



JESSIE RODRIGUEZ

STATE REPRESENTATIVE ★ 21ST ASSEMBLY DISTRICT

AB 586: Modifying Custody or Physical Placement Contingent on a Future Event

**Testimony of State Representative Jessie Rodriguez
Assembly Committee on Children and Families
November 14, 2017**

Chairman Kitchens and fellow committee members, thank you for the opportunity to testify on Assembly Bill 586, legislation that seeks to allow for modifications to a custody or physical placement order contingent on a reasonably likely future event.

In custody or physical placement orders there are often foreseeable events that will occur such as a child beginning school or improvement in a child or parent's health condition that would require changes in a placement schedule. Unfortunately, current law prohibits changes to a custody or placement order within two years of the final judgement even when the court understands a change will be necessary.

To illustrate such a scenario, say for example, parents live approximately two hours away from one another and share placement. If the child is to start school within two years of their judgement and they know the arrangement will no longer work, due to current law they have no other recourse but to return to court to work out an agreement after school commences.

This legislation would remedy that situation by allowing the court to incorporate anticipated future changes into an order without requiring the parents to return to court after the changes occur. The modifications to placement or custody can only be approved if both parents agree to the changes.

Accounting for future changes in placement will have multiple benefits including reduced costs associated with post-judgement litigation. The proposal also gives parents greater flexibility to negotiate orders based on the family's individual



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needs. Most importantly, making these changes will reduce the likelihood of parental conflict that can be harmful to a young child. This proposal will benefit parents, children and the family court system.

I encourage your support for this legislation. Thank you for your time.



Luther S. Olsen

State Senator

14th District

TO: Assembly Committee on Children and Families

FROM: Senator Olsen

DATE: November 15th, 2017

SUBJECT: Testimony for Assembly Bill 586

Thank you Chairman Kitchens and members of the Assembly Committee on Children and Families for holding a hearing and allowing me to testify in support of Assembly Bill 586. The idea for this legislation was brought to my attention by the State Bar of Wisconsin.

When separated parents are working out a custody or physical placement plan they are often aware that they may need to modify the plan in the future. Once a final custody or physical placement order is set in place, current law prohibits parents from changing a custody or placement order within two years of that final judgement.

It doesn't matter if both parties as well as the court acknowledge a change in placement or custody is likely necessary, or even if the change would be in the best interest of the child, under current law families must return to court to modify the final agreement. This can create a significant burden by forcing parents to return to court for post-judgement litigation.

Assembly Bill 586 will modify current law by allowing a court to approve anticipated modifications to a custody or physical placement order that is likely to occur within two years of the stipulation that is agreed upon. This bill will give separated parents greater flexibility to negotiate these foreseeable changes based on their individual family needs, and allow separated parents to make changes to their agreement without returning to court.

Thank you members, I ask for your support on Assembly bill 586 and I am happy to answer any questions that you may have.

To: Members, Assembly Committee on Children & Families
From: Jared M. Potter – Chair of the Collaborative Family Law Council of Wisconsin
Date: November 15, 2017
Re: Written testimony in support of AB 586 – contingent placement

The Collaborative Family Law Council of Wisconsin requests your support of AB 586, sponsored by Rep. Jessie Rodriguez, allowing for modification of Legal custody or physical placement orders contingent upon the occurrence of a specified future event or change in conditions.

The Collaborative Family Law Council of Wisconsin is a statewide association of lawyers, mental health professionals and financial advisors who work together to promote a problem solving and respectful solution to family law issues.

Under current law, families utilizing the collaborative process are prohibited from memorializing agreements that modify placement or custody based upon future events. In many collaborative divorces, families are often forward looking to contingent events and how their current divorce proceedings and actions will affect their lives and their children's lives in the future. Unfortunately, these families who are able to effectively co-parent are left without the necessary tools to enact their parenting plans which would call for modifications to their placement schedules based upon certain events like a child starting school, a parent's move to a new town, a change in a parent's job or a change in the child's school. Under current law, these families wait until whatever planned event occurs, then hire their attorneys and draft a new agreement to be submitted to the court.

Many families engaged in the collaborative process rely heavily on the expertise of mental health professionals in creating parenting plans which support their children in different developmental stages. This bill would allow these families to properly utilize the mental health professionals' expertise in modifying the placement or custodial provisions based upon foreseeable future events related to a child's development. This bill gives families engaged in the collaborative process a tool to problem solve the current issues in their placement and custody disputes and plan for foreseeable future changes without having to re-engage their attorneys and the legal process.

To: Members, Assembly Committee on Children & Families
From: Attorney Cassel Villarreal
Date: November 14, 2017
Re: AB 586 – Contingent Placement

I am the Chair of the State Bar of Wisconsin's Family Law Section and the section requests your support of AB 586 as the bill provides for the modification of legal custody or placement orders that are contingent upon a specified future event. I also worked on the legislative committee regarding this proposed bill.

Current case law does not allow the court to order or enforce an agreement between parents that is based on the occurrence of some stated contingency. However, there are foreseeable changes that may necessitate a change in the placement schedule. Some common foreseeable changes that I have seen parents want to address are:

- Child aging

There is a lot of social science that tells us infants and younger children may need different placement schedules due to their developmental needs. Father's I have worked with understand that it is in an infant's best interest to have shorter and frequent periods of placement rather than overnights BUT they also want to make sure they can be given overnight placement and shared placement as developmentally warranted.

However, because the law does not allow a future change to be enforceable the parents are left to decide whether to fight for more placement than developmentally appropriate, trust the other parent to act in good faith, or plan to return to court to litigate the matter once the child ages.

I had a case this summer where the parents lived in different states. The evaluator recommended Dad's summer placement increase from being shared in the first summer to Dad having the entire summer thereafter based solely on the youngest child's age and developmental need. Therefore, this father will be required to return to court for more placement.

- Commencing School with geographical distance
- Changes in work schedules (changing shifts or travel for work)
- Duties of care for other (mother needing to care for parent in Hospice)

Allowing parents to provide for a specified future event promotes healthy co-parenting and eliminates the need for people to return to court. Enforceable agreements allow certainty for the parents in their ability to rely on the agreement without having to worry about the other parent hold up their end of an informal agreement.

The bill continues to provide protections under current law. The court does have the discretion to not approve a stipulation if the court does not find it is in the best interest of the child. This allows the court to intervene if they feel the agreement is not voluntary or contrary to a child's interest.

To: Members, Assembly Committee on Children & Families
From: Mark G. Schroeder – Family Court Commissioner Outagamie County Wisconsin
Date: November 15, 2017
Re: Written testimony in support of AB 586 – contingent placement

Wisconsin families who are co-parenting children from separate households often find themselves with disputes over how much time the child should spend with each of their parents. While those disputes often end up in courts and are resolved after contested hearings, the long experience of Wisconsin citizens, courts, and child advocacy experts demonstrates that when those disputes are resolved by agreement between the parents, the child's schedule is more likely to stabilize long term and the disputes and tension between the parties are reduced. This is more likely to result in a healthier, child centered approach to co-parenting moving forward instead of one where the parents are looking for events and evidence they can use against the other parent the next time they return to court.

Under current Wisconsin law, those families able to reach an agreement can have those agreements adopted by a court Order, but they cannot do so when they want to change placement once some future event occurs, even when the parties recognize and agree that an upcoming event will require them to change their placement schedule. A Wisconsin family might share placement equally for a 3 year old even when one lives in Eau Claire and the other in Appleton, and know that such a plan won't be workable when the child begins school. They might talk about what changes to make and they might come up with a plan, but under current law they must wait until the child actually begins school to have that plan reduced to a binding Order, even if they reached an agreement 2 years before. Other families might anticipate that a Mother in Superior intends to move to Madison where the Father resides in a year, and they might agree that placement should be equally divided between the parties when that move occurs. Under current law, they would have to actually wait until the move occurs before their agreement can be reduced to an Order.

The lack of an order in those cases and the uncertainty that results can increase the tension and distrust in their co-parenting relationship and bring them back to court with a dispute that otherwise might have been avoided. This bill would provide Wisconsin families with the opportunity to formalize their agreements on what placement should look like when a future event occurs. It allows them to plan. It lets them reduce the chances that they'll return to court with a dispute that makes co-parenting a more challenging experience. The structure of the bill, which would permit a court to approve a stipulation to change placement only when the future event is 2 years or less away from the date of the agreement, prevents them from looking so far down the road they're traveling that such agreements are of less value. Moreover, the bill provides other protections consistent with current Wisconsin law. The bill indicates that courts "may approve" a stipulation with a contingent change in placement and then indicates that the courts may reject such a stipulation "if the court finds that the modification is not in the best interests of the child." These protections incorporate existing legal standards designed to

ensure that any placement order, whether produced by stipulation or contested hearing, is made with the best interests of the child as its chief objective.

While those protections are needed and they permit the courts to intervene when an agreement might be the product of coercion or are contrary to the child's interests, there are many Wisconsin families who co-parent effectively and know their child and themselves well enough to reach agreements that provide for the best interests of their child. Those families know that a change in schedule might be inevitable when school begins, or when parents move into the same city, town or school district. This bill empowers those parents to make those decisions and to have them reduced to a court order when those agreements are reached. It encourages parents to have these conversations well in advance of events they know are coming that will dictate a change in their placement schedule, and it provides the stability and support for the kind effective co-parenting Wisconsin law should encourage.

I am asking you to support Assembly Bill 586 and allow the courts to approve contingent agreements that well-meaning Wisconsin families want to enter into. This change is a targeted solution to a very specific issue and would be beneficial to many parents in the family court system, while continuing to allow judges and court commissioners to retain their discretion.

FAMILY LAW SECTION

To: Members, Assembly Committee on Children & Families
From: State Bar of Wisconsin Family Law Section
Date: November 15, 2017
Re: AB 586 – contingent placement

The State Bar of Wisconsin's Family Law Section encourages your support on AB 586, sponsored by Rep. Jessie Rodriguez, allowing for modification of legal custody or physical placement orders contingent upon the occurrence of a specified future event or change in conditions.

In custody or placement cases, there are often foreseeable changes, such as the child aging, commencing school, or the improvement of a parent's or child's health that may necessitate changes in a placement schedule. Current law prohibits changes to custody or placement orders within two years of a final judgement, even if the court determines a likelihood of foreseeable events within a two year timeframe that would necessitate a change in placement or custody, or if the child would benefit from the change in arrangement. Even an agreement between the parties regarding such events is unenforceable.

AB 586 would allow parents and the court to incorporate those anticipated changes in an order without the necessity of returning to court after the changes actually occur.

Incorporating contingent changes in a placement schedule would be particularly helpful for parents of young children because infants and toddlers need a different type of schedule than older children. As the child ages, the placement schedule could modify to accommodate the child's development without the need to return to court.

The Family Law Section supports this legislation because the provisions are likely to reduce post-judgment custody and placement litigation. This proposal also allows greater flexibility for the parents to negotiate and allows the court to issue orders that can be more adaptable as families go through predictable changes. This will benefit children greatly by reducing the frequency and intensity of litigation. Studies have clearly documented the damaging effect of parental conflict on their children. This legislation is a significant improvement in helping avoid that damage by providing parents and the court with an important tool to reduce litigation and tailor provisions specific to the individual family.

For these reasons, the **Family Law Section respectfully requests the Children & Families committee members' support AB 586.**

For more information, please do not hesitate to contact our Government Relations Coordinator, Lynne Davis, ldavis@wisbar.org or 608.852.3603.

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



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