



WISCONSIN LEGISLATIVE COUNCIL

MEETING MINUTES

STUDY COMMITTEE ON CHILD PLACEMENT AND SUPPORT

Room 412 East, State Capitol
Madison, WI

August 28, 2018
10:30 a.m. – 3:30 p.m.

Call to Order and Roll Call

Chair Brooks called the meeting to order. A quorum was determined to be present.

COMMITTEE MEMBERS PRESENT: Rep. Robert Brooks, Chair; Sen. Lena Taylor, Vice Chair; Reps. Janel Brandtjen and Amanda Stuck; Sen. Chris Kapenga (via phone); and Public Members Maureen Atwell, Tony Bickel, Mark Fremgen, Jenna Gormal, Tiffany Highstrom, Benjamin Kain, James Sullivan, and Thomas Walsh.

COUNCIL STAFF PRESENT: Jessica Karls-Ruplinger, Deputy Director; Rachel Letzing, Principal Attorney; Margit Kelley, Senior Staff Attorney; and Kelly Mautz, Support Staff.

APPEARANCES: Jessica Karls-Ruplinger, Deputy Director, Legislative Council staff; Constance M. Chesnik, Office of Legal Counsel, Department of Children and Families (DCF); Anthony J. Menting, Attorney, Stafford Rosenbaum LLP; and Meghan McCann, Senior Policy Specialist, National Conference of State Legislatures (NCSL).

OPENING REMARKS

Representative Robert Brooks, Co-Chair, Joint Legislative Council, and Chair of the Study Committee on Child Placement and Support, welcomed committee members and provided an overview of the study committee process. He expressed his intention to encourage open and respectful committee discussion and his appreciation at having Senator Taylor as the committee vice-chair. He then introduced Jessica Karls-Ruplinger, Deputy Director, Legislative Council staff. Ms. Karls-Ruplinger thanked members for their service and offered the Legislative Council

staff as a resource throughout the committee's deliberations.

Introduction and Background of Committee Members

At Chair Brooks' invitation, committee members introduced themselves and summarized their backgrounds.

[The PowerPoint presentations and other materials provided by the following speakers and Legislative Council staff are available at:

<https://docs.legis.wisconsin.gov/misc/lc/study/2018/1785.>]

Presentation by Constance M. Chesnik, Office of Legal Counsel, DCF, Regarding Wisconsin Child Support Standards

Constance Chesnik provided an overview of federal and state child support legislation. She began by explaining the development and key provisions of federal child support legislation from 1950 through the 2016 change to the federal child support guidelines rule. She then discussed the evolution of Wisconsin law from the early 1970s, when courts had substantial discretion to determine child support amounts based on each individual case, to the current statutes that provide a list of factors a court must consider when setting support. She noted that the percentage of income standard Wisconsin currently uses was based on extensive research done by the University of Wisconsin (UW)-Madison Institute for Research on Poverty, and was implemented through legislation in 1983 and promulgated in administrative rule in 1987. She noted that federal law requires states to review their child support guidelines at least once every four years.

Ms. Chesnik then explained Wisconsin's percentage of income standard and noted that while this standard is presumptively applied in shared placement cases, state statutes authorize a court to deviate from the set percentage standards after considering specific factors and upon making certain findings. Ms. Chesnik then described specific circumstances addressed in the child support guidelines, including serial families and very high or very low incomes, and noted that changes were recently made to the medical support provisions in the guidelines.

Regarding alternative child support methodologies, Ms. Chesnik noted that 40 states use the income shares model, which is often perceived as a model that is fairer, but that does not result in different outcomes from the percentage of income model, as used in Wisconsin. She also noted that an income shares model makes application of a low-income formula very difficult. Ms. Chesnik stated that moving to an income shares model would require extensive research before implementation.

Following her presentation, Ms. Chesnik responded to questions from committee members on a variety of issues. First, she responded to members' questions regarding the 2016 federal rule change that prohibits states from treating incarceration as voluntary unemployment in establishing or modifying support orders and changes how income is imputed to low-income payers, and DCF's intention to review these changes at its next quadrennial review in 2020.

Regarding questions from committee members about the state's role in providing job training, Ms. Chesnik noted that while DCF does not provide training directly, a number of counties operate job training and programming.

She also responded to members' questions regarding incarcerated parents who remain subject to accruing child support orders while incarcerated and options to address this issue.

She then answered members' questions regarding deviations from the guidelines for low-income payers, revising support orders, and the current interest rate of 6% on such orders.

In response to questions regarding fathers' payment of birth costs when the mother is receiving public assistance, she noted that ch. DCF 150, Wis. Adm. Code, limits these costs and federal law prohibits recovering public assistance money from recipients. At the request of members, she agreed to provide additional information regarding birth costs and trends, as well as a list of outdated or problematic issues identified by DCF that the committee may wish to address.

Presentation by Anthony J. Menting, Attorney, Stafford Rosenbaum LLP, Regarding Wisconsin Physical Placement Standards

Anthony Menting described the historical shift in courts' presumption of which parent should have primary placement, explained the current "best interest of the child" standard for placement determinations that disallows any favoritism based on race or sex, and noted that the trend toward equal placement reflects the fact that today's parents, judges, and court commissioners often had working parents themselves, or are part of two-parent working families.

Mr. Menting then responded to a series of questions from committee members. First, in response to questions regarding equal placement, he noted that the documented trend toward equal placement is consistent with what he sees in practice, that the effect of the *Landwehr* case is to maximize placement, not mandate equal placement, and that the best interest of the child does and should control the placement decision.

Next, Mr. Menting answered questions about contingent placement orders and noted that the Wisconsin Supreme Court has prohibited courts from issuing contingent orders and will not approve or enforce them even if the parents agree. He noted that the state bar has been advocating allowance of contingent placement orders for over 10 years.

In response to questions from members about the ability of the family court to address suspected domestic violence and coercion during child placement decisions, Mr. Menting noted that unless a case is fully litigated and the parties raise the issues themselves, the court does not have an opportunity to address the issue; however, courts are directed to consider domestic violence convictions when determining child placement. He noted that in his experience, he is not aware of attorneys recommending that clients in domestic violence circumstances accept equal placement rather than requesting sole custody in order to avoid being treated as an unreasonable party in a placement dispute.

In response to several questions from members regarding the court's use of parenting plans, Mr. Menting stated that in his experience, they are used very rarely, and that this is likely because the plans are required at such a late point in the process that the court is already aware of the information that is required to be in a plan. He noted that Jefferson County requires plans to be submitted before mediation begins and stated that he found that to be more useful.

Mr. Menting then responded to members' questions regarding shared placement during military deployment, training for judges and guardians ad litem on domestic violence, and successful mediation and family court services programs offered by counties.

At Chair Brooks' request, Mr. Menting agreed to provide the committee with a list of areas where the statutes encourage litigation and to provide possible solutions to those issues.

Presentation by Meghan McCann, Senior Policy Specialist, NCSL, Regarding States' Physical Placement and Child Support Standards

Meghan McCann provided an overview of federal child support laws, models used in other states to set child support guidelines, and other states' child custody and physical placement standards. At the outset, Ms. McCann explained that NCSL has a contract with the federal office of child support enforcement to create a clearinghouse of policy resources regarding child support legislation, which includes a child support and family law legislation database. She noted that child support enforcement programs are shown to reduce the number of parents in poverty, reduce reliance on public assistance, and to increase family engagement. Ms. McCann explained that the federal child support program provides a 66% funding match to states to carry out the child support enforcement functions.

Ms. McCann explained the income shares model, used in 40 states, the percentage of income model, used in seven states, and the Melson model, used in three states, but noted that there are variations in the way these models are implemented in each state. She said that in 2017, Illinois became the most recent state to change to an income shares model. Ms. McCann then gave an overview of legislation introduced in other states regarding the child support guidelines, termination of child support, and guideline adjustments.

Ms. McCann then provided an overview of the states with statutes requiring a presumption regarding legal custody, physical placement, or both. She also noted that 43 states introduced over 200 bills in 2018 regarding various aspects of child custody, visitation, military deployment, and either joint, shared, or equal custody presumptions. She cautioned that states' guidelines vary based on the definitions of legal custody, physical placement, shared custody, percentage of time or number of overnights with each parent, or whether parenting time is included in the calculation, as well as deviation factors.

Finally, Ms. McCann described the 2016 federal rule change, states that currently allow incarcerated parents to obtain a reduced or suspended child support order, and 2018 legislation introduced in other states to address the federal rule changes. She noted that North Dakota and California recently enacted legislation allowing an administrative suspension of a child support order for incarcerated parents.

Ms. McCann then responded to questions from committee members regarding the income shares model, the Illinois income shares model legislation, the data that other states have relied on to support the implementation of child support guidelines, domestic violence screening, the use of home studies, and states with a presumption of equal placement. Ms. McCann agreed to provide members with additional information regarding the number of bills relating to child support and placement enacted during 2018, the different income levels other states use in their child support guidelines, background information about the Illinois legislation, and research regarding differences in child support orders when a parent is pro se or represented by an attorney. In addition, she encouraged the committee to contact her with additional questions or requests as the committee continues its deliberations.

Discussion of Committee Assignment

Chair Brooks stated that speakers scheduled to make presentations at the next committee meeting on September 25, 2018, will include researchers from the UW-Madison Institute for Research on Poverty and a social worker. He then asked members for suggestions about other potential speakers for that meeting, and whether members would like to hear from mediators or guardians ad litem.

James Sullivan asked that both mediators and guardians ad litem be asked to give presentations, as well as a family court judge from Milwaukee and attorneys who work with low-income clients and pro se litigants.

Jenna Gormal asked that representatives from Legal Action of Wisconsin also be invited to speak, and noted that Domestic Abuse Intervention Services recently completed a training manual for guardians ad litem that would be useful to hear about.

Benjamin Kain requested that the committee hear from social scientists on the outcomes of shared parenting and child support enforcement.

Chair Brooks then asked members to submit to the Legislative Council staff any issues they would like the committee to address and additional speakers they would like to hear from at future meetings and noted that future meetings would attempt to accommodate those requests to the extent possible.

Other Business

There was no other business brought before the committee.

Adjournment

The committee adjourned at 3:30 p.m.

REL:ksm

[The preceding is a summary of the August 28, 2018 meeting of the Study Committee on Child Placement and Support, which was recorded by WisconsinEye. The video recording is available in the WisconsinEye archives at <http://www.wiseye.org/Video-Archive>.]