



## WISCONSIN LEGISLATIVE COUNCIL STUDY COMMITTEE MEMORANDUM

TO: MEMBERS OF THE STUDY COMMITTEE ON CHILD PLACEMENT AND SUPPORT

FROM: Rachel E. Letzing, Principal Attorney, and Margit S. Kelley, Senior Staff Attorney

RE: Topics for Committee Discussion Relating to the Standards for Determining Periods of Physical Placement and Child Support in Actions Affecting the Family

DATE: September 18, 2018

This memorandum provides a list of potential topics of discussion relating to the standards for determining periods of physical placement and child support in actions affecting the family, for the Study Committee on Child Placement and Support. The list is compiled from issues raised by presenters and committee members during the study committee's August 28, 2018, meeting, or separately submitted to Legislative Council staff. Where an item has been specifically suggested by a person or group, the name of the person or group follows the suggestion in brackets. The list is not necessarily exhaustive, but, rather, is intended to provide a starting point for discussion of possible topics the committee may wish to have addressed in legislative proposals for its review and further consideration.<sup>1</sup>

### **PLACEMENT DETERMINATIONS**

#### **Factors for Court Determination**

- Revise the language regarding the allocation of physical placement to strengthen the emphasis on maximizing placement and to re-order the best interest factors. [[State Bar of Wisconsin, Family Law Section.](#)]

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<sup>1</sup> Certain issues raised at the study committee's meeting on August 28, 2018, are not included in this list, such as the birth cost recovery program and guardian ad litem (GAL) reimbursement rates, which appear to be outside the scope of the committee's review of the standards for determining periods of physical placement and child support.

- Specify a rebuttable presumption to equalize placement to the highest degree. [Compare, for example, [2017 Assembly Bill 849](#).] [Kain.]
- Subject to the paramount concerns for domestic violence under current law, direct a court to use a substantially equal allocation of physical placement as the initial consideration, which is to be modified as appropriate after considering in each case the best interests of the child, geographic separation of the parents, and accommodations for different households. [To attempt to mirror current practices as described to the committee.] Additional options that could be included with this revision:
  - Re-order the best interest factors. [Kain; [State Bar of Wisconsin, Family Law Section](#).]
  - Subject to the paramount concerns for domestic violence under current law, specify that a court may allocate principal physical placement<sup>2</sup> to one parent only if the other parent unreasonably refuses to cooperate with the other parent, the other parent does not wish to have an active role in raising the child, the other parent is not capable of providing physical care for the child, the parents will not be able to cooperate in the future, or conditions exist that would interfere with exercising shared physical placement. [Compare, for example, legal custody under s. [767.41 \(2\) \(b\)](#) and [\(c\)](#), Stats.]

### **Encouragement of Parental Problem-Solving**

- Allow parents to include in a marital settlement agreement or placement stipulation a modification to physical placement that is contingent upon a future event. [Compare, for example, [2017 Assembly Bill 586](#).] [Highstrom.]
- Require parents to attend a one-time parent education class, subject to certain exceptions for when a parent has already attended the class or when attendance is inappropriate or impracticable, rather than allowing a court to determine whether to require that parents attend the class as allowed under current law. [Compare, for example, [2017 Assembly Bill 940](#).] [Fremgen.]
- Require multiple sessions of mediation [2 or 3?], unless an agreement has been reached, rather than one mediation session, as required under current law.
- Require exchange of proposed parenting plans at or before the first mediation session. Continue to require each parent to submit a “proposed” parenting plan to the court if the parents have not reached an agreement. [Highstrom.]

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<sup>2</sup> The term “principal physical placement” could be defined as when the other parent has court-ordered periods of placement of less than 25% a year, extrapolating from the term “shared placement” that is currently defined in the Wisconsin Administrative Code as when **both** parents have court-ordered periods of placement of at least 25% a year. [ss. [DCF 150.02 \(25m\)](#) and [150.04 \(2\) \(a\) 1.](#), Wis. Adm. Code.]

### **Terminology Relating to Reorganization of the Family**

- Revise the terminology that requires a referral to mediation when legal custody or physical placement is “contested” to instead require a referral when those issues are “not resolved” or “not stipulated” by the parties or when the parties “have not agreed to a parenting plan.”
- Revise the terminology from “legal custody” to “decision-making authority,” and from “physical placement” to “residential arrangements” or “residential schedule.” [Compare, for example, s. [26.09.187](#), Wash. Rev. Code.]

### **Considerations for Parent Deployment**

- Adopt the Uniform Deployed Parents Custody and Visitation Act (UDPCVA), by the Uniform Law Commission, to address issues of custodial responsibilities that arise when a parent is deployed in military or other national service. [See the [UDPCVA informational page](#).] [[Protecting Military Families in Wisconsin](#).]

### **Considerations in Domestic Violence Circumstances**

- Recommend to the Wisconsin Supreme Court’s Board of Bar Examiners that the GAL biennial continuing legal education (CLE) require [an identified number of CLE hours: one among the six hours?] on the impact of domestic violence on families. [Fremgen.]
- Specify that in an action affecting the family, a court [may or must?] take judicial notice of records maintained in the consolidated court automation programs (CCAP) relating to a conviction of a parent for a crime that is subject to the domestic abuse surcharge under s. [973.055 \(1\)](#), Stats., to an injunction issued against a parent under s. [813.12](#) or [813.122](#), Stats., or to a child welfare proceeding under [ch. 48](#), Stats., or a juvenile justice proceeding under [ch. 938](#), Stats., in which a parent is a party. [Fremgen.]

## **CHILD SUPPORT DETERMINATIONS**

### **Suspension or Reduction of Child Support During Extended Incarceration**

- Specify that child support is suspended during a paying parent’s period of incarceration if certain conditions are met. [Compare, for example, the [Milwaukee County Child Support Prison Project](#).] Conditions could include:
  - Sentence for period of incarceration is at least [an identified period of time: Six months? One year?]
  - The paying parent does not have another source of income that could be utilized.
  - The paying parent will not be released to work outside the facility.
  - The child for whom the child support is due, or the other parent, is not the victim of the crime for which the paying parent is incarcerated.

- Specify that child support is reduced by [an identified percentage: 50%? 80%?] for each month during a paying parent's period of incarceration if certain conditions are met. Identify the conditions.

### **Establishment of Child Support Guidelines**

- Continue the current calculations that apply to shared and principal placement arrangements, but move the emphasis to shared parenting arrangements to recognize current practices. Options could include either or both of the following:
  - Revise the statutory directive to the Department of Children and Families to specify that in a shared placement arrangement<sup>3</sup> the standard in determining child support must be based on both parents' incomes and assets and the allocation of physical placement with each parent, and in a principal placement arrangement the standard must be based on a percentage of the other parent's gross income and assets, rather than a directive to base the standard "upon a percentage" with rules that may also consider the amount of physical placement. [See s. [49.22 \(9\)](#), Stats.]
  - Revise relevant administrative rules to treat the shared placement formula as the principal calculation, rather than as a "special circumstance," and to rename the "percentage of income standard" as the "designated percentage" that applies within the various child support formulas and in the case of a principal physical placement arrangement. [See ch. [DCF 150](#), Wis. Adm. Code.]
- Specify an alternative model for determining child support obligations that adequately and equitably provides for the support of children.

### **Repeal of Family Support**

- Eliminate the option to combine child support and spousal maintenance into one family support obligation, as authorized under s. [767.531](#), Stats. [Highstrom.]

### **Determining Income of Military Parent**

- Define an active military parent's income to include the basic allowance for housing without an amount that is attributable to area variable housing costs. [Compare, for example, s. [19-6-15](#) (f) (1) (E), Ga. Code Ann.] [[Protecting Military Families in Wisconsin](#).]

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<sup>3</sup> The term "shared placement" is currently defined in the Wisconsin Administrative Code as when **both** parents have court-ordered periods of placement of at least 25% a year. [ss. [DCF 150.02 \(25m\)](#) and [150.04 \(2\) \(a\) 1](#), Wis. Adm. Code.]