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## WISCONSIN LEGISLATIVE COUNCIL

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### MEETING MINUTES

#### STUDY COMMITTEE ON CHILD PLACEMENT AND SUPPORT

Room 225 Northwest, State Capitol  
Madison, WI

February 11, 2019  
10:00 a.m. – 2:50 p.m.

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#### 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; Rep. Amanda Stuck; and Public Members Maureen Atwell, Tony Bickel, Mark Fremgen, Jenna Gormal, Benjamin Kain, James Sullivan, and Thomas Walsh.

COMMITTEE MEMBERS EXCUSED: Rep. Janel Brandtjen; Sen. Chris Kapenga; and Public Member Tiffany Highstrom.

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

APPEARANCES: Bobby Peterson, Executive Director, ABC for Health, Inc.; Constance M. Chesnik, Office of Legal Counsel, Department of Children and Families (DCF).

#### Approval of the Minutes of the November 20, 2018 Meeting of the Study Committee

*Mr. Kain moved, seconded by Mr. Fremgen, that the minutes of the November 20, 2018 meeting be approved. The motion passed by unanimous consent.*

<p><b>ATTENTION:</b> This was the final meeting of the Study Committee on Child Placement and Support. Committee members are requested to send any corrections regarding these minutes to the Legislative Council staff. After the incorporation of any corrections, these minutes will be considered approved by the committee.</p>
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## Discussion of Drafts Relating to Determining Child Support

### LRB-0410/1, relating to reduction of child support payments during incarceration

Ms. Kelley explained that the bill draft creates a process and standards under which an incarcerated parent's child support order is automatically suspended, if the incarcerated parent meets the eligibility requirements included in the draft. In addition, as required by federal law, the draft specifies that a parent's incarceration cannot be considered voluntary unemployment.

Committee members discussed the draft, and no further revisions were requested.

### LRB-0667/1, relating to elimination of family support

Ms. Letzing briefly explained that the draft would eliminate family support orders, which combine the components of maintenance and child support, beginning on the bill's effective date.

The committee did not request any revisions.

### LRB-0668/1, relating to exclusion of certain military allowances in determining gross income for purposes of child support

Ms. Letzing stated that the draft would specify that variable housing costs may not be considered gross income for the purposes of calculating child support under DCF administrative rule.

The committee did not request any revisions.

### LRB-0707/1, relating to calculating the child support obligation

Ms. Kelley explained that the bill draft reorganizes aspects of DCF administrative rule in order to make the shared placement formula the principal calculation, rather than a "special circumstance." In response to a question from Chair Brooks, Constance Chesnik, Office of Legal Counsel, DCF, noted that the draft does not make substantive changes to the calculations or guidelines, but that private attorneys will need to be educated on the revisions.

The committee did not request any revisions.

### **Bobby Peterson, Executive Director, ABC for Health, Inc.**

Mr. Peterson described how ABC for Health became involved in birth cost recovery in the course of their work helping families seeking health care coverage and explained the organization's concerns with the birth cost recovery program in Wisconsin. He stated that it amounts to a "birth tax," which disproportionately impacts minority and poor families and negatively impacts maternal and child health. He said that most states have abandoned birth cost recovery, but Wisconsin is the highest collector of birth costs. Mr. Peterson argued that the money counties receive from birth cost payments provides an incentive to pursue low income families, and that Wisconsin should find a different way to fund county child support agencies.

He noted that enforcement varies among counties, but that in his experience fathers are not aware of their rights and do not have legal representation.

Some committee members expressed concern about the research Mr. Peterson cited to support his assertions. Mr. Peterson offered to send links to the research reports to members. Committee members then discussed the public policy considerations of the birth cost recovery program and the intact families' exception in the DCF birth cost recovery rule.

### **LRB-0976/1, Relating to Eliminating Administrative Rule Limitation on Recovery of Birth Costs**

In response to a question from Chair Brooks, Ms. Chesnik explained the origin of the intact families exception in the rule. Chair Brooks noted that although the committee discussed the birth cost recovery program today, LRB-0976/1 only changes the intact families exception.

The committee did not request any revisions to LRB-0976/1.

### **Discussion of Drafts Relating to Determining Placement**

#### **LRB-0409/1, relating to a Uniform Deployed Parents Custody and Visitation Act**

Ms. Kelley provided an overview of the draft and noted that it was revised to begin with a mobilization of at least 30 days, rather than 90 days. In addition, the termination of the temporary arrangements was 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.

In response to a question, she stated that if a parent returns earlier from a deployment than expected, the deploying parent would need to notify the other parent, and placement would revert automatically to the prior arrangement unless a court order was obtained.

The committee did not request any revisions.

#### **LRB-0411/1, relating to proposed parenting plans in certain actions affecting the family**

Ms. Letzing described the draft. Committee members discussed ways to require parties and attorneys to submit parenting plans, and methods for judges to be educated about and to enforce this requirement. Chair Brooks suggested that committee recommendations could be included in the committee's final report to encourage enforcement and education regarding parenting plans.

The committee also discussed whether requiring parties to exchange proposed parenting plans at least 10 days before mediation is appropriate if domestic violence is present. Chair Brooks then asked staff to draft an amendment to address the committee's concerns.

After a break, the committee then reached consensus to amend LRB-0411/1 as follows:

Page 2, remove lines 9 to 15 and replace with the following:

767.405 (8) (d) At least 10 days before the initial mediation session, each party shall submit a proposed parenting plan containing all the information required under s. 767.41 (1m) to the director of family court services for the county in which the action is pending or the assigned mediator. The parties may exchange proposed parenting plans before the initial mediation session. For purposes of the exchange and submission under this paragraph, a party may provide a copy of the party's proposed parenting plan electronically.

No other revisions were requested.

**LRB-0660/1, relating to modifications to legal custody or physical placement contingent upon a future event**

Ms. Letzing stated that this draft was revised to allow stipulated agreements between the parties for modification to legal custody or placement upon the occurrence of life events of the adult parties or the child, or developmental and educational needs of the child, that are reasonably certain to occur within two years of the stipulation, but prohibits stipulated agreements between the parties that are based on an anticipated behavior modification of a party.

The committee did not request any revisions.

**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 explained the training requirements for guardians ad litem in the current rule and in the draft petition.

The committee did not request any revisions.

**LRB-0662/1, relating to judicial notice of certain court records relating to domestic violence or child abuse**

Ms. Kelley stated that the draft allows a court in a family law action to take judicial notice of certain records relating to domestic violence. Some members noted that this is a good first step, but more needs to be done to address domestic violence in the court system, and that judges should be aware that a family could have a domestic violence history that is not reflected in any court records.

Chair Brooks reminded members that they should feel free to offer amendments or suggestions to the draft legislation as it proceeds through the Legislature.

The committee did not request any revisions.

LRB-1350/1, relating to parenting time

Ms. Kelley explained that this draft is based upon an Indiana court rule which requires that a right of first refusal be included in a shared placement schedule.

Committee members then discussed the draft and decided, by consensus, not to advance the draft for a vote.

LRB-0659/1, relating to a presumption that equalizing physical placement to the highest degree is in the child's best interest; LRB-0709/1, relating to the best interest of the child in determining custody and physical placement; LRB-0708/2, relating to equalizing physical placement; LRB-1037/1, relating to requiring equalizing physical placement

Chair Brooks suggested that the committee discuss all four bill drafts relating to equal placement to determine whether there were any they wanted to eliminate from consideration.

Regarding LRB-0659/1, some members expressed concern that a presumption of equal placement primarily focuses on what the parents want, rather than the best interests of the child. In addition, some members stated that shared placement should continue to be prioritized and has been shown to be best for kids, and that Wisconsin still has a very high standard even without presumed equal placement. Chair Brooks noted that this issue will be addressed by bills from individual legislators this session. There was no committee consensus on this draft.

Chair Brooks and Senator Taylor then initiated and led a discussion about whether there are components in the remaining three bill drafts that committee members would like to include in a new draft.

Committee members discussed a provision in LRB-1037/1, which specifies that if a court grants less than 25% of physical placement to one parent in a temporary or final order, specific findings of fact must be entered as to the reason greater physical placement with that parent is not in the best interest of the child. Members discussed whether to define "shared placement" and agreed that it should be determined as provided by rule under current law.

The committee also discussed a separate provision in LRB-1037/1, which provides that any allocation of physical placement presumes that the maximum involvement and cooperation of both parents regarding the physical, mental, and emotional well-being of the child is in the best interest of the child. After discussion, members agreed that "maximum" should be removed and the provision should be placed in the introductory language of the custody and placement provisions, as a new paragraph among the "general provisions."

Regarding LRB-0709/1, Chair Brooks asked if there was consensus to support the provisions in the draft reordering the best interest of the child factors. Some committee members noted that although reordering the factors is not a substantive change and judges are required to consider all the factors, in practice judges may be prioritizing certain factors over others. There was consensus to support the reorganization of the factors provided in LRB-0709/1, and to specify that the factors are not listed in order of priority.

Chair Brooks stated that the provision from LRB-1037/1 requiring a court to specify in a written order why less than 25% placement was given to a parent, with revisions suggested by

the committee, would be combined with the provision in LRB-0709/1 reordering the best interest factors, with revisions suggested by the committee, into one bill draft. He stated that the parental involvement and cooperation provision from LRB-1037/1, with revisions suggested by the committee, would be drafted as a separate bill draft. Chair Brooks stated that the remaining drafts relating to equal placement would not be advanced for a vote.

Finally, committee members discussed and reached consensus to recommend that judges in all counties adopt local court rules requiring submission of parenting plans before mediation and if mediation fails, and to recommend training for judges, commissioners, and guardians ad litem on the timing, filing, and benefits of parenting plans.

Chair Brooks said that because three committee members were absent from the meeting, a mail ballot would be distributed following the meeting with the drafts the committee reached consensus on today. In addition, the mail ballot will include LRB-0976/1.

### **Adjournment**

The committee adjourned at 2:50 p.m.

REL:ksm

[The preceding is a summary of the February 11, 2019 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>.]