours; hard to waive. We also have a program for children called Sandcastles. Children are required to attend one Sat. morning session. I forget the age limits, but real young kids and older teens do not have to do it. Our FCC sends parents in paternity cases to a free course that is run by the Family Resource Center here in La Crosse. The goal is to teach them to learn to be parents together. It is a one night a week, 9-week course. Among other things, they work on their parenting plans and need not attend together, although it is helpful if they can.
Lafayette	Yes	Classes are available (and, in fact, required by the judges) The parties pay for the classes (roughly \$45 a piece), and vast majority say the classes were worth taking
Langlade	Yes	Classes are available and required (became available in the last year or so.)
Lincoln	Yes	Has education programs for divorce parents but not for paternity parents.
Manitowoc	Yes	We have a co-parent education course for divorcing couples with children that is entirely paid for by the litigants. Since they are the ones who petition for a divorce, we felt justified in requiring them to bear this expense. (Litigants pay \$25 for two 2-hour group sessions.) We also have a co-parenting education course for paternity couples that is provided by our UW Extension education people (county funded). We provide this through county resources because most paternity cases are brought by the state and the litigants have no choice about being in court. The cost to the county is minimal, since the UW Extension provides all kinds of community outreach classes and this is just another one for them. They teach the class about five times per year (3 hours per class).

Marathon	Yes	Mandatory. Marathon County has a parenting program in place. Before we grant a divorce, the parents must attend this class which lasts about 3 hours. Each parent is required to pay \$40 for the class. One of the complaints I've heard is that it is redundant information for the parents who will cooperate anyway and falls on deaf ears for those who will probably not cooperate regardless. From the west side of Marathon County, I have heard complaints about their mandatory program which is partly due to the distance and thus time and costs to Wausau. With drive time, the 4 hour class becomes 6 hours from our area.
Marquette	Yes	This county uses the "Children in the Middle" program, which is mandatory in divorce cases with minor children. It is not mandatory in paternity cases, but can be required if necessary. (The "Children in the Middle" program is also used in Burnett, Monroe and Polk counties.)
Menominee		
Milwaukee	Yes	In Milwaukee County we have mandatory parent education classes for pre-judgment divorce matters (with children) only. It is NOT mandated for paternity pre-judgment cases or for ANY post-judgment matters. There is no funding provided for this in Milwaukee County. Each person has to pay her/his portion of the fee. Most of the program providers in Milwaukee County have a "sliding fee scale" based on income. A number of agencies provide the 3-hour parent ed program in Milwaukee. An information sheet about the requirement is given out at time of filing and included in pleadings to be served on the other party. The class is not required if it is a collaborative divorce and the parties are working with a child specialist (considered a tutorial instead of a group class).
Monroe	Yes	Monroe County requires a program in divorce cases entitled "Children in the Middle." It is not required in paternity cases generally, but may be mandated where there is a custody issue. (The "Children in the Middle" program is also used in Burnett, Marquette and Polk counties.)
Oconto	Yes	Required in divorce classes. Parties pay \$35 fee.
Oneida	Yes	The Family Court Commissioner's office runs a seminar program titled "Children Caught in the Middle." It's a one-time, 2-hour seminar that is required for both paternity and divorce cases as a condition of mediation. It can be mandated in other circumstances, but is not always required.
Outagamie	Yes	

Ozaukee	Yes	In Ozaukee County, there is a non-profit agency that offers a parent education class. The cost is \$30.00 per person. All divorcing parents with minor children are by local court order required to attend such a class unless a waiver is granted. The class does not work well for unmarried parents and so we are not currently using it for them; there has been some discussion about another class for those parents, but so far the agency is not in a position to develop and offer it. The fees charged to the parents do not cover the full cost of providing the class - they rely on grants and contributions to supplement the fees.
Pepin	Yes	Both Pepin and Buffalo counties run the same program entitled "Sandcastles." (Both counties have the same Family Court Commissioner) It is a mandatory 4 hour program. What's interesting about this program is that it is interactive and all children between ages 6-16 are required to attend with their parents. The cost is \$35 per person with a cap per family at \$100. The program is not required in paternity cases.
Pierce	Yes	Pierce County has a mandatory program entitled "Kids First." It's typically a 1 hour group session. The same program is available for paternity cases but is not required.
Polk	Yes	A class entitled "Children in the Middle" is required in both divorce cases and paternity cases where custody is contested. It is a one time session lasting about 2-3 hours. (Both Polk and Burnett counties have this program. Both counties have the same Family Court Commissioner.)
Portage	Yes	Parents in divorce cases are required to attend a program offered through the Big Brothers, Big Sisters program. A fee of about \$35 is charged. The program is completed by just divorcing parents not paternity parents.
Price	Yes	Has education programs for divorce parents but not for paternity parents.
Racine	Yes	Required
Richland	Yes	There are two different classes that are utilized by Richland County. One is through the UW Extension at Richland Center that requires two meetings on Saturdays between 9 a.m. and 12 p.m. The second class is run by Huebner & Associates on Monday nights from 6-7:30. Participant in this second class must be attend on 4 consecutive Mondays. It is possible to use these classes in paternity situations, but they is rarely used.
Rock	Yes??	Rock County does not have a parent education program. The mediation orientation (1 1/2 hours) tries to address some of the basic information. Individual sessions are conducted with the couple.

Rusk	Yes	Parents are required to attend a "mandatory counselling session" which is run through the department of social services. It's basically a brief, one time class for the divorce cases. There are no programs used for paternity cases.
St. Croix		
Sauk	Yes	Parents are required to attend a seminar which discusses the affects on divorce in children. It is a single evening "class" and is required for all divorces affecting minor children. No such programs are offered in paternity cases.
Sawyer		
Shawano	Available	Classes are not mandated for divorce nor paternity cases. It is decided on a case by case basis if such a program is necessary.
Sheboygan	Yes	Sheboygan County requires a 4 hour PEC in all divorce cases involving children under the age of 16. The fee is \$25.00 a person. Currently, that fee does cover the cost of the class. The class is taught on a rotating schedule by two of the frequently used court appointed mediators who work in this county. Most of the feedback regarding the class has been positive. We do not offer a PEC class in paternity cases yet, but a class specific to paternity cases is in development. I anticipate it will be a 3 hour class. If everything proceeds according to plan, we will start including an order to attend the class as part of every paternity judgment beginning next month. Pursuant to sec. 767.115(4)(b), failure to comply may result in the court refusing to hear custody or placement motions brought by a party who failed to attend.
Taylor	Yes	Has education programs for divorce parents but not for paternity parents. We are starting a paternity education program in Taylor but it has been a difficult process because paternity is an entirely different animal than a divorce. The dynamics of the relationships, if any, are much different. In paternity you generally do not have years of history from a relationship to clutter up the mix, but then you have the "one-night stand currently-disinterested impregnator" versus "it's my baby and you're not wanted in my life" arguments.
Trempealeau	Yes	No specific information on the program was provided.
Vernon	Yes	No specific information on the program was provided.
Vilas		

Walworth	Yes	Required. Walworth County has had a parent education class prior to the enactment of 767.115. Our Judges agreed with me that such a class was necessary and authorized it by Judicial order. It is a four hour session taught by a master's level educator. The cost is \$50 per parent. (\$25 goes to the educator who is a private contractor and \$25 goes to the Clerk of Court whose office generates the paperwork). An order to attend the class is provided by the Clerk of Courts in every case filed involving children. It is a requirement of judgement. The parents pay the fee to the Clerk of Court. Fees are seldom waived. The class is well worth the cost. The class goes a long way to defuse volatile situations, help parents understand the task they face, understand the children's needs in a divorce and give them realistic information about how courts operate. A video is available to be viewed in lieu of attendance for hardship cases.
Washburn	Yes	Washburn County already has parent education classes. The cost is covered by the clerk of court's filing fees.
Washington	Yes	Mandatory, several hours and good materials. Washington County has a parent ed class offered through Catholic Charities for a fee of \$25. Participants pay the fee. The class is a nationally franchised curriculum out of Atlanta Georgia; "Helping Children Cope With Divorce." The same curriculum is sometimes called, "Transparenting." We often order parents to attend the class, either in Washington County or anywhere else its offered. The same class is offered by Milwaukee County Family Service and by Waukesha Family Court Counseling. This class contains most, but not all, of the components which would be required under the G.A.L. Study Cmte. bill.
Waukesha	Yes	There is a mandatory 4-hour class for divorce cases entitled "Helping Children Cope with Divorce." No classes are required for parents in paternity cases.
Waupaca	Yes	The Court Commissioner's office runs a seminar program similar to the one in Outagamie County. It is called the "Smile Program" and is mandated for all divorce cases involving minor children. It is not mandated in paternity cases.

Waushara	Yes	<p>Parenting classes are mandated for divorce cases as a condition of mediation. If the divorce is not pending mediation, then a "parenting packet" is filled out by the parents and the information is sent to social services. Any classes or requirements are handled by social services from there. As far as paternity cases, there aren't any specific requirements, but any classes or seminars are usually taken care of through social services, again</p>
Winnebago	Yes	<p>Winnebago County has a Parent Education program which is mandatory in all cases referred or ordered into mediation and in any other cases ordered by the court. The program is also available upon request of a party. Also, in anticipation of this bill passing, Winnebago County created a local court rule requiring all parents in paternity actions to attend a PEC. The Partners in Parenting seminar is collaborative project between the new Parent Program of Family Services, Winnebago Family Court Counseling Services, Child Support and Family Court. The goal is to have parents attend prior to the stipulation conference so they can hopefully better understand the issues that will be raised and be able to reach agreements that benefit all concerned. Two seminars are held each month and individuals have two locations to choose from.</p>
Wood	No (Available)	<p>Wood County does not require parenting classes, though the local Family Resource Center in Marshfield offers assistance and groups for parents and children in divorce</p>

DECEMBER 16TH PUBLIC HEARING

Assembly Bill 244

Kevin from Representative Gundrum's Office

- Testified in Support
- *CR questioned whether or not all counties have resources available to provide parenting classes.*

Bob Anderson

- He submitted written testimony. He has an amendment suggestion.

Patti Seger (Coalition Against Domestic Violence)

- Fees
 - Concerned about working families who are not poverty line but don't have a lot of money. Now they are able to pay as much as they can per month. Under the bill, the wage assignment would be increased.
- Parenting Classes
 - Not all counties have access, may well have to create parenting classes.
- Section 20
 - If there is evidence of domestic violence, there should be the discretion there to allow parents to attend parenting programs separately. Why risk putting a couple together if there has been abuse.

AB
244

Halbur, Jennifer

From: Sappenfield, Anne
Sent: Tuesday, February 17, 2004 3:23 PM
To: Halbur, Jennifer
Subject: AB 244

Hi Jennifer--

I talked to Dan Rossmiller about parent education programs. Currently, most counties do have parent education programs available. Generally, they are not provided by counties but by private entities. According to Dan, most family court commissioners support the concept of requiring parent education.

Please let me know if you need any additional information. Thank you for scheduling the bill for a vote.

Anne Sappenfield
Senior Staff Attorney
WI Legislative Council Staff

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TO: Senate Committee on Health, Children, Families, Aging and Long Term Care

FROM: Bob Andersen 

RE: AB 244, relating to guardians ad litem, parent education, and parenting plans in actions affecting the family.

DATE: December 16, 2003

Legal Action of Wisconsin, Inc. (LAW) is a nonprofit organization funded by the federal Legal Services Corporation, Inc., to provide legal services for low income people in 39 counties in Wisconsin. LAW provides representation for low income people across a territory that extends from the very populous southeastern corner of the state up through Brown County in the east and La Crosse County in the west. Family Law is one of the three major priority areas of law for our delivery of legal services (the other two are public benefits and housing). As a result, our organization has been extensively involved in family law issues over the years.

AB 244 is a very good revision of the law relating to guardians ad litem, because it makes clearer the responsibilities of the guardians ad litem (GAL's), makes clearer what is involved for the parties and their children in these family law actions, and makes an important revision in the payment of guardian ad litem fees.

1. **The bill provides various procedures for the payment of GAL fees by the parties, including allowing payment into escrow accounts and allowing advance payment by the counties, where either party is indigent.**

This is an important change in the law, because GAL's are put in a difficult position at times of having to collect their fees. This interferes with the important role of a GAL in being a neutral and detached party who is supposed to be devoting his or her attention to the best interest of the children in these proceedings. Worse yet, current law puts GAL's in the position of appearing to one of the parties to be favoring the party who is paying more for the GAL fees. Unfortunately, this situation is at its worst where one party is indigent and, as a result, the non indigent party is required to pay for the GAL fees. Under current law, advance payment may not be made by the counties unless *both* parties are indigent. This can either lead to resentment on the part of the paying party or can lead to either the appearance or reality, for the indigent person, that the GAL favors the non-



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OSHKOSH - Adams, Fond du Lac, Green Lake, Marquette, Ozaukee, Sheboygan, Washington, Waushara and Winnebago Counties Phone (920) 233-6521 Toll-free (800) 236-1128 Fax (920) 233-0307

RACINE - Kenosha, Racine and Walworth Counties Phone (262) 635-8836 Toll-free (800) 242-5840 Fax (262) 635-8838

indigent party.

SB 244 makes a vitally important change in the law, by allowing courts to order the counties to pay for the GAL fees up front, where *either* party is indigent. Under current law, a judgment for the cost of the GAL can be entered by the court against both parties and both parties may be subsequently proceeded against for reimbursement to the county.

2.

However, we would like to recommend that the committee amend the bill to delete the bill's provision for income assignment against the parties for the recovery of the costs of GAL fees, mediation fees, and custody study fees.

Under current law, there is a provision which allows the costs of GAL fees to be recovered through income assignments in paternity actions; however, there is no such provision for any other action affecting the family, nor is there any provision at all for the recovery of the costs of mediation and custody studies through income assignments.

- a. **The cost of GAL's, custody studies and mediation are not like support orders that are subject to income assignments under current law; they are debts for services rendered. Income withholding is inappropriate for these costs.**

Income assignments were an important creation in the family code for the enforcement of *child support, family support and maintenance*. These orders relate to payments that are critical to the continuing subsistence of parents and children. Income assignments were seen as a way to get immediate wage assignments against payors to make certain that these means of subsistence begin immediately and are certain to continue. With the exception of certain administrative costs associated with the collection of child support, maintenance and family support, and with the exception of certain costs in paternity actions, income assignments have been established only for the collection of support payments.

The income withholding statute is Section 767.265 (1), which provides as follows:

Income withholding. (1) Each order for child support under this chapter, for maintenance payments under s. 767.23 or 767.26, for family support under this chapter, for costs ordered under s. 767.51 (3) or 767.62 (4), for support by a spouse under s. 767.02 (1)(f), or for maintenance payments under s. 767.02 (1) (g), each order for or obligation to pay the annual receiving and disbursement fee under s. 767.29 (1) (d), each order for a revision in a judgment or order with respect to child support, maintenance, or family support payments under s. 767.32, each stipulation approved by

IF 1 party is indigent + 1 is not, the non indigent party ends up having to pay. Leads to resentment by the person who paid.

Court can automatically impose an assignment on agent a person's income to pay fees.

the court or a circuit court commissioner for child support under this chapter, and each order for child or spousal support entered under s. 948.22 (7) constitutes an assignment of all commissions, earnings, salaries, wages, pension benefits, benefits under ch. 102 or 108, lottery prizes that are payable in installments, and any other money due or to be due in the future to the department or its designee. The assignment shall be for an amount sufficient to ensure payment under the order, obligation, or stipulation and to pay any arrearages due at a periodic rate not to exceed 50% of the amount of support due under the order, obligation, or stipulation so long as the addition of the amount toward arrearages does not leave a party at an income below the poverty line established under 42 USC 9902 (2).

Costs for GAL fees, mediation and custody fees **are not support orders**. They are **debts for services** rendered in family law actions. **They are more like any other debt (and certainly like court costs in any other action), which may be recovered by the ordinary procedures for execution on a judgment.** The ordinary procedures for execution on a judgment involve the wage garnishment statutes in chapter 812 of the statutes. It is this procedure that should be followed. The garnishment statutes have their own limitations on the amount of a person's income that may be garnished. **Under s. 812.34, the following limitations apply to the garnishment of a person's wages:**

(2) (a) Unless the court grants relief under 812.38 (2) or par. (b) applies, 80% of the debtor's disposable earnings are exempt from garnishment under this subchapter.

(b) The debtor's earnings are totally exempt from garnishment under this subchapter if:

1. The debtor's household income is below the poverty line or the garnishment would cause that result

2. The debtor receives need-based public assistance, has received such assistance within 6 months prior to the service of the earnings garnishment forms upon the garnishee or has been determined to be eligible to receive need-based assistance although actual receipt of benefits has not commenced.

This latter limitation on garnishment is intended to prevent the person from slipping back into dependence on public assistance during this critical period of emergence from dependency.

Very expensive
Bill allows an
income assign.
agrees to pay
fees - this is
treating fees
just like a child
support order.

Child support assignee do not have these limitations.

Income withholding for child support, maintenance and family support does not have these limitations. The only protection that exists for a low income worker is that the income withholding may not place the person below the federal poverty line, in accordance with the number of children in the person's family.

- b. **The provision for income withholding in AB 244 for GAL fees, mediation fees, and custody study fees, does not appear to have the same protection for low income workers that exists for income withholding for child support, family support and maintenance.**

Under 767.265 (1) income withholding for child support, family support and maintenance is limited in how much may be withheld. The limitations are that (1) the periodic payments that may be ordered do not exceed 50% of the support that is due and (2) that the payments do not leave the person with an income below the federal poverty level. The second of these limitations is the most important.

Unfortunately, probably as a result of an oversight, it does not appear that the provisions of the bill regarding income withholding for GAL fees, mediation fees, and custody study fees have this same limitation. The result is that, while support may no longer be withheld from a person's income once the poverty level is reached for that person's family size, withholding may still be conducted to recover the costs of GAL's, mediation fees and custody study fees.

In any event, as indicated in the previous paragraph, the proper limitation on withholding a person's income for these costs should be the limitations in the garnishment statute, which do not allow garnishment of more than 20% of the person's wages, do not allow a garnishment if the effect would be to reduce the person's income to below the federal poverty level, and do not allow a garnishment within 6 months of the persons' receipt of public assistance.

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TO: Senate Committee on Health, Children, Families, Aging and Long Term Care

FROM: Bob Andersen 

RE: AB 244, relating to guardians ad litem, parent education, and parenting plans in actions affecting the family.

DATE: December 16, 2003

Legal Action of Wisconsin, Inc. (LAW) is a nonprofit organization funded by the federal Legal Services Corporation, Inc., to provide legal services for low income people in 39 counties in Wisconsin. LAW provides representation for low income people across a territory that extends from the very populous southeastern corner of the state up through Brown County in the east and La Crosse County in the west. Family Law is one of the three major priority areas of law for our delivery of legal services (the other two are public benefits and housing). As a result, our organization has been extensively involved in family law issues over the years.

AB 244 is a very good revision of the law relating to guardians ad litem, because it makes clearer the responsibilities of the guardians ad litem (GAL's), makes clearer what is involved for the parties and their children in these family law actions, and makes an important revision in the payment of guardian ad litem fees.

1. **The bill provides various procedures for the payment of GAL fees by the parties, including allowing payment into escrow accounts and allowing advance payment by the counties, where either party is indigent.**

This is an important change in the law, because GAL's are put in a difficult position at times of having to collect their fees. This interferes with the important role of a GAL in being a neutral and detached party who is supposed to be devoting his or her attention to the best interest of the children in these proceedings. Worse yet, current law puts GAL's in the position of appearing to one of the parties to be favoring the party who is paying more for the GAL fees. Unfortunately, this situation is at its worst where one party is indigent and, as a result, the non indigent party is required to pay for the GAL fees. Under current law, advance payment may not be made by the counties unless **both** parties are indigent. This can either lead to resentment on the part of the paying party or can lead to either the appearance or reality, for the indigent person, that the GAL favors the non-



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indigent party.

SB 244 makes a vitally important change in the law, by allowing courts to order the counties to pay for the GAL fees up front, where *either* party is indigent. Under current law, a judgment for the cost of the GAL can be entered by the court against both parties and both parties may be subsequently proceeded against for reimbursement to the county.

- 2. However, we would like to recommend that the committee amend the bill to delete the bill's provision for income assignment against the parties for the recovery of the costs of GAL fees, mediation fees, and custody study fees.

Under current law, there is a provision which allows the costs of GAL fees to be recovered through income assignments in paternity actions; however, there is no such provision for any other action affecting the family, nor is there any provision at all for the recovery of the costs of mediation and custody studies through income assignments.

- a. The cost of GAL's, custody studies and mediation are not like support orders that are subject to income assignments under current law; they are debts for services rendered. Income withholding is inappropriate for these costs.

Income assignments were an important creation in the family code for the enforcement of *child support, family support and maintenance*. These orders relate to payments that are critical to the continuing subsistence of parents and children. Income assignments were seen as a way to get immediate wage assignments against payors to make certain that these means of subsistence begin immediately and are certain to continue. With the exception of certain administrative costs associated with the collection of child support, maintenance and family support, and with the exception of certain costs in paternity actions, income assignments have been established only for the collection of support payments.

The income withholding statute is Section 767.265 (1), which provides as follows:

Income withholding. (1) Each order for child support under this chapter, for maintenance payments under s. 767.23 or 767.26, for family support under this chapter, for costs ordered under s. 767.51 (3) or 767.62 (4), for support by a spouse under s. 767.02 (1)(f), or for maintenance payments under s. 767.02 (1) (g), each order for or obligation to pay the annual receiving and disbursement fee under s. 767.29 (1) (d), each order for a revision in a judgment or order with respect to child support, maintenance, or family support payments under s. 767.32, each stipulation approved by

Revising
 + repayment
 of GAL
 Fees

"P" Reference
 to Payor
 Party

only if Party
 is indigent

When happens is now
 current law states
 for recovery of costs
 of in support

Income
 Assignments
 for " " " "

Statute
 now 767.265
 applies here

the court or a circuit court commissioner for child support under this chapter, and each order for child or spousal support entered under s. 948.22 (7) constitutes an assignment of all commissions, earnings, salaries, wages, pension benefits, benefits under ch. 102 or 108, lottery prizes that are payable in installments, and any other money due or to be due in the future to the department or its designee. The assignment shall be for an amount sufficient to ensure payment under the order, obligation, or stipulation and to pay any arrearages due at a periodic rate not to exceed 50% of the amount of support due under the order, obligation, or stipulation so long as the addition of the amount toward arrearages does not leave a party at an income below the poverty line established under 42 USC 9902 (2).

Costs for GAL fees, mediation and custody fees *are not support orders*. They are *debts for services* rendered in family law actions. *They are more like any other debt (and certainly like court costs in any other action), which may be recovered by the ordinary procedures for execution on a judgment*. The ordinary procedures for execution on a judgment involve the wage garnishment statutes in chapter 812 of the statutes. It is this procedure that should be followed. The garnishment statutes have their own limitations on the amount of a person's income that may be garnished. *Under s. 812.34, the following limitations apply to the garnishment of a person's wages:*

(2) (a) Unless the court grants relief under 812.38 (2) or par. (b) applies, 80% of the debtor's disposable earnings are exempt from garnishment under this subchapter.

(b) The debtor's earnings are totally exempt from garnishment under this subchapter if:

1. The debtor's household income is below the poverty line or the garnishment would cause that result
2. The debtor receives need-based public assistance, has received such assistance within 6 months prior to the service of the earnings garnishment forms upon the garnishee or has been determined to be eligible to receive need-based assistance although actual receipt of benefits has not commenced.

This latter limitation on garnishment is intended to prevent the person from slipping back into dependence on public assistance during this critical period of emergence from dependency.

Income withholding for child support, maintenance and family support does not have these limitations. The only protection that exists for a low income worker is that the income withholding may not place the person below the federal poverty line, in accordance with the number of children in the person's family.

b. **The provision for income withholding in AB 244 for GAL fees, mediation fees, and custody study fees, does not appear to have the same protection for low income workers that exists for income withholding for child support, family support and maintenance.**

Under 767.265 (1) income withholding for child support, family support and maintenance is limited in how much may be withheld. The limitations are that (1) the periodic payments that may be ordered do not exceed 50% of the support that is due and (2) that the payments do not leave the person with an income below the federal poverty level. The second of these limitations is the most important.

Unfortunately, probably as a result of an oversight, it does not appear that the provisions of the bill regarding income withholding for GAL fees, mediation fees, and custody study fees have this same limitation. The result is that, while support may no longer be withheld from a person's income once the poverty level is reached for that person's family size, withholding may still be conducted to recover the costs of GAL's, mediation fees and custody study fees.

In any event, as indicated in the previous paragraph, the proper limitation on withholding a person's income for these costs should be the limitations in the garnishment statute, which do not allow garnishment of more than 20% of the person's wages, do not allow a garnishment if the effect would be to reduce the person's income to below the federal poverty level, and do not allow a garnishment within 6 months of the persons' receipt of public assistance.



WISCONSIN LEGISLATIVE COUNCIL
REPORT TO THE LEGISLATURE

SPECIAL COMMITTEE ON
GUARDIANS AD LITEM IN
ACTIONS AFFECTING
THE FAMILY

April 14, 2003

RL 2003-11

**SPECIAL COMMITTEE ON GUARDIANS AD LITEM IN
ACTIONS AFFECTING THE FAMILY
REPORT TO THE LEGISLATURE**

Prepared by:
Anne Sappenfield and Pam Shannon, Senior Staff Attorneys
April 14, 2003

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PART I

KEY PROVISIONS OF COMMITTEE RECOMMENDATION

This part of the report summarizes the key provisions of the proposal recommended by the Special Committee on Guardians Ad Litem in Actions Affecting the Family and approved by the Joint Legislative Council. The recommendations of the Special Committee were approved for introduction in the 2001-02 Session of the Legislature, but failed to pass, and the following bill was subsequently approved for introduction in the 2003-04 Session:

ASSEMBLY BILL 244, RELATING TO GUARDIANS AD LITEM, PARENT EDUCATION, AND PARENTING PLANS IN ACTIONS AFFECTING THE FAMILY

Key Provisions

- Clarifies the current statutory provision governing guardian ad litem (GAL) compensation to provide that when parties are ordered to pay GAL compensation, they may be ordered to pay the GAL directly, pay into an escrow account from which the GAL will be paid, or reimburse the county if it has paid the GAL's compensation. Also, allows the court to order the county to pay a GAL's compensation for an indigent party if either party is indigent.
- Permits a court to order income withholding to collect GAL fees or fees for mediation and custody and physical placement studies.
- Requires the clerk of court to provide parties with instructions for completing and filing a parenting plan when the parties file a petition or receive a summons for an action affecting the family. Also, provides that a mediator must review the nonfinancial provisions of the parenting plan at the initial session of mediation.
- Requires parties to file a parenting plan with the court within 60 days after the court waives the requirement that the parties attend mediation or within 60 days after the mediator notifies the court that the parties have not reached an agreement, unless the court orders otherwise.
- Requires parties to an action affecting the family in which a minor child is involved to attend a parent education program that includes at least four hours of instruction or training on the effects of divorce on a child; working together in the best interest of the child; parenting or coparenting skills; the consequences of stipulating to a custody and placement arrangement and of resolution of disputes by the court; available mediation; current law relating to custody and physical placement; current law relating to the duties and responsibilities of a GAL; and the potential costs associated with an action affecting the family.
- Provides that a court or family court commissioner (FCC) may elect not to order attendance at a parent education program or may order the parties to attend separate sessions of the program if the court or FCC determines that attending the program or attending the

program with the other party would cause undue hardship or endanger the health or safety of one of the parties.

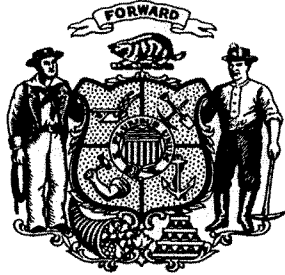
- Provides that the court or FCC may require attendance as a condition to the granting of a final judgment or order in the action, if attendance at the program is ordered. In addition, the court or FCC may refuse to hear a custody or physical placement motion of a party who refuses to attend the program.

State of Wisconsin
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TO: MEMBERS OF THE SENATE COMMITTEE ON HEALTH, CHILDREN,
FAMILIES, AGING AND LONG TERM CARE

FROM: Terry C. Anderson, Director *TCA*

RE: Hearing on 2003 Assembly Bill 244

DATE: December 8, 2003

Enclosed, for your information, is a copy of Wisconsin Legislative Council Report to the Legislature, RL 2003-11, dated April 14, 2003. This report describes the recommendations of the Joint Legislative Council's Special Committee on Guardians Ad Litem in Actions Affecting the Family.

The following recommendation of the Special Committee has been referred to your committee:

2003 Assembly Bill 244, relating to guardians ad litem, parent education, and parenting plans in actions affecting the family.

Assembly Bill 244 is scheduled to be considered by your committee at its hearing which will be held on **Tuesday, December 16, 2003, beginning at 9:00 a.m., in Room 411 South, State Capitol.**

If you have any questions relating to the above report or bill, please feel free to contact Pam Shannon, Senior Staff Attorney, at 266-2680, or Anne Sappenfield, Senior Staff Attorney, at 267-9485.

TCA:wu

Enclosure

PART II

COMMITTEE ACTIVITY

ASSIGNMENT

The Joint Legislative Council established the Special Committee by a May 18, 2000 mail ballot and appointed the co-chairs by a June 13, 2000 mail ballot. The Special Committee was directed to study the GAL system as it applies to actions affecting the family, including an examination of the appointment, role, supervision, training and compensation of GALs. The review of the appointment of GALs was to include the necessity of appointment in contested custody or placement cases and whether professionals with specialized expertise in the emotional and developmental phases and needs of children should be appointed to act as GALs. The committee was directed to prepare a report of any recommended legislation and to petition the Wisconsin Supreme Court to consider rules for the reform of the GAL system in actions affecting the family based on the committee's recommendations that are more appropriate for Supreme Court rules.

The membership of the Special Committee, appointed by August 14 and October 12, 2000 mail ballots, consisted of four Senators, three Representatives and 12 Public Members.

A membership list of the Joint Legislative Council is included as **Appendix 2**. A list of the committee membership is included as **Appendix 3**.

SUMMARY OF MEETINGS

The Special Committee held five meetings at the State Capitol in Madison on the following dates:

September 13, 2000
October 24, 2000
November 14, 2000

December 12, 2000
January 12, 2001

September 13, 2000: The Special Committee received testimony from J. Denis Moran, Director of State Courts, and Attorney Gretchen Viney, Baraboo. Mr. Moran, accompanied by Pam Radloff, fiscal officer for the Director of State Courts, discussed his office's role in training GALs, the "Through the Eyes of a Child" training program and the Board of Bar Examiners' approval of continuing legal education courses for GALs. Mr. Moran also explained his office's administration of grants to counties for GAL expenditures and answered questions regarding how GALs are reimbursed when parents do not pay. Attorney Viney described her work as a contract GAL in Sauk County. She explained circumstances in which GALs are appointed and noted that each county has its own system for appointing and compensating GALs. Ms. Viney outlined the statutory requirements for GALs in family law cases and the steps she goes through as a GAL in a typical proceeding.

The Special Committee also briefly reviewed a staff brief on GALs in family law cases.

October 24, 2000: The Special Committee received testimony from Judge Gary Carlson and Jean Nuernberger, Coordinator, Family and Juvenile Services, Taylor County Circuit Court, Medford; Attorney Charles Senn, Thorp; Judge Daniel Noonan, Milwaukee County Circuit Court, Milwaukee; Attorney Margaret Wrenn Hickey, Milwaukee; Kathleen Jeffords, Director, Dane County Family Court Counseling Services, Madison; Judge John Albert, Dane County Circuit Court, Madison; and Diane Wolff, Director, Waukesha County Family Court Counseling Services, Waukesha. Judge Carlson explained how he works as a team with Ms. Nuernberger and Attorney Senn in contested family law cases. He explained what he requires of the parties and attorneys in a custody case and distributed materials concerning the median cost of a GAL for a litigated case in Taylor County. Ms. Nuernberger described her work as coordinator of a parenting program on divorce and as a mediator in contested cases. She also explained her role in developing parenting plans, recommending whether GALs are needed in certain cases and conducting home studies. Attorney Senn discussed the need for ongoing training of GALs who are handling family court cases. He also addressed the need for parties to be educated regarding the role of the GAL and the costs of litigation. He also discussed the evaluation of GALs. Judge Noonan discussed the large volume of divorce cases in Milwaukee County, about 50% of which are *pro se* cases. He explained the system for appointing GALs in Milwaukee County and the arrangement the county has with the Legal Aid Society of Milwaukee County for appointing GALs in low-income cases. Attorney Hickey discussed her role as a family law attorney in Milwaukee County and the importance of GALs being attorneys, since the law requires them to be advocates for the best interests of children. Ms. Jeffords explained the parent education program and mediation and custody and placement study services provided by the Dane County Family Court Counseling Services program. She emphasized the importance of GALs being attorneys and recommended additional funding for family court counseling services. Judge Albert discussed his role as a circuit judge handling divorce cases. He noted his opposition to having trained volunteers, rather than attorneys, acting as GALs. He stated the importance of GAL training including training in child development and the need for more accountability for GALs. Ms. Wolff discussed the family court counseling services provided in Waukesha County. She noted the importance of GALs bringing a legal perspective, as opposed to a social work perspective, and their trial advocacy skills, to a case.

The Special Committee also discussed Memo No. 1, *Issues Raised for Consideration by the Special Committee on Guardians Ad Litem in Actions Affecting the Family* (October 13, 2000).

November 14, 2000: The Special Committee received testimony from Kenneth Waldron, psychologist, Waldron, Kriss and Associates, Middleton; Jan Raz, President, Wisconsin Fathers for Children and Families, Hales Corners; Carol Medaris, staff attorney, Wisconsin Council on Children and Families, Madison; and Attorney Marjorie Schuett, Lathrop and Clark, LLP and Chair, Family Law Section, State Bar of Wisconsin, Madison. Mr. Waldron discussed his work with divorcing families as a psychologist. He stated that GALs would benefit from increased knowledge in several areas, including: child development; understanding the effects of conflict on children, recognizing parents' character disorders; working with mental health professionals, learning how children express preferences; and developing child-focused plans for divorcing families. Mr. Raz cited a number of concerns, including that parenting plans are not used early enough in the court process and that the best

interests of the child standard conflicts with the requirement to maximize placement with each parent. He suggested that GALs not be appointed unless there are special concerns for the welfare of the child and that parents be required to file a parenting plan earlier in the process. He also suggested requiring courts to determine allocation of periods of physical placement by considering the parenting plans and requiring GALs and mediators to use the same legal standards for resolving custody and placement disputes as do court commissioners and judges. Ms. Medaris stated that GALs are very important in contested custody proceedings and that they must be attorneys to balance the representation of the parents' interests with those of their children. She recommended that GALs receive additional training focusing on child development, family systems and trial advocacy, as well as domestic abuse training to heighten GALs' awareness and sensitivity to the effect of domestic abuse on family dynamics. She also recommended that financial and other costs of custody disputes be explained to parents early in the case and that the "best interests of the *poor* child" should be taken into consideration. Ms. Schuett discussed the Family Law Section's efforts on behalf of children and the Section's perspective on the importance of maintaining high standards for GALs. She described various areas in which the Section has supported the Legislature's and the Supreme Court's initiatives to improve the quality of GAL representation and to try to ensure fair results in family law disputes. She noted that the Family Law Section supports continuing education and training for GALs as well as adequate compensation.

The Special Committee discussed the recommendations that had been made to the committee to date, summarized in Memo No. 2, *Issues Raised for Consideration by the Special Committee on Guardians Ad Litem in Actions Affecting the Family* (November 7, 2000). The committee eliminated some recommendations from further consideration and agreed to discuss others at a subsequent meeting.

December 12, 2000: The Special Committee received testimony from Jennifer Ortiz, Supervising Attorney, Guardian ad Litem Division, and James Brennan, Chief Staff Attorney, Legal Aid Society of Milwaukee, Inc., Milwaukee; Amy O'Neil, Task Force on Family Violence, Milwaukee; and Laurie Jorgensen, Cochair, Justice Committee, Governor's Council on Domestic Abuse, Wausau. Ms. Ortiz discussed the GAL Division's work in representing low-income individuals in family court cases, including serving as GALs for minor teen parents from Milwaukee County. She explained the in-house training provided for GALs by Legal Aid in order to try to address the many different cultural needs of individuals represented. She recommended continuing the practice of using attorneys as GALs and providing training to GALs relating to cultural sensitivity. Mr. Brennan discussed Legal Aid's employment of social workers and training of attorneys to investigate cases and conduct home studies. Ms. O'Neil explained her role as a victim advocate for children in court cases and assisting families in obtaining restraining orders and advocating for children who have been abused or have witnessed abuse. She discussed the importance of GALs in custody cases and the particularly vital role of GALs when domestic abuse or child abuse is present. She emphasized the need for GALs to recognize the dynamics of a child's home life in domestic abuse situations and the importance of training GALs to recognize and understand warning signs of domestic abuse. Ms. Jorgensen explained the work of the Justice Committee in advising the Governor's Council on Domestic Abuse regarding issues in the courts across the state as they relate to victims of domestic abuse. She emphasized the need for GALs to have training in and understanding of the dynamics of domestic violence and the profound impact it

has on children, as well as the need for GALs to take threats of violence seriously. She also addressed the need for a mechanism for accountability when GALs do not fulfill their responsibilities adequately.

The Special Committee discussed Memo No. 3, *Issues Raised for Consideration by the Special Committee on Guardians Ad Litem in Actions Affecting the Family* (December 5, 2000). The committee discussed issues relating to training for GALs and agreed to include a number of suggested training topics in a letter to the State Bar. The committee also discussed Memo No. 4, *Three Draft Letters* (December 5, 2000), which contained three draft letters prepared at the committee's request. The first letter, addressed to the Cochairs of the Joint Legislative Audit Committee, requested that the Legislative Audit Bureau be directed to audit various items relating to the compensation of GALs and the provision of family court counseling services. The second letter, to Chief Justice Shirley Abrahamson, in her capacity as Chair of the Supreme Court's Judicial Education Committee, requested that that Judicial Education Committee consider including several items relating to GALs in its judicial education program. The third letter, to George Brown, Executive Director, State Bar of Wisconsin, requested that the Bar provide continuing legal education for GALs that focuses on issues that arise in family law disputes; develop a videotape that addresses the consequences to parties of contesting legal custody or physical placement; and coordinate mentoring for new GALs. The committee suggested a number of changes in the draft letters to be reviewed at the next meeting of the committee.

The committee also discussed a bill draft, WLCS: 0019/1, relating to compensation of guardians ad litem, parent education and parenting plans in actions affecting the family. The draft: (1) clarified current law to provide that parties ordered to pay GAL compensation may be ordered to pay the GAL directly, pay into an escrow fund from which the GAL will be paid, or reimburse the county if it is paid the GAL's compensation; (2) added a requirement that the four-hour educational program for parties in family law cases on the effects of marriage dissolution must include the viewing of a videotape that addresses the financial and other consequences of contesting legal custody or physical placement and the effects of conflict on children; and (3) required parties to file a parenting plan with the court prior to attending the first session of mediation, with certain exceptions. The committee asked for a redraft of this proposal to include language proposed in a memo from Judge Kirk for items to be covered in parent education. The committee also asked staff to prepare a draft requiring a GAL to describe to the court what he or she considered in making the recommendation regarding the best interest of a child.

January 12, 2001: The Special Committee discussed the three draft letters that were revised following the previous meeting to incorporate members' suggestions. The committee agreed to make additional modifications in the three letters and gave final approval to sending the letters, as modified. The committee then discussed WLCS: 0019/2, a redraft of a previous draft. The committee made a number of modifications to the draft and gave final approval to recommending the draft, as amended and renumbered WLC: 0019/3, to the Joint Legislative Council for introduction. The committee considered WLCS: 0057/1, agreed to incorporate a portion of it in WLC: 0019/3 and rejected the remainder of the draft. The committee also considered a draft petition to the Wisconsin Supreme Court asking for modifications to the Supreme Court's rules regarding GAL training. The committee made a modification and

approved the petition, as amended, for submission to the Joint Legislative Council for approval and subsequently, to the Wisconsin Supreme Court. The committee reviewed and decided not to send a letter to Representative Carol Owens, Chair of the Assembly Family Law Committee, and Senator Gary George, Chair of the Senate Judiciary Committee, regarding child support.

PART III

RECOMMENDATION INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL

This part of the report provides background information on, and a description of, the bill recommended by the Special Committee on Guardians Ad Litem in Actions Affecting the Family and approved by the Joint Legislative Council.

2003 ASSEMBLY BILL 244, RELATING TO GUARDIANS AD LITEM, PARENT EDUCATION, AND PARENTING PLANS IN ACTIONS AFFECTING THE FAMILY

Reimbursement of GAL Costs

Background

Current law relating to GAL compensation provides that the court must order either or both parties in an action affecting the family to pay all or any part of the compensation of the GAL. The Special Committee determined that many judges and FCCs are interpreting this provision to require the GAL to collect his or her own fees although many counties prefer to collect the fees for GALs and reimburse them, to eliminate the pressure that a party who is paying the GAL directly may exert. The Special Committee concluded that judges and FCCs should be permitted to require parties to place funds into an escrow account to reimburse the GAL or to order the county to pay the GAL directly and then have the parties reimburse the county.

Description of the Bill

The bill specifies that a court order to pay the compensation of a GAL may direct either or both parties to pay the GAL directly, to pay into an escrow fund from which the GAL is reimbursed, or to reimburse the county of venue for payments made by the county to the GAL.

Compensation of GALs for Indigent Parties

Background

Under current law relating to GAL compensation, if both parties to an action affecting the family are indigent, the court may direct that the county of venue pay the compensation and fees. Prior to the enactment of 1995 Wisconsin Act 27, the 1995-97 Biennial Budget Act, the court was permitted to direct the county of venue to pay compensation and fees of a GAL if either or both parties were unable to pay. In addition, the court was permitted to direct that any or all parties reimburse the county in whole or in part, for the payment. A recent Court of Appeals decision held that the current statute does not permit a court to order the county to pay a GAL's compensation when only one party to an action affecting the family proceeding is found to be indigent. The court stated that the change in the wording of the statute under Act 27 is a clear signal that the Legislature intended to decrease the number of cases in which counties are ordered to pay for GALs. The court concluded that, as currently drafted, the

statute provides that when one party is indigent and the other is not, the court's only option is to order the nonindigent party to pay the GAL's fees. [*Olmsted v. Circuit Court*, 2000 Wi. App. 261, 2000 Wisc. App. LEXIS 1111 (2000).]

The Bill

Under the bill, if either party is indigent, the court may direct that the county of venue pay the GAL compensation and fees for that party.

Income Withholding to Pay Fees

Background

Under current law, the court is not permitted to order an income withholding, or "wage assignment," in order to reimburse the county or a GAL for GAL compensation or to collect fees for mediation services or custody and placement studies.

The Bill

Under the bill, the court may order an income withholding for the amount of GAL reimbursement in favor of the county or the GAL and against a party or parties responsible for the reimbursement. In addition, a court or FCC may order income withholding for one or both parties in order to collect fees for mediation or a custody and placement study.

Parenting Plans

Background

Under current law, in an action affecting the family in which legal custody or physical placement of a child is contested, a party seeking sole or joint legal custody or periods of physical placement must file a parenting plan with the court before any pretrial conference. Unless cause is shown, a party required to file a parenting plan who does not timely file the plan waives the right to object to the other party's plan.

A parenting plan must provide information about questions such as what legal custody or physical placement the parent is seeking, where the parent lives, where the parent works and what hours he or she works, who will provide necessary child care, where the child will go to school, how the child's medical care will be provided and what the child's religious commitment will be, if any. In addition, the parenting plan must discuss how the child's time is proposed to be divided between the two parents and how the parent proposes to resolve disagreements related to matters over which the court orders joint decision-making. Finally, the parenting plan should discuss what child support, family support, maintenance or other income transfer there will be.

Under current law, the parenting plan must be filed with the court before any pretrial conference. Testimony to the Special Committee indicated that there is no definition of pretrial conference and the term is interpreted differently across the state. Also, in some counties, the

pretrial conference is considered to be a conference that is held in preparation for a scheduled trial.

The Special Committee discussed that the parenting plan appears to be a good tool in helping parties come to a mutually satisfactory agreement outside of court about custody and placement arrangements. The committee concluded, therefore, that parties should receive information on the parenting plan soon after commencing an action affecting the family.

The Bill

Under the bill, the clerk of court must provide, without charge, to each person filing a petition in an action affecting the family instructions for completing and filing a parenting plan. In addition, a summons in any action affecting the family must be accompanied by instructions, provided without charge by the clerk of court, for completing and filing a parenting plan.

The bill also provides that at the parties' initial session of mediation in an action affecting the family, the mediator must review with the parties the nonfinancial provisions of the parenting plan.

Finally, under the bill, the parenting plan must be filed with the court within 60 days after the court waives the requirement for the parties to attend mediation or within 60 days after the mediator for the parties notifies the court that the parties have not reached an agreement, unless the court orders otherwise.

Parent Education

Background

Under current law, at any time during the pendency of an action affecting the family in which a minor child is involved and in which the court or FCC determines that it is appropriate and in the best interests of the child, the court or FCC, on its own motion, may order the parties to attend a program specified by the court or FCC concerning the effects on a child of a dissolution of the marriage. In addition, at any time during the pendency of an action to determine paternity of a child, the court or FCC may order either or both of the parties to attend a program specified by the court or FCC that provides training in parenting or coparenting skills or both.

Current law provides that these programs must be educational rather than therapeutic in nature and may not exceed a total of four hours in length. The parties are responsible for the costs, if any, of attendance at the program.

Under current law, the court or FCC may require the parties to attend an educational program as a condition to the granting of a final judgment or order in the action affecting the family that is pending. A party who fails to attend an educational program as ordered or who fails to pay for the educational program may be proceeded against for contempt of court.

Also under current law, at any time during the pendency of a divorce or paternity action, the court or FCC may order the parties to attend a class as approved by the court or FCC and that addresses such issues as child development, family dynamics, how parental separation affects child development and what parents can do to make raising a child in a separated situation less stressful for the child. The court or FCC may not require the parties to attend such a class as a condition to the granting of the final judgment or order in the divorce or paternity action. However, the court or FCC may refuse to hear a custody or physical placement motion of a party who refuses to attend such a class. The parties are responsible for any costs of attending such a class. However, if the court or FCC finds that a party is indigent, any costs that would be the responsibility of that party are paid by the county.

During its deliberations, the Special Committee discussed the importance of educating parties on the effects and consequences of litigation in family court, the financial costs of protracted litigation and the roles and responsibilities of the parties, GALs and attorneys in the cases. The Special Committee concluded that certain changes should be made to current law relating to education programs to better prepare parties for litigation and coparenting after a divorce or other action affecting the family.

The Bill

Under the bill, during the pendency of an action affecting the family in which a minor child is involved, the court or FCC *must* order the parties to attend a program specified by the court or FCC that provides instruction on or training in any of the following that the court or FCC determines is appropriate in the particular case:

- The effects of divorce on a child.
- Working together in the best interest of the child.
- Parenting or coparenting skills, or both.
- The consequences of stipulating to a custody and placement arrangement and of resolution of disputes by the court.
- Available mediation.
- Current law relating to custody and placement.
- The provisions of current law relating to the role and responsibilities of the GAL and the duties and responsibilities of a GAL in representing the best interest of a child.
- The potential costs of an action affecting the family, including the cost of representation by an attorney; mediation fees; legal custody and physical placement study fees; GAL fees and expenses and the fees and expenses of any expert witness ordered to assist the GAL; the costs of mental or physical examinations of a party,

if applicable, including the costs for preparing a written report or court testimony; and any other costs, fees or expenses that may be incurred during litigation.

Under the bill, in the discretion of the court or FCC, the parties may not be required to attend an educational program or may be required to attend separate sessions of the program if the court or FCC finds that attending such a program or attending such a program with the other party would cause undue hardship or endanger the health or safety of one of the parties. When making a determination of whether attending a program or attending the program with the other party would endanger the health or safety of one of the parties, the court or FCC must consider evidence that a party engaged in abuse of the child, evidence of interspousal battery or domestic abuse, evidence that either party has a significant problem with alcohol or drug abuse, and any other evidence indicating that a party's health or safety will be in danger by attending a program or by attending the program with the other party.

Under the bill, the educational program must include *at least* four hours of instruction or training.

The bill provides that the court or FCC may require the parties to an action affecting the family in which a minor child is involved to attend an educational program as a condition to granting a final judgment or order in an action affecting a family. If the parties were not ordered to attend a program because the court or FCC found that attending the program would cause undue hardship or endanger the health or safety of one of the parties, the court or FCC may not condition the granting of the final judgment or order in the action affecting the family on attending the program.

The bill also provides that the court or FCC may refuse to hear a custody or physical placement motion of a party who refuses to attend an educational program.

Committee and Joint Legislative Council Votes

The bill described in this report was first introduced in the 2001 Legislative Session as 2001 Senate Bill 126. The bill did not pass in the 2001 Session. On March 12, 2003, the Joint Legislative Council voted unanimously to reintroduce the proposal into the 2003-04 Legislature. The votes by the Special Committee and by the Joint Legislative Council for introduction of the proposal are listed below.

SPECIAL COMMITTEE VOTE

At its January 12, 2001 meeting, the Special Committee voted to recommend WLC: 0019/3 to the Joint Legislative Council for introduction in the 2001-02 Session of the Legislature. The vote on the draft is as follows:

- WLC: 0019/3, relating to guardians ad litem, parent education and parenting plans in actions affecting the family: Ayes, 13 (Sens. Plache and Huelsman; Reps. Gundrum, and Owens; and Public Members Barrett, Cranley, Fahrenkrug, Hansen, Kirk, Onheiber, Pfeiffer, Ptacek and Screnock); Noes, 0; and Absent, 6 (Sens. Shibilski and Welch; Rep. Staskunas; and Public Members Delaney, Gemignani and Serlin).

JOINT LEGISLATIVE COUNCIL VOTES

At its March 14, 2001 meeting, the Joint Legislative Council voted to introduce WLC: 0019/3 on a roll call vote as follows: Ayes, 18 (Sens. Risser, Baumgart, Burke, Darling, George, Grobschmidt, Robson, Rosenzweig and Zien; and Reps. Rhoades, Bock, Foti, Freese, Gard, Huber, Jensen, Lehman and Stone); Noes, 0; and Absent, 4 (Sens. Chvala and Panzer; and Reps. Black and Krug).

WLC: 0019/3 was subsequently introduced as 2001 Senate Bill 126 on April 4, 2001 and was referred to the Senate Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform.

At its March 12, 2003 meeting, the Joint Legislative Council voted unanimously to reintroduce 2001 Senate Bill 126 into the 2003-04 Session of the Legislature. The bill was subsequently introduced as 2003 Assembly Bill 244.

APPENDIX 2

JOINT LEGISLATIVE COUNCIL
s. 13.81, Stats.

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This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the cochairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

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STUDY ASSIGNMENT: The Committee is directed to study the guardian ad litem system as it applies to actions affecting the family, including an examination of the appointment, role, supervision, training and compensation of guardians ad litem. The review of the appointment of guardians ad litem shall include the necessity of appointment in contested custody or placement cases and whether professionals with specialized expertise in the emotional and developmental phases and needs of children should be appointed to act as guardians ad litem. The Committee shall prepare a report of any recommended legislation and shall petition the Wisconsin Supreme Court to consider rules for the reform of the guardian ad litem system in actions affecting the family based on the Committee's recommendations that are more appropriate for supreme court rules. The Special Committee shall report its recommendations to the Joint Legislative Council by January 1, 2001.

Established by a May 18, 2000 mail ballot; Cochairs appointed by a June 13, 2000 mail ballot; and members appointed by an August 14, 2000 mail ballot.

19 MEMBERS: 4 Senators; 3 Representatives and 12 Public Members.

LEGISLATIVE COUNCIL STAFF: Anne Sappenfield, Senior Staff Attorney; Pam Shannon, Senior Staff Attorney; and Julie Learned, Support Staff.

⁽¹⁾ Appointed as a Public Member of the Special Committee by an October 12, 2000 mail ballot.

Committee Materials List

September 13, 2000 Meeting

Staff Brief 00-2, Guardians Ad Litem in Actions Affecting the Family (9-6-00)

October 24, 2000 Meeting

Memo No. 1, Issues Raised for Consideration by the Special Committee on Guardians Ad Litem in Actions Affecting the Family (10-13-00)

Material submitted by Jan Raz, President, Wisconsin Fathers for Children and Family (10-6-00)

Letter from Robert and Rosemary Albrecht (10-10-00)

November 14, 2000 Meeting

Memo No. 2, Issues Raised for Consideration by the Special Committee on Guardians Ad Litem in Actions Affecting the Family (11-7-00)

December 12, 2000 Meeting

Memo No. 3, Issues Raised for Consideration by the Special Committee on Guardians Ad Litem in Actions Affecting the Family (12-5-00)

Memo No. 4, Three Draft Letters (12-5-00)

WLCS: 0019/1, relating to compensation of guardians ad litem, parent education and parenting plans in actions affecting the family

Draft petition to the Wisconsin Supreme Court

Letter from Joseph Vaughn (11-17-00)

January 12, 2001 Meeting

Memo No. 5, Revised Draft Letters (1-5-01)

WLCS: 0019/2, relating to guardians ad litem, parent education and parenting plans in actions affecting the family

WLCS: 0057/1, relating to mediation and parenting plans in actions affecting the family

Draft letter to Representative Carol Owens and Senator Gary George, relating to child support legislation

Memorandum from Representative Tony Staskunas, WLCS: 0019/1 (1-4-01)

Committee Meeting Attendance Sheet

Committee on Health, Children, Families, Aging and Long Term Care

Date: 12-16-03 Meeting Type: Public Hearing
Location: 411 South

<u>Committee Member</u>	<u>Present</u>	<u>Absent</u>	<u>Excused</u>
Senator Carol Roessler, Chairs	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Ted Kanavas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Ronald Brown	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Robert Welch	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Senator Dale Schultz	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Judith Robson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Charles Chvala	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Robert Jauch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Tim Carpenter	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 8 1