

2007 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB309)

Received: 06/13/2007

Received By: pkahler

Wanted: As time permits

Identical to LRB:

For: Sheryl Albers (608) 266-8531

By/Representing: Terri Griffiths

This file may be shown to any legislator: NO

Drafter: pkahler

May Contact:

Addl. Drafters:

Subject: Dom. Rel. - cust./plac./vis.

Extra Copies:

Submit via email: YES

Requester's email: Rep.Albers@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Introducing report into evidence

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 06/19/2007	jdyer 06/21/2007		_____			
/1			rschluet 06/21/2007	_____	lparisi 06/21/2007	lparisi 06/21/2007	
/2	pkahler 06/22/2007	jdyer 06/22/2007	jfrantze 06/22/2007	_____	mbarman 06/22/2007	mbarman 06/22/2007	

FE Sent For:

<END>

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/?	pkahler 06/19/2007	jdyer 06/21/2007		_____			
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FE Sent For:

6/22
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<END>

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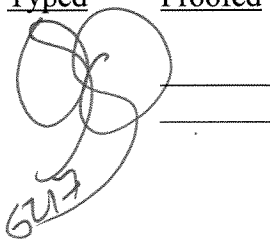
See Attached

Drafting History:

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

/? pkahler

1/6/07
Zijl


GUF

FE Sent For:

<END>

Kahler, Pam

From: Robert Andersen [rja@legalaction.org]
Sent: Thursday, June 14, 2007 9:43 AM
To: Kahler, Pam; Griffiths, Terri
Subject: AB 309 -- Substitute Amendment

Pam:

We agree that the last sentence of the current statute [767.405 (14)(b)] is problematic and is the reason why we are asking for this change in the statute. That is why we recommend that the entire section be replaced with the following language, which was recommended by the Family Law Section of the State Bar:

"767.405 (14) (b) The person or entity investigating the parties under par. (a) shall complete the investigation and submit a report of the results to the parties at least 10 days before the report is introduced as evidence. The report shall be offered and received in accordance with the rules of evidence."

Thank you. If this does not answer your concerns or there are still some questions you have, you may contact me at this email address or by phone at 256-3304 x. 106.

Kahler, Pam

From: Kahler, Pam
Sent: Wednesday, June 13, 2007 12:00 PM
To: Griffiths, Terri
Subject: Substitute amendment to AB 309

Terri:

A further complication has come up regarding the language for the substitute amendment. In the substitute amendment, s. 767.405 (14) (b) was to be amended so that the court would not see the report before it was introduced in evidence. However, the last sentence of s. 767.405 (14) (b), which states that the report shall be a part of the record *unless* the court orders otherwise, presents a logical and logistical problem with that scenario. If the court orders that the report will not be a part of the record *before* the report is introduced in evidence, the court will never see the report and so will not have a basis for ordering that it not be part of the record. On the other hand, I'm not sure that the court has the authority to remove from the record or from evidence something that is already part of the record or in evidence. That would be the only way for the court to order that the report not be part of the record after actually having seen the report.

Perhaps the individuals who are seeking this change know that courts do remove evidence after it has been received. In that case, maybe we need to limit the court's ability to order that the report not be part of the record only *after* it has been introduced. Another possibility is to *remove* the last sentence, but then the court would not have the authority to order that the report not be part of the record. Alternatively, maybe there is no problem at all, and it is just fine for the court to order that the report not be part of the record without having seen it or after it is already part of the record.

How would you like me to proceed on this? Thanks.

Pam

Pamela J. Kahler
Legislative Attorney
Legislative Reference Bureau
608-266-2682

Kahler, Pam

From: Griffiths, Terri
Sent: Wednesday, June 13, 2007 6:36 AM
To: Kahler, Pam
Subject: RE: FW: AB 309

We should just do a new sub to incorporate everything for clarity. Thank you.

-----Original Message-----

From: Kahler, Pam
Sent: Tuesday, June 12, 2007 2:18 PM
To: Griffiths, Terri
Subject: RE: FW: AB 309

Terri:

Would you like an amendment to the sub or a new sub that you can introduce as ASA2?

-----Original Message-----

From: Griffiths, Terri
Sent: Tuesday, June 12, 2007 2:04 PM
To: Kahler, Pam
Cc: 'Robert Andersen'
Subject: FW: FW: AB 309

Let's amend the sub to make this perfectly clear as Bob states below and you suggested. You certainly may email him with further questions.

Thank you,

Terri

-----Original Message-----

From: Robert Andersen [mailto:rja@legalaction.org]
Sent: Tuesday, June 12, 2007 2:01 PM
To: Griffiths, Terri
Subject: Re: FW: AB 309

Terri:

I think what Pam said at the end of her email is right:

"If there is a difference, to be ultra safe and cover all bases, the report should go to the parties before being introduced into evidence and may not be submitted to the court before being introduced into evidence."

I think that what Pam is indicating is that it would be best, if this is the concern, to clearly state that the report may not be submitted to the court before being introduced in accordance with the rules of evidence. This is what we would like to see happen. This is what the family law section would want, for them to support this, and it is what WCADV was concerned about some time ago -- in addition to making sure the parties received the report in advance. I will be happy to answer any other questions you or Pam may have.

>>> "Griffiths, Terri" <Terri.Griffiths@legis.wisconsin.gov> 06/12/07
>>> 01:23PM >>>

Bob,

Here is the response from the drafter to my question regarding the language. I have included the entire conversation for your reference.

Please let me know if the suggested changes she has made is what you want done or not.
Thanks, Terri

-----Original Message-----

From: Kahler, Pam
Sent: Tuesday, June 12, 2007 1:17 PM
To: Griffiths, Terri
Subject: RE: AB 309

Terri:

I think he is saying that there is a difference between submitting the report to the court and introducing the report into evidence. They want the report to go to the parties before it is introduced into evidence.

That is fine, but if there is a difference between submitting to the court and introducing into evidence, the language they suggest only addresses the evidence introduction and does not prohibit the report from being submitted to the court - even before it goes to the parties; it just cannot be introduced into evidence until 10 days after going to the parties. On the other hand, if there is no difference between submission to the court and introduction into evidence, then there is not problem with the language. If there is a difference, to be ultra safe and cover all bases, the report should go to the parties before being introduced into evidence and may not be submitted to the court before being introduced into evidence.

Pam

-----Original Message-----

From: Griffiths, Terri
Sent: Tuesday, June 12, 2007 12:41 PM
To: Kahler, Pam
Subject: AB 309

Pam,

Below is a concern that the language of ASA 1 to AB 309 does not prevent a report going to the court before it is given to other parties. Please review the email below and let me know if we have missed something that I personally can not see in the draft as being incorrect. Thanks, Terri

-----Original Message-----

From: Robert Andersen [mailto:rja@legalaction.org]
Sent: Tuesday, June 12, 2007 11:34 AM
To: Griffiths, Terri
Subject: RE: Hearing on AB 309

Terri:

Thanks. We still have a big problem with the language on lines 5 and 6.

The draft says that a copy of the report will be given to the parties 10 days in advance "before submitting the report to the court." The problem with this was first pointed out by the WCADV attorney, who said that the judge will get these reports and look at them before they are introduced as evidence -- that's just human nature. The family law section of the state bar said the same thing. That's why we changed this to say that a copy of the report will be given to the parties "before the report is to be introduced as evidence." That way the court will not get the report ahead of time and look at it before the report can be officially and properly received as evidence. Actually, a judge in the state bar family

law section, Judge Mark A. Warpinski, Brown County Circuit Court, came up with a simpler way to say the whole thing:

767.405 (14) (b) The person or entity investigating the parties under par. (a) shall complete the investigation and submit a report of the results to the parties at least 7 days before the report is introduced as evidence. If the report is to be made a part of the record, it shall be offered and received in accordance with the rules of evidence.

This is the same as the substitute, except that it eliminates some of the redundant language. Again, if you would like me to explain this to the drafter, I would be happy to do so. Thanks again.

2005

Date (time) needed

today
Sean
(in 6-19)

LRBs 0103 / 1

PJK : jld:

**SUBSTITUTE AMENDMENT
[TO A BILL]**

Use the appropriate components and routines developed for substitute amendments.

§ A SUBSTITUTE AMENDMENT

TO 2005 ~~SB~~ **AB** 309 (LRB-)

AN ACT . . . [generate catalog] *to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . .* of the statutes; **relating to:**

.....
.....
.....
.....

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION #.





State of Wisconsin
2007 - 2008 LEGISLATURE

LRBs0090/2
PJK:jld:rs

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2007 ASSEMBLY BILL 309**

May 31, 2007 - Offered by Representative ALBERS.

- 1 **AN ACT to amend** 767.405 (14) (b) of the statutes; **relating to:** submitting
- 2 custody study reports to the parties and offering and admitting custody study
- 3 reports in accordance with the rules of evidence. ✓

Analysis by the Legislative Reference Bureau

Under current law, in an action affecting the family, such as a divorce, if there is a minor child and the parties do not agree on legal custody or physical placement, the parties must be referred to mediation to attempt to resolve the contested issues. The court may order a person or entity designated by the county to conduct a legal custody or physical placement study to investigate such issues as the conditions of the child's home, the parties' performance of parental duties, and whether either party has engaged in domestic abuse. The report that results from the study is submitted to the court, ~~with copies~~ to the parties, ✓ and made a part of the record of the action unless the court orders otherwise. This substitute amendment requires that the report be submitted to the parties at least ten days before it is submitted to the court and that, if the report is to be made a part of the record, it be offered and received in accordance with the rules of evidence. Consequently, the parties would have the opportunity to question the person who conducted the study and made the

made available

insert A

report with respect to any statements, conclusions, or recommendations that the person includes in the report.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 767.405 (14) (b) of the statutes is amended to read:

767.405 (14) (b) The person or entity investigating the parties under par. (a) shall complete the investigation and submit a report of the results to the court. The court shall make the results available to both parties person or entity completing the report shall submit a copy of the report to each of the parties at least 10 days before submitting the report to the court. If the report is to be made a part of the record, it shall be offered and received in accordance with the rules of evidence. The report shall be a part of the record in the action unless the court orders otherwise.

SECTION 2. Initial applicability.

(1) The treatment of section 767.405 (14) (b) (with respect to submitting legal custody and physical placement study reports to the parties at least 10 days before submitting the report to the court), of the statutes first applies to legal custody and physical placement study reports that are completed on the effective date of this subsection.

(END)

Insert 2-8

LES -
FIX ->
Component

-> This act ✓

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0103/?ins
PJK:.....

INSERT A

WOF introduced into evidence, that it be made a part of the record in the action and offered and received in accordance with the rules of evidence, and that it not be submitted to the court before it is introduced into evidence.

(END OF INSERT A)

INSERT 2-8

1 ~~SECTION 1. 767.405 (14) (b) of the statutes is amended to read:~~
2 767.405 (14) (b) The person or entity investigating the parties under par. (a)
3 shall complete the investigation and submit a report of the results to the court. The
4 ~~court shall make the results available to both parties~~ at least 10 days before the
5 report is introduced into evidence. The report shall be a part of the record in the
6 action ~~unless the court orders otherwise~~ and shall be offered and received in
7 accordance with the rules of evidence. The report may not be submitted to the court
8 before it is introduced into evidence.

History: 1987 a. 355; 1989 a. 56; 1991 a. 269; Sup. Ct. Order No. 93-03, 179 Wis. 2d xv; 1995 a. 275, 343; 1999 a. 9; 2001 a. 61, 109; 2003 a. 130; 2005 a. 443 ss. 8, 56, 57, 181; Stats. 2005 s. 767.405.

(END OF INSERT 2-8)

Kahler, Pam

From: Griffiths, Terri
Sent: Friday, June 22, 2007 9:55 AM
To: Kahler, Pam
Subject: RE: FW: LRB 07s0103 Topic: Introducing report into evidence

Okay, thanks

-----Original Message-----

From: Kahler, Pam
Sent: Friday, June 22, 2007 9:48 AM
To: Griffiths, Terri
Subject: RE: FW: LRB 07s0103 Topic: Introducing report into evidence

You'll have to send the stripes back, if you haven't already.

-----Original Message-----

From: Griffiths, Terri
Sent: Friday, June 22, 2007 9:27 AM
To: Kahler, Pam
Subject: FW: FW: LRB 07s0103 Topic: Introducing report into evidence

Pam,

I had Bob take a look at the new sub draft and he had one more change. Terri

-----Original Message-----

From: Robert Andersen [mailto:rja@legalaction.org]
Sent: Friday, June 22, 2007 9:25 AM
To: Griffiths, Terri
Subject: Re: FW: LRB 07s0103 Topic: Introducing report into evidence

Terri:

Hi. I was in Chicago yesterday to pick up my daughter at the airport. The draft is great, with one exception. The words, "report shall be a part of the record in the action" should also be deleted. These words should be deleted, because the report may not be part of the record if, the report is not properly introduced or if the parties stipulate otherwise. The new statute would then read, with the deletion: "The report shall be offered and received in accordance with the rules of evidence." This sentence says it all, because it says that the report, like any other evidence, will be either made a part of the record or not -- depending on whether the rules of evidence were properly followed. The final sentence in the LRB draft -- "The report may not be submitted to the court before it is introduced into evidence" is excellent, because it makes it clear that the report should not be seen by the court before the report is properly introduced. You may forward this email to Pam, and if she has any questions, she could contact me at 256-3304 x 106 or this email address. Thanks very much!

>>> "Griffiths, Terri" <Terri.Griffiths@legis.wisconsin.gov> 06/21/07
>>> 01:43PM >>>

Bob,
Please review this to see if we hit the mark. Thanks, Terri

>
>

From: Parisi, Lori
> Sent: Thursday, June 21, 2007 11:47 AM
> To: Rep.Albers
> Subject: LRB 07s0103 Topic: Introducing report into evidence

> The attached proposal has been jacketed for introduction.

> A copy has also been sent to:

>

> <<LRB s0103_1>>



State of Wisconsin
2007 - 2008 LEGISLATURE

LRBs0103/1 → 2
PJK:jld:rs

Handwritten signature

**ASSEMBLY SUBSTITUTE AMENDMENT ,
TO 2007 ASSEMBLY BILL 309**

today

Regen

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Handwritten mark

