



WISCONSIN LEGISLATIVE COUNCIL

MEETING MINUTES

STUDY COMMITTEE ON CHILD PLACEMENT AND SUPPORT

Room 225 Northwest, State Capitol
Madison, WI

November 20, 2018
10:00 a.m. – 4:15 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 (via telephone); 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 MEMBER EXCUSED: Sen. Chris Kapenga.

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

APPEARANCES: Constance M. Chesnik, Office of Legal Counsel, Department of Children and Families (DCF); Chase Tarrier, Public Policy Coordinator, End Domestic Abuse Wisconsin; and Amber Peterson, Legal Advisor, Director of State Courts, Office of Court Operations.

Approval of the Minutes of the October 23, 2018 Meeting of the Study Committee

Representative Brandtjen moved, seconded by Mr. Bickel, that the minutes of the October 23, 2018 meeting be approved. The motion passed by unanimous consent.

Description of Preliminary Drafts Relating to Determining Child Support

Margit Kelley and Rachel Letzing, Legislative Council staff, briefly summarized the provisions of the preliminary bill drafts relating to determining child support.

Constance M. Chesnik, Office of Legal Counsel, DCF

Regarding draft LRB-0410/P3, relating to a reduction of child support payments during incarceration, Ms. Chesnik suggested that a provision could be added to allow a child support agency a choice in whether to close a case for which current child support has been suspended due to incarceration. She stated that this would allow an agency to close a case if it determined that payments towards arrears were likely to be uncollectible during incarceration, but could hold a case open if it determined that even sporadic sources of payments towards arrears could become available.

Regarding draft LRB-0707/P1, relating to calculating the child support obligation, Ms. Chesnik noted that the draft is very detailed and could on a person's first review appear to be making substantial substantive changes to the methods of calculating a child support obligation, but that the preliminary draft is simply shifting the focus to shared placement and rebranding the calculations. Ms. Chesnik commented that the bill draft included a six-month delayed effective date, which would provide time to prepare public education on the rebranding.

Ms. Chesnik remained available for questions during the members' discussion of each of the preliminary bill drafts relating to determining child support.

Discussion of Preliminary Drafts Relating to Determining Child Support

LRB-0410/P3, relating to reduction of child support payments during incarceration

Ms. Kelley described the preliminary bill draft. The committee then discussed a variety of issues, including what actions would initiate the clock for the minimum period of incarceration, whether suspension could be retroactive, how "confinement" is defined, what would be a suitable amount of time after release before a current child support order is reinstated, whether additional conditions could be placed on a person in exchange for suspension of child support, and whether interest would accrue on pre-incarceration arrears.

Some members commented that continuing a current child support obligation during incarceration can lead to insurmountable debt for the person, and can also impact the person's family relationships. Some members commented that continuing to require collection efforts on a current child support obligation during a person's incarceration is an inefficient use of a county child support agency's resources. Committee members also discussed the impact of adopting or not adopting the bill on the state's ranking against other states' child support collection measures and how that relates to federal funding calculations.

Based on general consensus of the members, Chair Brooks directed that the draft be revised to authorize a child support agency to close a case in its discretion and, with that revision, that the draft be prepared for final discussion and a potential vote at the next meeting.

LRB-0667/P1, relating to elimination of family support

Ms. Letzing described the preliminary bill draft. Committee members generally approved the draft and did not suggest any changes. Chair Brooks directed that the draft be prepared for final discussion and a potential vote at the next meeting.

LRB-0668/P1, relating to exclusion of certain military allowances in determining gross income for purposes of child support

Ms. Letzing described the preliminary bill draft. Committee members generally approved the draft and did not suggest any changes. Chair Brooks directed that the draft be prepared for final discussion and a potential vote at the next meeting.

LRB-0707/P1, relating to calculating the child support obligation

Ms. Kelley briefly described the preliminary bill draft. In response to questions from committee members, Ms. Chesnik noted that the bill draft revises the naming and focus of the child support formulas to reflect that the shared placement formula is already based on an income shares model, rather than a percentage-of-income model, but that the draft retains the methodology that has been interpreted in over 30 years of case law in Wisconsin. In response to a question about the administrative cost to implement the bill draft, Ms. Chesnik noted that various documents and forms would need to be updated for the revised source citations, though the actual method of setting support would remain the same.

Chair Brooks directed that the draft be prepared for final discussion and a potential vote at the next meeting.

Presentation by Deb Barnes, Director, La Crosse County Child Support Agency, and Brent Vruwink, Director, Wood County Child Support Agency

Ms. Barnes and Mr. Vruwink described an administrative rule change that went into effect on July 1, 2018, regarding partial recovery of birth costs from a father when a mother had been covered by the state's medical assistance program for a pregnancy and birth. Mr. Vruwink described the funding that county child support agencies receive as incentive under the birth cost recovery program, and the anticipated reduction in that funding from the rule change.

Ms. Barnes and Mr. Vruwink responded to various questions, including how the recovery amount is determined, whether both parents are subject to the recovery action, how much is collected in individual cases and at what frequency, whether other states implement a birth cost recovery program, and whether there are societal impacts from implementing the program. Some members expressed concern at the reduced recovery amounts from the rule change. Some members expressed concern that Wisconsin implements a birth cost recovery program.

Ms. Chesnik noted that the rule change was implemented upon the recommendation of the most recent advisory panel of stakeholders that is required to be convened under federal law at least once every four years to review the state's child support guidelines.

Chair Brooks directed that a bill draft be prepared to reverse the rule change, for further consideration and a potential vote at the next meeting.

Discussion of Preliminary Drafts Relating to Determining Placement

LRB-0409/P3, relating to a Uniform Deployed Parents Custody and Visitation Act

Ms. Kelley summarized the preliminary bill draft and conveyed responses from the Department of Military Affairs and the Uniform Law Commission on questions that arose at the October 23rd meeting of the committee. Based on those responses, the committee asked that the applicable deployment period be revised to begin with a mobilization of at least 30 days, rather than 90 days, and that the termination of the temporary arrangements be revised to terminate immediately upon a deploying parent's return from a deployment of 30 days to six months, and to terminate 30 days after a deploying parent's return from a deployment that is longer than six months. With those revisions, Chair Brooks directed that the bill draft be prepared for final discussion and a potential vote at the next meeting.

LRB-0411/P2, relating to proposed parenting plans in certain actions affecting the family

Ms. Letzing described the preliminary bill draft. Committee members considered methods of encouraging the use of parenting plans in mediation and determined that those methods would best be left to county practices. Committee members generally approved the draft but suggested that the provisions be reorganized to separate the new requirement to exchange proposed parenting plans in mediation from the requirement in current law to file a proposed parenting plan with a court if mediation fails. Chair Brooks directed that the draft be reorganized as recommended and, with that revision, that the draft be prepared for final discussion and a potential vote at the next meeting.

Members also requested that a draft letter be prepared to encourage judicial education on the revised parenting plan requirement from the bill draft.

LRB-0660/P2, relating to modifications to legal custody or physical placement contingent upon a future event

Ms. Letzing described the preliminary bill draft. At the request of Chair Brooks, Chase TARRIER, Public Policy Coordinator, End Domestic Abuse Wisconsin, explained the organization's concerns with the concept of allowing contingent placement agreements. He stated that the organization understood the benefit of such arrangements, such as in cases involving small children, but stated that in practice it is very difficult to ensure that agreements are truly made in a voluntary, healthy dynamic and to ensure that judges would be aware of instances of domestic violence. Some members noted that, particularly in cases of unmarried parents with an infant, a majority of placement time might be allocated to the mother in order to support the infant's breastfeeding needs, but that the law then places a presumption that maintaining that allocation is in the child's best interests.

After discussion and consideration by the committee, members suggested that the draft be revised to limit the applicable "contingent" events to only life events of the parents or child

or the developmental and educational needs of the child, without allowance for basing a contingent placement agreement on anticipated behavior modifications by a parent. Mr. Tarrier stated that this revision could be an improvement and that he would work with his organization to determine if it would support the bill with that revision. Chair Brooks directed that the draft be prepared, with that revision, for final discussion and a potential vote at the next meeting.

Preliminary draft petition to amend Supreme Court Rule 35.015 (intro.) and (1), relating to qualifications for appointment as a guardian ad litem in an action affecting the family

Ms. Letzing described the preliminary draft petition to the Wisconsin Supreme Court. Committee members generally approved the petition and did not suggest any changes. Chair Brooks directed that the petition be prepared for final discussion and a potential vote at the next meeting.

In response to additional discussion related to guardians ad litem, members requested information on the Board of Bar Examiner's course approval process, and an option to recommend that guardian ad litem payment rates be reviewed.

LRB-0662/P2, relating to judicial notice of certain court records relating to domestic violence or child abuse

Ms. Kelley summarized the preliminary bill draft and conveyed technical suggestions made by the Wisconsin Court System and the State Bar of Wisconsin Family Law Section. Based on those suggestions, the committee asked that the allowance for judicial notice of a child abuse restraining order be removed, that a harassment restraining order be added, and that a conviction for a crime under ch. 948, Stats., against a child of the parties be added.

At the request of Chair Brooks, Amber Peterson, Legal Advisor, Director of State Courts, Office of Court Operations, responded to questions regarding judicial access to case file information and federal law limitations on naming a petitioner in a restraining order that concerns domestic abuse. Committee members also considered whether judicial notice should be permitted for any conviction or restraining order related to domestic violence that involves either party, but not necessarily both, but concluded that the judicial notice was most needed in the identified cases that involve both parties or a child. Some members commented that the bill draft will help judges identify circumstances of domestic violence, but noted that it would not fully identify all such circumstances.

Chair Brooks directed that the draft be prepared, with the suggested revisions, for final discussion and a potential vote at the next meeting.

LRB-0665/P1, relating to parental authority in joint legal custody situations

Ms. Kelley described the preliminary bill draft. Committee members commented that the draft was unlikely to result in fewer instances of litigation on the identified issues and did not provide any mechanisms to assist the parents in resolving differences. Chair Brooks stated that the draft would not be moved forward for further discussion.

LRB-0659/P2, relating to a presumption that equalizing physical placement to the highest degree is in the child's best interest

Ms. Kelley summarized the preliminary bill draft. A member asked that the burden of proof to rebut the presumption be revised to the clear and convincing evidence standard, rather than the preponderance of evidence standard. Chair Brooks directed that the draft be prepared, with that revision, for final discussion and a potential vote at the next meeting.

LRB-0709/P1, relating to the best interest of the child in determining custody and physical placement

Ms. Kelley summarized the preliminary bill draft. Committee members briefly discussed the protocol under current law for reviewing and identifying any factors that are considered in a child's best interests. Based on committee discussion, Chair Brooks directed that the bill draft be revised to include the definition of "shared physical placement" that is provided in draft LRB-0708/P1 and, with that revision, that the draft be prepared for final discussion and a potential vote at the next meeting.

LRB-0708/P1, relating to equalizing physical placement

Ms. Kelley summarized the preliminary bill draft. Some committee members commented that the bill draft seemed to work well toward the goal of increasing two-parent participation with involved and engaged parents. Upon discussion, the committee suggested that the provision relating to future cooperation be removed and that its domestic violence aspect be incorporated in the provision relating to a refusal to cooperate. Chair Brooks directed that the draft be prepared, with that revision, for final discussion and a potential vote at the next meeting.

Other Business

The next meeting of the committee is scheduled for Tuesday December 18, 2018.

Adjournment

The committee adjourned at 4:15 p.m.

MSK:ksm

[The preceding is a summary of the November 20, 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 preliminary drafts and other materials provided by the speakers and Legislative Council staff are available at <https://docs.legis.wisconsin.gov/misc/lc/study/2018/1785>.]