



WISCONSIN LEGISLATIVE COUNCIL

MEETING MINUTES

STUDY COMMITTEE ON CHILD PLACEMENT AND SUPPORT

Room 412 East, State Capitol
Madison, WI

September 25, 2018
10:00 a.m. – 3:40 p.m.

Call to Order and Roll Call

Representative Brandtjen called the meeting to order. A quorum was determined to be present.

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

COMMITTEE MEMBERS EXCUSED: Rep. Robert Brooks, Chair; and Sen. Chris Kapenga.

COUNCIL STAFF PRESENT: Rachel Letzing, Principal Attorney; and Margit Kelley, Senior Staff Attorney.

APPEARANCES: Shelly Anday, Owner, Family Court Consulting Services, LLC; Amber Peterson, Legal Advisor, Director of State Courts, Office of Court Operations; and Professors Maria Cancian and Daniel Meyer, University of Wisconsin (UW)-Madison Institute for Research on Poverty.

APPROVAL OF THE MINUTES OF THE AUGUST 28, 2018, MEETING OF THE STUDY COMMITTEE

Mr. Bickel moved, seconded by Ms. Highstrom, that the minutes of the August 28, 2018, meeting be approved. The motion passed by unanimous consent.

Presentation by Shelly Anday, Owner, Family Court Consulting Services, LLC

Shelly Anday described the methods that are available statutorily or by agreement of the parents to resolve child custody and placement arrangements in an action affecting the family. She first described the parenting plans and parent education classes that are used in some cases, depending on the county and whether an agreement has already been reached by the parents. Ms. Anday noted that both steps are usually useful for families, helping to reframe any dispute between the parents and move the focus to the best interests of the child.

Ms. Anday then described the mediation process, and the general need for a safe, secure, discussion where a mediator is mindful of any power dynamics between the parents. She noted that, as a resource, mediation is more affordable than a contested family law action, with the benefit of empowering the parents to work on an agreement that is for the benefit of the whole family.

Ms. Anday noted that if parents need additional help to work out the custody and placement arrangements, an evaluation or study can be conducted to make specific recommendations on each of the best interest factors outlined in state law. Ms. Anday stated that the Association of Family and Conciliation Courts (AFCC) has adopted model standards for an evaluator to follow that are not mandated, but are commonly accepted as best practices. Ms. Anday noted that the process is intrusive and the evaluator cannot act as a therapist for any of the parties. She stated that the process can, however, help parents reach an agreement in whole or in part, based on the evaluator's recommendations.

In addition, if a family would benefit from continued help after custody and placement have been determined, Ms. Anday stated that a parent coordinator can be agreed upon. She stated that both parents must agree to use a coordinator, must agree on who the coordinator is, must agree on the issues for which the coordinator is engaged, and must follow certain protocols such as always copying the other parent on any communication with the coordinator.

Following her presentation, Ms. Anday responded to questions from members on a variety of issues, including training for domestic violence awareness for personnel in this process, parent coordinator boundaries, best practices for considering placement arrangements, strategies for working with high-conflict parents, and the usefulness of preparing parenting plans.

Presentation by Amber Peterson, Legal Advisor, Director of State Courts, Office of Court Operations

Amber Peterson summarized the requirements for judicial and guardian ad litem training under Supreme Court rules. Ms. Peterson noted that for both judicial education and guardian ad litem education, training on domestic violence in family law cases is not required, but is available. Ms. Peterson described the efforts of the Office of Court Operations to provide training and resources on domestic violence and conflict, including the use of a federal grant to send judges to intensive training, and the availability of presentations, seminars, benchcards, and a benchbook chapter. Ms. Peterson also described the *Domestic Abuse Guidebook* that was

released in 2017 for guardians ad litem, and which is available online on the Wisconsin Court System's publications page.

Ms. Peterson briefly reported the findings of a 2017 review of family law cases that was conducted by the advocacy organization End Domestic Abuse Wisconsin. She stated that a key question of the research was to determine how often courts make domestic abuse findings in custody and placement cases. She stated that for that purpose, only verified cases in which a parent had a previous conviction for battery or more serious abuse were selected for review, and, that, among those 364 cases, fewer than 10% of the family law cases included a formal finding of the domestic abuse. In response to a question, Ms. Peterson noted that the study has not been peer reviewed, but that the review was conducted in a manner that could be replicated for that purpose.

In response to various questions, Ms. Peterson stated that the office is working on making the trainings available online, that equal placement would be ideal, but that studies have shown that abusers have an inability to put the child first, that an exemption from equal placement in cases of domestic violence is difficult to implement if courts do not learn of the abuse, and that between 50 to 90% of parents are unrepresented in family law actions. Ms. Peterson also noted that there are different types of domestic violence with different outcomes for the family; in particular, a person with coercive and controlling behaviors is unable to coparent even after the separation, contrasted with a couple that has experienced situational violence and for which a parent does have the ability to modify behaviors and interactions.

Presentation by Professors Maria Cancian and Daniel Meyer, UW-Madison Institute for Research on Poverty

Professors Cancian and Meyer provided an overview and responded to questions regarding trends in child placement arrangements, the economics and models used for setting child support orders, and certain emerging issues relating to placement and support. Professor Cancian noted that Wisconsin has a unique data source with court cases from 1989 through 2010 that is cited both nationally and internationally, which was largely funded by the Office of Child Support Enforcement, Administration for Children and Families, in the U.S. Department of Health and Human Services, through contract with the Wisconsin Department of Children and Families.

Professor Cancian noted that legal custody is now nearly universal in all cases. She also noted that shared and equal physical placement has increased from 12% of divorce cases in 1989 to 50% of cases in 2010, with equal placement having the largest jump, from 5% to 35% of divorce cases. She noted that the trend toward shared placement could be due to the change in workforce and parenting involvement by mothers and fathers, and the change in social norms and legal policies, including that 48 states now have shared custody and placement policies. Professor Cancian further noted that differences in placement also vary by the age and gender of the child, the parents' income, and whether each parent had legal representation, with the cause and effect of the differences being difficult to interpret. She also noted that nonmarital cases have also seen

an increase in shared placement, but at a quite substantially lower level than divorce cases, and with differences between paternity adjudications versus paternity acknowledgments.

Professor Meyer stated that, historically, child support was framed as a determination of how much children cost, while contemporary framing focuses on a child's right to share in both parents' income as if the family was intact. He noted that federal public assistance law requires parents to cooperate with establishing and obtaining child support, and that federal guidelines require each state to use a rebuttable presumption for its child support standard. Professor Meyer noted that there are two primary models for determining child support, commonly referred to as the "income shares" and "percentage-of-income" models. He noted that both models vary in their implementation by each state, all states have adaptations for shared placement, multiple-partner fertility ("serial families"), and low- and high-income cases. He explained that states' child support guidelines include additional complexities that make comparisons between states more difficult, including whether a state uses gross income or net income in the formula, how certain types of income are counted, how certain expenses such as child care and health care are factored in, and variations in some states' formulas for other factors such as the age of the child. Professor Meyer noted that states commonly use U.S. Department of Agriculture (USDA) estimates of family expenditures for a periodic review against the child support formulas, and that the Wisconsin guideline is below the USDA estimates.

Professor Cancian turned to emerging issues, including the issue of incarceration of a parent who is responsible for paying child support. She noted that, nationally, 53% of persons incarcerated in state or federal prison in 2007 were parents of minor children, and that 40% of African American fathers have been incarcerated by the time the child is one year old. Professor Cancian noted that states can range in how they address incarceration for a child support payer, but noted that federal law has been revised to prohibit states from specifying that incarceration cannot be used as a reason to modify child support. Professor Cancian stated that a 2017 study of the Milwaukee Prison Project found suggestive, but not decisive, evidence of improved child support outcomes within the project.

Lastly, Professors Cancian and Meyer discussed the difficulties in selecting policies that address the increasing complexity of family structures, including serial families, fluid relationships, and the consideration of shared custody and placement in other public assistance programs. They noted that other issues include balancing incentives such as the earned income tax credit, finding child support collection tools that work in the changing labor market, and addressing evidence that irregular income streams are sometimes not very good for kids.

Introduction of Topics for Committee Discussion by Legislative Council Staff

Legislative Council staff briefly summarized potential topics of discussion that were included in the memorandum relating to the standards for determining periods of physical placement and child support in actions affecting the family, dated September 18, 2018. Staff noted that the third option to revise the factors for a court determination of placement could be better characterized as reflecting current expectations that in most cases placement should be

shared, rather than reflecting current practices for that determination. Staff also noted that, regarding the options to suspend or reduce child support during extended incarceration, the National Conference of State Legislatures has provided the committee with a chart of other states' statutes that address modification of child support due to incarceration.

Discussion of Committee Assignment

Members briefly discussed the desire to have further discussions on various topics, including the Uniform Deployed Parents Custody and Visitation Act, authorization for contingent placement arrangements, regular use of parent education classes, better use of parenting plans, better understanding and consideration of adverse childhood experiences (ACEs) for children, suspension or reduction of child support during incarceration, ways to incentivize parent involvement, and the challenge of collecting child support with the rise of freelance work.

Other Business

The next meeting of the committee is scheduled for Tuesday, October 23, 2018.

Adjournment

The committee adjourned at 3:40 p.m.

MSK:ksm

[The preceding is a summary of the September 25, 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>. The PowerPoint presentations and other materials provided by the speakers and Legislative Council staff are available at <https://docs.legis.wisconsin.gov/misc/lc/study/2018/1785>.]