



# Joint Legislative Council's Report of the Study Committee on Child Placement and Support

[2019 Assembly Bills 93, 94, 95, 96, 97, 98,  
99, 100, 101, 102, and 103]

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# STUDY COMMITTEE ON CHILD PLACEMENT AND SUPPORT

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# PART I

## KEY PROVISIONS OF JOINT LEGISLATIVE COUNCIL RECOMMENDATIONS

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The Joint Legislative Council introduced the following bills in the 2019-20 session of the Legislature.

### **2019 ASSEMBLY BILL 93, RELATING TO A UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT**

#### **Description**

The bill provides two methods for creating a temporary delegation of custodial responsibilities during a parent's deployment: a temporary agreement between the parents or a temporary court order following a hearing.

Under a temporary agreement entered into by the parents, custodial responsibilities or visitation may be shared with any agreed-upon person. Under proceedings for a temporary court order, unless a proceeding is prohibited by the Servicemembers Civil Relief Act, custodial responsibilities or visitation may be granted upon a deploying parent's request to a stepparent, grandparent, or great-grandparent or to an adult who has a parent-like relationship with the child. The arrangements must be found to be in the best interest of the child, using the best-interest factors identified in current state law for legal custody and physical placement determinations, placing particular emphasis on maintaining sibling relationships.

The bill also asks the Wisconsin Court Records Management Committee to develop a form that parents may use to enter into an agreement, and a form to file a motion with a court, for a temporary delegation of custodial responsibilities for a child during a parent's deployment.

### **2019 ASSEMBLY BILL 94, RELATING TO REDUCTION OF CHILD SUPPORT PAYMENTS DURING INCARCERATION**

#### **Description**

The bill specifies that in making an initial child support determination, a parent's incarceration cannot be considered to be voluntary unemployment in considering the parent's earning capacity. Additionally, the bill specifies that if certain conditions are met, a current child support obligation is automatically suspended and no arrears accrue on the suspended current obligation while a parent who is obligated to pay child support is incarcerated.

## **2019 ASSEMBLY BILL 95, RELATING TO MODIFICATIONS TO LEGAL CUSTODY OR PHYSICAL PLACEMENT CONTINGENT UPON A FUTURE EVENT**

### **Description**

The bill authorizes a court to approve a stipulated agreement between the parties for modifications to legal custody or physical placement upon the occurrence of life events of the adult parties or child, or based upon the developmental and educational needs of the child, that are reasonably certain to occur within two years of the date of the stipulation. The bill prohibits stipulated agreements between the parties that are based on anticipated behavior modifications by a party.

## **2019 ASSEMBLY BILL 96, RELATING TO CALCULATING THE CHILD SUPPORT OBLIGATION**

### **Description**

The bill reorganizes aspects of the DCF administrative rules in order to make the shared physical placement formula the principal calculation, rather than a “special circumstance.” The bill makes other revisions to reflect the reorganization of the shared physical placement and designated percentage provisions in the administrative code chapter. The manner of calculating the amount of child support and the applicable formulas are not changed in the bill.

## **2019 ASSEMBLY BILL 97, RELATING TO THE INVOLVEMENT AND COOPERATION OF BOTH PARENTS IN A PHYSICAL PLACEMENT SCHEDULE**

### **Description**

The bill adds a statement among the general principles for custody and placement that any allocation of physical placement, as ordered by the court, presumes that the 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.

## **2019 ASSEMBLY BILL 98, RELATING TO FACTORS RELATING TO THE PHYSICAL PLACEMENT OF A CHILD**

### **Description**

The bill 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 more physical placement with that parent is not in the best interest of the child. The bill also reorganizes the factors that must be considered by a court in determining the best interests of a child.



## **2019 ASSEMBLY BILL 99, RELATING TO PROPOSED PARENTING PLANS IN CERTAIN ACTIONS AFFECTING THE FAMILY**

### **Description**

The bill requires parties who are directed to participate in an initial mediation session to submit their respective proposed parenting plans to family court services or the assigned mediator at least 10 days before the initial mediation session. The parties may also exchange proposed parenting plans before the initial mediation session. Proposed parenting plans may be exchanged and submitted electronically. The bill maintains the requirement under current law for the parties to each file a parenting plan with the court if no agreement was reached in mediation or if mediation was waived.

The bill also revises certain aspects of information that must be included in a parenting plan to focus more specifically on co-parenting factors, rather than financial arrangements.

## **2019 ASSEMBLY BILL 100, RELATING TO JUDICIAL NOTICE OF CERTAIN COURT RECORDS RELATING TO DOMESTIC VIOLENCE OR CHILD ABUSE**

### **Description**

The bill specifies that in a family law action where the parties have a minor child, a court may take judicial notice of records available in the electronic consolidated court automation programs, commonly referred to as CCAP, for certain domestic abuse convictions and restraining orders between the parties.

## **2019 ASSEMBLY BILL 101, RELATING TO ELIMINATION OF FAMILY SUPPORT**

### **Description**

The bill provides that no new family support orders, which combine child support and maintenance in a single obligation, may be issued beginning on the bill's effective date. Family support orders issued before the bill's effective date would remain in effect.

## **2019 ASSEMBLY BILL 102, RELATING TO EXCLUSION OF CERTAIN MILITARY ALLOWANCES IN DETERMINING GROSS INCOME FOR PURPOSES OF CHILD SUPPORT**

### **Description**

The bill amends the Department of Children and Families (DCF) administrative code to specify that gross income includes military basic allowances for subsistence and housing, but does not include variable housing costs.

## **2019 ASSEMBLY BILL 103, RELATING TO ELIMINATING ADMINISTRATIVE RULE LIMITATION ON RECOVERY OF BIRTH COSTS**

### **Description**

The bill removes a limitation under DCF administrative rules that the state's recovery of birth costs is inappropriate in cases where the alleged father is a member of an intact family that includes the mother and the subject child at the time paternity or support is established, and the father's income, if any, contributes to the support of the child.

## **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**

The study committee recommends that the Joint Legislative Council, on behalf of the committee, petition the Wisconsin Supreme Court to amend current rules relating to qualifications for appointment as a guardian ad litem in an action affecting the family.

### **Description**

The petition to the Supreme Court proposes amending a Supreme Court Rule to require that an attorney obtain minimum education relating to dynamics and impact of family violence in order to be eligible to accept an appointment by a court as a guardian ad litem for a minor in a family law action. For an initial appointment, the petition asks that at least three of the six required education hours be on the dynamics and impact of family violence. For any subsequent appointments, the petition asks that at least one of the six required education hours be on that topic.

## **RECOMMENDATIONS RELATING TO PARENTING PLANS**

The study committee proposes the following recommendations regarding parenting plans:

- Judges in all counties should pass a local court rule requiring that the parties complete and submit parenting plans to family court services or a privately retained mediator 10 days prior to the first mediation session.
- Judges in all counties should pass a local court rule requiring that the parties complete and submit parenting plans to the court 60 days from the waiver of mediation or the impasse of mediation.
- The Office of Judicial Education should require training for judges and court commissioners regarding the timing, filing, and benefits of parenting plans.
- The State Bar of Wisconsin should include training regarding the timing, filing, and benefits of parenting plans in all training offered for guardians ad litem.

# PART II

## COMMITTEE ACTIVITY

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### ASSIGNMENT

The Joint Legislative Council established the Study Committee on Child Placement and Support and appointed the chairperson by an April 9, 2018 mail ballot. **Appendix 2** identifies the membership of the Joint Legislative Council at the time the mail ballot was approved. The committee was directed to review the standards under current law for determining periods of physical placement and child support obligations. In addition, the committee was authorized to consider alternatives to current law concerning physical placement, including a rebuttable presumption that equal placement is in the child's best interest, and to consider whether the current standard for determining child support adequately and equitably provides for the support of children and alternative models for determining child support obligations.

Membership of the study committee was appointed by a June 4, 2018 mail ballot. The final committee membership consisted of three representatives, two senators, and eight public members. A list of committee members is included as **Appendix 3** to this report.

### SUMMARY OF MEETINGS

The committee held five meetings on the following dates:

- August 28, 2018.
- September 25, 2018.
- October 23, 2018.
- November 20, 2018.
- February 11, 2019.

At the **August 28, 2018** meeting, the committee heard testimony from several invited speakers.

**Constance M. Chesnik, Office of Legal Counsel, DCF**, provided an overview of the development of, and key provisions in, federal and state child support legislation, and noted that federal law requires states to review their child support guidelines at least once every four years, which is often referred to as a "quadrennial review." 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. 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. Regarding alternative child support methodologies, she 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.

The committee then heard a presentation by **Anthony J. Menting, attorney, Stafford Rosenbaum LLP**, regarding Wisconsin's physical placement standards. He 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.

Next, the committee heard a presentation from **Meghan McCann, senior policy specialist, National Conference of State Legislatures (NCSL)**. She 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. Ms. McCann explained that the federal child support program provides a 66% funding match to states to carry out the child support enforcement functions. She then described the income shares model, the percentage of income model, and the Melson model, but noted that there are variations in the way these models are implemented in each state. She then gave an overview of other states' legislation and statutes regarding a variety of topics, including child support guidelines, determination of child support, and a presumption regarding legal custody, physical placement, or both. Finally, Ms. McCann described various aspects of the 2016 federal rule change.

At the conclusion of the meeting, Chair Brooks 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.

At the September 25, 2018 meeting, the committee heard presentations from invited speakers and briefly discussed topics summarized in the LC Study Committee Memorandum, *Topics for Committee Discussion Relating to the Standards for Determining Periods of Physical Placement and Child Support in Actions Affecting the Family*.

First, the committee heard a presentation from **Shelly Anday, owner, Family Court Consulting Services, LLC**. Ms. 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 then described the mediation process, and noted that 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 explained that the Association of Family and Conciliation Courts has adopted model standards for an evaluator to follow that are not mandated, but are commonly accepted as best practices. After custody and placement have been determined, she noted that a parent coordinator who is agreed upon by both parents can be very helpful.

**Amber Peterson, legal advisor, Office of Court Operations, Director of State Courts Office,** 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, as well as the Domestic Abuse Guidebook that was released in 2017 for guardians ad litem. Ms. Peterson then briefly reported the findings of a 2017 review of family law cases that was conducted by the advocacy organization End Domestic Abuse Wisconsin.

Next, the committee heard a 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. They noted that Wisconsin has a unique data source regarding child custody and placement from court cases from 1989 through 2010. Professor Cancian explained that shared and equal physical placement has increased, with equal placement having the largest jump, and noted possible reasons for this trend. In addition, she noted the factors that may influence differences in placement. Professor Meyer then explained the economics and models used for setting child support orders. Lastly, they 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 both then discussed certain emerging issues relating to placement and support.

Legislative Council staff then briefly summarized potential topics of discussion that were included in the LC Study Committee Memorandum.

At the October 23, 2018 meeting, the committee heard presentations from invited speakers, discussed three preliminary bill drafts, and engaged in further discussion about the LC Study Committee Memorandum, *Topics for Committee Discussion Relating to the Standards for Determining Periods of Physical Placement and Child Support in Actions Affecting the Family.*

**Lindsay Beaver, legislative counsel, Uniform Law Commission (ULC),** provided an overview of the Uniform Deployed Parents Custody and Visitation Act (UDPCVA), including background regarding the role of the ULC, ULC membership, and the process the ULC utilizes when crafting a uniform act. She explained why the ULC determined a uniform law was appropriate to address issues of child custody and visitation that arise when parents are deployed in military or other national service and summarized the major provisions of the act. She then noted the following differences between the act and LRB-0409/P1: the bill draft does not include a 60-day transition period for temporary custody arrangements after the deployed parent returns; does not include a limited contact visitation provision; and does not specifically allow a court to consider significant impacts of the service member's deployment in determining the child's best interest.

The committee then heard a presentation from **Kenneth Waldron, Ph.D., Monona Mediation and Counseling.** Mr. Waldron summarized social science research on residential placement schedules. At the outset, he explained the inherent limitations in conducting and interpreting the research, and the evolutionary history of custody and physical placement. He explained that

research has shown that substantial time with both parents, unless the specific facts indicate otherwise, and not the residential placement schedule alone, leads to better child adjustment. Mr. Waldron then discussed the research regarding the specific factors that are relevant to designing a child-focused placement schedule. Regarding research on equal placement, Mr. Waldron noted that most studies compare a form of shared placement with primary placement, and only one study has compared equal placement with other forms of shared placement, which showed that the respondents' satisfaction was highest with equal placement schedules. Mr. Waldron also provided an overview of research showing positive outcomes when co-parenting education classes are combined with mediation, and suggested changes to the child support guidelines.

The committee then discussed three preliminary bill drafts, which Chair Brooks explained were intended to stimulate committee discussion and possible suggestions for revisions.

First, the committee discussed LRB-0409/P1, relating to a Uniform Deployed Parents Custody and Visitation Act. The committee discussed issues including the potential conflict between the draft's provision regarding a deploying parent's delegation of custodial responsibilities by a power of attorney and current Wisconsin law, whether to include a limited visitation provision and how to ensure that visitation includes a child's siblings, and the need to create a form deploying parents may use to create an agreement or a motion for custodial responsibility. Following this discussion, the committee requested several specific changes to the bill draft.

Next, the committee discussed LRB-0410/P1, relating to reduction of child support payments during incarceration. At the request of Chair Brooks, **Constance M. Chesnik, Office of Legal Counsel, DCF**, explained that federal regulations provide three ways for states to comply with the requirement to review and adjust child support after learning that a payer will be incarcerated. The committee then discussed a variety of issues, including whether to automatically suspend or reduce child support, what sources of income to include, whether to retain the list of exceptions in the bill draft, how long the period of incarceration should be in order to be eligible for suspension or reduction, and the rate and range of payment inmates may earn. At the conclusion of the committee's discussion, Chair Brooks stated that there was some consensus to revise the bill draft to automatically suspend child support orders when a parent is incarcerated, and asked Legislative Council staff to work with Ms. Chesnik to answer questions raised by members and to ensure that the draft requires consistent application by Wisconsin courts and optimizes funding available under federal law.

The committee then discussed LRB-0411/P1, relating to proposed parenting plans in certain actions affecting the family. At the conclusion of the discussion, the committee reached consensus on several specific changes to the bill draft, including adding an option to submit proposed parenting plans to an assigned mediator, allowing parenting plans to be exchanged or submitted electronically, and adding a list of proposed variable costs to the parenting plan requirements.

Following a summary by Legislative Council staff of the remaining topics for committee discussion included in the memorandum, Chair Brooks facilitated a discussion of the issues members would like to have drafted as preliminary bill drafts. After significant discussion, the committee reached consensus to request drafts on nine additional items: contingent placement; domestic violence training for guardians ad litem; judicial notice of domestic violence records;

reorganizing DCF 150, Wis. Adm. Code, to emphasize shared placement; repealing family support; variable housing costs for military parents who pay child support; reorganizing the best interest of the child factors; presumption of equal placement; and substantial allocation of physical placement.

At the conclusion of the meeting, Chair Brooks stated his intention to discuss birth cost recovery at the committee's next scheduled meeting and asked Legislative Council staff to provide the committee with background information.

At the November 20, 2018 meeting, the committee reviewed 12 preliminary bill drafts, a draft petition to the Wisconsin Supreme Court, and heard a presentation from invited speakers regarding the birth cost recovery program.

**Deb Barnes, director, La Crosse County Child Support Agency**, and **Brent Vruwink, director, Wood County Child Support Agency**, 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 explained 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 then responded to various questions from committee members. Chair Brooks then directed that a bill draft be prepared to reverse the rule change, for further consideration and a potential vote at the next meeting.

The committee discussed four preliminary drafts relating to determining child support. First, the committee resumed discussion of LRB-0410/P3, relating to reduction of child support payments during incarceration. Some members commented that continuing a current child support obligation during incarceration can lead to insurmountable debt for the person, can impact the person's family relationships, and 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.

Next, the committee discussed LRB-0667/P1, relating to elimination of family support. Committee members generally approved the draft and did not suggest any changes.

The committee then discussed LRB-0668/P1, relating to exclusion of certain military allowances in determining gross income for purposes of child support. Committee members generally approved the draft and did not suggest any changes.

Finally, the committee discussed LRB-0707/P1, relating to calculating the child support obligation. In response to questions from committee members, **Constance M. Chesnik, Office of Legal Counsel, DCF**, 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.

The committee then discussed eight preliminary bill drafts and a draft petition to the Wisconsin Supreme Court relating to determining child placement.

First, the committee resumed discussion of LRB-0409/P3, relating to a Uniform Deployed Parents Custody and Visitation Act. After discussion, 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. Chair Brooks directed that a new draft be prepared to incorporate those revisions.

Next, the committee resumed discussion of LRB-0411/P2, relating to proposed parenting plans in certain actions affecting the family. Committee members considered methods of encouraging the use of parenting plans in mediation and determined that such encouragement 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.

The committee then discussed LRB-0660/P2, relating to modifications to legal custody or physical placement contingent upon a future event. At the request of Chair Brooks, **Chase Tarrier, public policy coordinator, End Domestic Abuse Wisconsin**, explained the organization's concerns with allowing contingent placement agreements. 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. Chair Brooks directed that a final draft be prepared with that revision.

Next, the committee discussed a 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. Committee members generally approved the petition and did not suggest any changes.

The committee then discussed LRB-0662/P2, relating to judicial notice of certain court records relating to domestic violence or child abuse. Margit Kelley, Legislative Council staff, 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, and that judicial notice of a harassment restraining order and 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, Office of Court Operations, Director of State Courts Office**, 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. Chair Brooks directed that a final draft be prepared with the suggested revisions.



Next, the committee discussed LRB-0665/P1, relating to parental authority in joint legal custody situations. Committee members determined 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 committee consensus was to not proceed with this draft.

The committee then discussed LRB-0659/P2, relating to a presumption that equalizing physical placement to the highest degree is in the child's best interest. 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 a final draft be prepared with that revision

Next, the committee discussed LRB-0709/P1, relating to the best interest of the child in determining custody and physical placement. Committee members briefly discussed the protocol under current law for reviewing and identifying any factors that are considered in a child's best interest. 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.

Finally, the committee discussed LRB-0708/P1, relating to equalizing physical placement. Some committee members commented that the bill draft seemed to work well toward the goal of increasing two parent involvement and engagement. 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 a final draft be prepared with that revision.

At the February 11, 2019 meeting, the committee reviewed 14 preliminary bill drafts, a draft petition to the Wisconsin Supreme Court, and heard a presentation from **Bobby Peterson, executive director, ABC for Health, Inc.**

Mr. Peterson described the negative impacts of what he described as a "birth tax" on minority and poor families, as well as maternal and child health. He said that most states have abandoned birth cost recovery, but Wisconsin is the highest collector of birth costs. He argued that the money counties receive from birth cost payments provides an incentive for counties to pursue low income families, who most often lack legal representation, and that the state should find a different way to fund county child support agencies.

The committee discussed the following drafts, had no additional revisions, and decided, by consensus, to advance each draft to the Joint Legislative Council for a vote:

- LRB-0410/1, relating to reduction of child support payments during incarceration.
- LRB-0667/1, relating to elimination of family support.
- LRB-0668/1, relating to exclusion of certain military allowances in determining gross income for purposes of child support.
- LRB-0707/1, relating to calculating the child support obligation.
- LRB-0409/1, relating to a Uniform Deployed Parents Custody and Visitation Act.

- LRB-0660/1, relating to modifications to legal custody or physical placement contingent upon a future event.
- LRB-0662/1, relating to judicial notice of certain court records relating to domestic violence or child abuse.
- 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.

The committee recommended a revision to draft LRB-0411/1, relating to proposed parenting plans in certain actions affecting the family, to be incorporated in the draft for a vote.

Next, the committee considered draft LRB-0976/1, relating to eliminating administrative rule limitation on recovery of birth costs, and had no additional revisions. Chair Brooks directed that the bill draft be advanced for a vote.

The committee also considered the following bill drafts, and, after discussion, decided, by consensus, not to advance each 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 placement.
- LRB-1350/1, relating to parenting time.

Finally, the committee requested two new drafts relating to physical placement determinations. The first would include a 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, combined with the provision in LRB-0709/1, reordering the best interest factors, with revisions suggested by the committee. The second would include the parental involvement and cooperation provision from LRB-1037/1 with revisions suggested by the committee.

Chair Brooks stated that because three committee members were absent for the meeting and two new bill drafts needed to be prepared, a mail ballot would be distributed following the meeting.

# PART III

## RECOMMENDATIONS INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL

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This Part of the report provides background information on, and a description of, the bills and petition as recommended by the Study Committee on Child Placement and Support and introduced by the Joint Legislative Council.

### **2019 ASSEMBLY BILL 93**

#### **Background**

Under current law, in a legal custody determination, a court is prohibited from considering whether a service member has been or will be absent from the home for a call to active duty. In a physical placement determination, a court may allocate a service member's physical placement periods to the other parent for the service member's call to active duty, if the order requires immediate reinstatement of the prior physical placement schedule upon the service member's return. Additionally, under current law, parents may together sign a power of attorney for a temporary delegation of parental powers for the care and custody of a child to another person. However, as stated in a Wisconsin Court of Appeals decision, a court has no authority to delegate a service member's allocation of physical placement periods to another person without the other parent's agreement. [*Lubinski v. Lubinski*, 2008 WI App 151.]

The committee received testimony that making temporary arrangements for custody and placement is a challenge for a military family during deployment. The committee considered the importance of providing a method for parents to delegate a deploying parent's custodial responsibilities in a manner that reflects a child's bonded relationships with a stepparent, other siblings, and grandparents, in addition to continuing the regular placement arrangements with the other parent.

#### **Description**

This bill maintains the current law provisions relating to determining or revising a legal custody or physical placement order between the parents, but creates a new standard for temporary arrangements with another person during a parent's deployment. Specifically, the bill provides two methods for creating a temporary delegation of custodial responsibilities during deployment: a temporary agreement between the parents; or a temporary court order following a hearing.

Under a temporary agreement entered into by the parents, custodial responsibilities or visitation may be shared with any agreed-upon person. The agreement must identify the specific arrangements for custodial responsibility or visitation, a process to resolve any dispute that may arise, and arrangements for the deploying parent's contact with the child during the deployment and while the parent is on leave.

Under proceedings for a temporary court order, unless a proceeding is prohibited by the Service Members Civil Relief Act, custodial responsibilities or visitation may be granted upon a deploying parent's request to a stepparent, grandparent, or great-grandparent or to an adult who has a parent-like relationship with the child. The arrangements must be found to be in the best interest of the child, using the best-interest factors identified in current state law for legal custody and physical placement determinations, placing particular emphasis on maintaining sibling relationships.

Under the bill a delegation of physical placement periods cannot be greater than a child's habitual or court-ordered physical placement with the deploying parent unless otherwise agreed to by the other parent or as needed to account for any unusual travel time. Additionally, a delegation of custodial responsibilities or visitation cannot be granted to a person who was previously denied those rights.

Temporary arrangements under either an agreement or court order terminate immediately upon the return of a deploying parent, if the deployment is for less than six months, 30 days after the return of a deploying parent, if the deployment is for six months or more, or on a date that is specified by stipulation by the parties or a court order. If a parent has acted in bad faith or intentionally failed to comply with a temporary court order or other requirement under these provisions, the bill specifies that a court may assess reasonable attorney fees and costs and may order other appropriate relief.

The bill applies to a service member who is deployed between 30 days and 18 months in accordance with service orders that are designated as unaccompanied, do not authorize dependent travel, or otherwise do not permit movement of a child to the location. As applied in the bill, service may include service in: the U.S. armed forces, including any reserve component; the national guard of any state; the merchant marine; the commissioned corps of the U.S. Public Health Service; or the commissioned corps of the National Oceanic and Atmospheric Administration. Certain procedural requirements apply to the temporary delegation process, including timelines for notice of deployment from the deploying parent to the other parent, and for holding a court hearing.

The bill also asks the Wisconsin Court Records Management Committee to develop a form that parents may use to enter into an agreement, and a form to file a motion with a court, for a temporary delegation of custodial responsibilities for a child during a parent's deployment.

## **2019 ASSEMBLY BILL 94**

### **Background**

Under federal regulations, a parent's incarceration cannot be considered to be voluntary unemployment for purposes of determining or revising child support. Under current state law, incarceration is not addressed or identified as a circumstance that affects a child support determination. Accordingly, a child support payer's incarceration is considered on a case-by-case basis. [*Rottscheit v. Dumler*, 2003 WI 62.]

The committee members considered multiple goals in addressing child support orders when a parent is incarcerated. These included creating court consistency in applying any reduction,

reducing collection efforts that are largely inefficient, and reducing the buildup of debt for the person that can otherwise become insurmountable and that can impact the family relationships.

## **Description**

The bill specifies that in making an initial child support determination, a parent's incarceration cannot be considered to be voluntary unemployment in considering the parent's earning capacity. Additionally, the bill specifies that if certain conditions are met, a current child support obligation is automatically suspended and no arrears accrue on the suspended current obligation while a parent who is obligated to pay child support is incarcerated. The obligation must be reinstated on the first day of the first month that begins 60 days after the obligated parent is no longer incarcerated.

Under the bill, to be eligible for a suspension of a current child support obligation during incarceration, all of the following conditions must apply: the parent is sentenced to incarceration for more than 180 days, not including time served; the parent does not have income or assets from which child support could be collected; the other parent was not the victim of the crime for which the person is incarcerated; the parent is not incarcerated for a crime against a child; and the parent is not incarcerated for nonpayment of child support. Under the bill, "incarcerated" means a person is confined in a jail, prison, Huber facility, or other house of correction.

## **2019 ASSEMBLY BILL 95**

### **Background**

Under current law, a court cannot modify an order for legal custody or physical placement that would substantially alter a child's time with each parent within two years of the final judgment, unless custodial conditions are physically or emotionally harmful to the best interest of the child. After the first two years, a court may modify an order for legal custody or physical placement if: (1) there has been a substantial change in circumstances; and (2) the court has determined that the modification is in the best interest of the child. A court must presume that maintaining the status quo allocation of decision-making and physical placement is in the child's best interest, unless rebutted by the parent seeking the modification.

The study committee heard testimony about the value of encouraging parents to engage in advance discussions about anticipated issues and changes in the family, and to attempt to resolve those issues together. The committee also considered the limitations on modifying orders under current law that favors the status quo on placement arrangements once an order has been entered, but that these limitations are not realistic in all circumstances when changes in life events and a child's needs can reasonably be anticipated within a reasonable time horizon.

### **Description**

This bill authorizes a court to approve a stipulated agreement between the parties for modifications to legal custody or physical placement upon the occurrence of life events of the adult parties or child, or based upon the developmental and educational needs of the child, that are reasonably certain to occur within two years of the date of the stipulation. The bill authorizes the

court to approve such a stipulation if it is filed in an action initially determining, modifying, or revising a legal custody and physical placement order. The bill prohibits stipulated agreements between the parties that are based on anticipated behavior modifications by a party.

## **2019 ASSEMBLY BILL 96**

### **Background**

Under current DCF administrative rules, the child support formula that applies in a shared physical placement arrangement is included among the formula for “special circumstances.”

The committee members heard testimony that shared and substantially equal physical placement has increased over the last 30 years and is now a common arrangement, rather than an anomaly. The members also heard testimony that the contemporary focus of child support is on a child’s right to share in both parents’ income as if the family was intact, and is based on national studies of family expenditures.

### **Description**

The bill moves the formula that applies in a shared physical placement arrangement to a new section of DCF’s rules before all of the child support formula variations. The bill also specifies that, under DCF rules, the designated percentage that applies in a nonshared physical placement arrangement applies only if the conditions for the shared placement formula do not apply. The bill creates a new defined term under DCF’s rules for a “designated percentage,” to mean the applicable percentage of a parent’s monthly income, or adjusted monthly income that is available for child support. The “designated percentage” phrase is then used within the calculations for a shared-placement arrangement and circumstances of a serial-family parent, split-placement parents, and combinations of special circumstances. The manner of calculating the amount of child support and the applicable formulas are not changed in the bill.

In addition, the bill does all of the following: retitles the applicable DCF administrative code chapter from “Child Support Percentage of Income Standard” to “Child Support Standard”; removes the definition of the term “standard” or “percentage standard” from DCF’s rules; moves a Note appended to the definition of “standard” in DCF’s rules to the new definition of the “designated percentage”; moves the listing of the designated percentage amounts, and the standard that applies to a request for a deviation from the percentage standard, to be placed with and follow the shared physical placement arrangement formula; and updates cross-references within DCF’s rules to reflect the reorganization of the shared physical placement and designated percentage provisions.

## **2019 ASSEMBLY BILL 97**

### **Background**

Under current law, a court must set a physical placement schedule that allows a child to have regularly occurring, meaningful periods of physical placement and that maximizes the amount of time for a child with each parent.

The committee considered the importance of emphasizing that cooperation in parenting and involvement by both parents is usually in a child's best interests, to the extent that cooperation is appropriate for the parties' circumstances and all court orders that may apply to their relationship.

## **Description**

The bill adds a statement among the general principles for custody and placement that any allocation of physical placement, as ordered by the court, presumes that the 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.

## **2019 ASSEMBLY BILL 98**

### **Background**

Under current law, a court must set a physical placement schedule that allows a child to have regularly occurring, meaningful periods of physical placement and that maximizes the amount of time for a child with each parent. In determining a physical placement schedule, a court must, in each case, consider a statutory list of best-interest factors.

Given the trend in shared and substantially equal physical placement arrangements, the committee considered the value in having a court explain its reasoning when physical placement with one parent is limited. The committee also heard testimony suggesting that the factors be rearranged for easier application.

### **Description**

The bill 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.

The bill also reorganizes the statutory best-interest factors, removing two considerations: the stability in placement; and availability of child care services. In the introduction to the list of factors, the bill specifies that the list is not necessarily in any order of priority.

## **2019 ASSEMBLY BILL 99**

### **Background**

Under current law, in any action affecting the family in which legal custody or physical placement is contested, the parties are required to attend at least one session of mediation, unless a court finds that attending mediation will cause undue hardship or would endanger the health or safety of one of the parties and waives the mediation requirement. If after the initial session the mediator notifies the court that no agreement has been reached, or if mediation has been waived, the parties must each file a parenting plan with the court within 60 days. A parenting plan must provide certain information, including what legal custody or physical placement the parent is seeking, where the parent lives currently and intends to live during the next two years, where the

parent works and the hours of employment, who will provide necessary child care and who will pay for it, a proposed summer and holiday placement schedule, whether and how the child may contact the other parent, what child support, family support, maintenance, or other income transfer there will be, and how the child's medical expenses will be paid.

The committee heard testimony that the exercise of detailing and discussing a co-parenting proposal is very effective in helping parents focus on a child's needs and determine arrangements that work best for the family, without litigation, but that the effectiveness is largely lost if the parties only exchange proposals after mediation has failed and the parties are presenting separate proposals to the court in preparation for litigation.

## **Description**

The bill requires parties who are directed to participate in an initial mediation session to submit their respective proposed parenting plans to family court services or the assigned mediator at least 10 days before the initial mediation session. The parties may also exchange proposed parenting plans with each other before the initial mediation session. Proposed parenting plans may be exchanged and submitted electronically. The bill maintains the separate requirement for the parties to each file a proposed parenting plan with the court if no agreement was reached in mediation or if mediation was waived.

The bill removes from the required parenting plan information about what child support, family support, maintenance, or other income transfer there will be, and how the child's medical expenses will be paid. The bill adds a requirement that proposed parenting plans must include, with specific detail, what proposed variable costs are expected to be incurred by or on behalf of the child.

## **2019 ASSEMBLY BILL 100**

### **Background**

Under current law, certain aspects of family law proceedings are modified if a court finds that a parent has engaged in a pattern or serious incident of interspousal battery or domestic abuse. The committee heard testimony, however, that a court is frequently unaware if a family has a history of domestic violence, even when a parent has a conviction or an injunction that is publicly available in court records.

### **Description**

The bill specifies that in a family law action where the parties have a minor child, a court may take judicial notice of records available in the electronic consolidated court automation programs, commonly referred to as CCAP, for certain convictions and restraining orders between the parties. The records of which a court may take judicial notice are:

- A conviction of a parent for a crime that is subject to the statutory domestic abuse surcharge and is committed against the other parent. The crimes include battery, stalking, sexual assault, damage to property, and disorderly conduct, among others.



- A conviction of a parent for a crime against a child that is committed against a child of the parties.
- An injunction issued against a parent if the injunction was requested by the other parent, for a domestic abuse or harassment restraining order.

## **2019 ASSEMBLY BILL 101**

### **Background**

Current law allows a court to order family support, which combines the component parts of child support and maintenance in a single obligation, in lieu of separate child support and maintenance payments. Under prior federal law, the entire family support payment was treated as tax deductible, and therefore the payments were deductible by the payor-spouse and taxable income of the recipient-spouse. Under s. 11051 of the federal tax cuts and jobs act of 2017, maintenance payments are no longer deductible by the payor-spouse and are not treated as taxable income to the recipient spouse for divorce or separation instruments executed after December 31, 2018. State tax law was changed to be consistent with federal tax law for taxable years beginning after December 31, 2017.

The committee members discussed the importance of ensuring that maintenance and child support payments are consistent with current state and federal tax laws.

### **Description**

The bill provides that no new family support orders may be issued beginning on the bill's effective date. Family support orders issued before the bill's effective date would remain in effect and be subject to all provisions in current law that apply to family support orders, including provisions relating to calculating interest and the duties of the DCF regarding application of payments received.

## **2019 ASSEMBLY BILL 102**

### **Background**

Currently, DCF administrative code defines gross income for the purposes of calculating child support to include military allowances.

The committee received testimony that using a service member's variable housing costs, rather than base housing costs, leads to an increased number of court actions for a revision of child support upon each military move, and that using base housing costs would create stability and better reflect the purposes of the variable housing costs allowance.

### **Description**

This bill amends the DCF administrative code to specify that gross income includes military basic allowances for subsistence and housing, but does not include variable housing costs.

## **2019 ASSEMBLY BILL 103**

### **Background**

Under current law, if a mother was enrolled in Medical Assistance at the time of a child's birth, the father may be ordered to contribute to birth costs paid by the Medical Assistance program. The amount that may be ordered for a father's obligation is up to half of the actual costs of the pregnancy and birth, subject to an income limitation formula. Additionally, effective July 1, 2018, DCF's administrative rules specify that recovery from a father is inappropriate in cases where the family is intact at the time that paternity or support is established and the father's income, if any, contributes to the support of the child.

The study committee heard testimony that the revised 2018 rule will reduce collections by the child support enforcement agencies, which in turn reduces the county budgets for child support enforcement services. The committee also considered the importance of holding a father responsible for a share of the birth costs.

### **Description**

The bill removes the limitation under DCF's administrative rules that recovery of birth costs is inappropriate in cases where the alleged father is a member of an intact family that includes the mother and the subject child at the time paternity or support is established, and the father's income, if any, contributes to the support of the child.

## **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**

### **Background**

Current law requires a guardian ad litem to investigate whether there is evidence that either parent has engaged in interspousal battery or domestic abuse and requires the guardian ad litem to report to the court on the results of the investigation. However, while the Supreme Court Rules for eligibility to accept an appointment as a guardian ad litem for a minor in a family law action may include education relating to the dynamics and impact of family violence, education on that topic is not required in order to accept an appointment.

The committee members considered the difficulty in effectively recognizing and responding to family violence dynamics and the importance of providing training to guardians ad litem in the family court system on the dynamics of interspousal battery and domestic abuse.

### **Description**

The petition to the Supreme Court proposes amending a Supreme Court Rule to require minimum education relating to dynamics and impact of family violence in order for an attorney to be eligible to accept an appointment by a court as a guardian ad litem for a minor in a family law

action. For an initial appointment, the petition asks that at least three of the six required education hours be on the dynamics and impact of family violence. For any subsequent appointments, the petition asks that at least one of the six required education hours be on that topic.



## STUDY COMMITTEE AND JOINT LEGISLATIVE COUNCIL VOTES

The following drafts were recommended by the Study Committee on Child Placement and Support to the Joint Legislative Council for introduction in the 2019-20 session of the Legislature.

### STUDY COMMITTEE VOTE

The study committee voted by a February 15, 2019 mail ballot to recommend the following bill drafts to the Joint Legislative Council for introduction in the 2019-20 session of the Legislature. The votes on the bill drafts and petition were as follows.

- LRB-0410/1, relating to reduction of child support payments during incarceration, passed by a vote of Ayes, 12 (Reps. Brooks, Brandtjen, and Stuck; Sens. Kapenga and Taylor; and Public Members Atwell, Bickel, Fremgen, Gormal, Kain, Sullivan, and Walsh); Noes, 1 (Public Member Highstrom); and Not Voting, 0.
- LRB-0667/1, relating to elimination of family support, passed by a vote of Ayes, 13 (Reps. Brooks, Brandtjen, and Stuck; Sens. Kapenga and Taylor; and Public Members Atwell, Bickel, Fremgen, Gormal, Highstrom, Kain, Sullivan, and Walsh); Noes, 0; and Not Voting, 0.
- LRB-0668/1, relating to exclusion of certain military allowances in determining gross income for purposes of child support, passed by a vote of Ayes, 13 (Reps. Brooks, Brandtjen, and Stuck; Sens. Kapenga and Taylor; and Public Members Atwell, Bickel, Fremgen, Gormal, Highstrom<sup>1</sup>, Kain, Sullivan, and Walsh); Noes, 0; and Not Voting, 0.
- LRB-0707/1, relating to calculating the child support obligation, passed by a vote of Ayes, 13 (Reps. Brooks, Brandtjen, and Stuck; Sens. Kapenga and Taylor; and Public Members Atwell, Bickel, Fremgen, Gormal, Highstrom, Kain, Sullivan, and Walsh); Noes, 0; and Not Voting, 0.
- LRB-0976/1, relating to eliminating administrative rule limitation on recovery of birth costs, passed by a vote of Ayes, 9 (Reps. Brooks, Brandtjen, and Stuck; Sens. Kapenga and Taylor; and Public Members Atwell, Fremgen, Sullivan, and Walsh); Noes, 4 (Public Members Bickel, Gormal, Highstrom, and Kain); and Not Voting, 0.

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<sup>1</sup> In Ms. Highstrom's mail ballot, she voted "no" on this draft. Accordingly, in Report LCR 2019-10 to the Joint Legislative Council, dated February 26, 2019, Ms. Highstrom's vote was recorded as "no". On March 4, 2019, Ms. Highstrom submitted a supplemental memorandum stating that her vote on LRB-0668/1 was submitted incorrectly. She asked that the record be amended to reflect her intended vote. [Memorandum, from Tiffany L. Highstrom, regarding 2018 Legislative Council Study Committee on Child Placement and Support (March 4, 2019).]

- LRB-0409/1, relating to a Uniform Deployed Parents Custody and Visitation Act, passed by a vote of Ayes, 11 (Reps. Brooks, Brandtjen, and Stuck; Sens. Kapenga and Taylor; and Public Members Atwell, Bickel, Fremgen, Kain, Sullivan, and Walsh); Noes, 2 (Public Members Gormal and Highstrom); and Not Voting, 0.
- LRB-0411/2, relating to proposed parenting plans in certain actions affecting the family, passed by a vote of Ayes, 12 (Reps. Brooks, Brandtjen, and Stuck; Sens. Kapenga and Taylor; and Public Members Atwell, Bickel, Fremgen, Highstrom, Kain, Sullivan, and Walsh); Noes, 1 (Public Member Gormal); and Not Voting, 0.
- LRB-0660/1, relating to modifications to legal custody or physical placement contingent upon a future event, passed by a vote of Ayes, 12 (Reps. Brooks, Brandtjen, and Stuck; Sens. Kapenga and Taylor; and Public Members Atwell, Bickel, Fremgen, Highstrom, Kain, Sullivan, and Walsh); Noes, 0; and Not Voting, 1 (Public Member Gormal).
- LRB-0662/1, relating to judicial notice of certain court records relating to domestic violence or child abuse, passed by a vote of Ayes, 12 (Reps. Brooks, Brandtjen, and Stuck; Sens. Kapenga and Taylor; and Public Members Atwell, Bickel, Fremgen, Gormal, Highstrom, Sullivan, and Walsh); Noes, 1 (Public Member Kain); and Not Voting, 0.
- LRB-1984/1, relating to the involvement and cooperation of both parents in a physical placement schedule, passed by a vote of Ayes, 12 (Reps. Brooks, Brandtjen, and Stuck; Sens. Kapenga and Taylor; and Public Members Atwell, Bickel, Fremgen, Highstrom, Kain, Sullivan, and Walsh); Noes, 1 (Public Member Gormal); and Not Voting, 0.
- LRB-1985/1, relating to factors relating to the physical placement of a child, passed by a vote of Ayes, 10 (Reps. Brooks, Brandtjen, and Stuck; Sens. Kapenga and Taylor; and Public Members Bickel, Fremgen, Highstrom, Kain, and Walsh); Noes, 3 (Public Members Atwell, Gormal, and Sullivan); and Not Voting, 0.
- 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, passed by a vote of Ayes, 10 (Reps. Brooks, Brandtjen, and Stuck; Sens. Kapenga and Taylor; and Public Members Atwell, Fremgen, Gormal, Sullivan, and Walsh); Noes, 3 (Public Members Bickel, Highstrom, and Kain); and Not Voting, 0.

## JOINT LEGISLATIVE COUNCIL VOTE

At its March 6, 2019 meeting, the Joint Legislative Council voted as follows on the recommendations of the study committee:

*Sen. Roth moved, seconded by Rep. Ballweg, that **LRB-0410/1, LRB-0667/1, LRB-0668/1, LRB-0707/1, LRB-0409/1, LRB-0411/2, LRB-0660/1, LRB-0662/1, LRB-1984/1, and LRB-1985/1** be approved by the Joint Legislative Council. The motion passed on roll call vote as follows: Ayes, 20 (Reps. Brooks, August, Ballweg, Billings, Hesselbein, Hintz, Spiros, Steineke, Taylor, and Vos; and Sens. Roth, Darling, Fitzgerald,*

*Jacque, Marklein, Miller, Olsen, Petrowski, Risser, and Shilling); Noes, 0; and Absent, 2 (Rep. Nygren and Sen. Erpenbach). [LRB-0409/1, LRB-0410/1, LRB-0707/1, LRB-1984/1, LRB-1985/1, LRB-0411/2, LRB-0662/1, LRB-0667/1, and LRB-0668/1 were introduced as 2019 Assembly Bills 93, 94, 95, 96, 97, 98, 99, 100, 101, and 102.]*

*Sen. Roth moved, seconded by Rep. Ballweg, that **LRB-0976/1** be approved for introduction by the Joint Legislative Council. The motion passed on a roll call vote as follows: Ayes, 15 (Reps. Brooks, August, Ballweg, Billings, Spiros, Steineke, and Vos; Sens. Roth, Darling, Fitzgerald, Jacque, Marklein, Miller, Olsen, and Petrowski); Noes, 5 (Reps. Hesselbein, Hintz, and Taylor; and Sens. Risser and Shilling); and Absent, 2 (Rep. Nygren and Sen Erpenbach). [**LRB-0976/1 was introduced as 2019 Assembly Bill 103.**]*

*Sen. Roth moved, seconded by Rep. Ballweg, that the petition to amend the Wisconsin Supreme Court rule be approved. The motion passed on a roll call vote as follows: Ayes, 15 (Reps. Brooks, August, Ballweg, Spiros, Steineke, and Vos; Sens. Roth, Darling, Fitzgerald, Jacque, Marklein, Miller, Olsen, Petrowski, and Risser); Noes, 5 (Reps. Billings, Hesselbein, Hintz, and Taylor; and Sen. Shilling); and Absent, 2 (Rep. Nygren and Sen Erpenbach).*





JOINT LEGISLATIVE COUNCIL

<b><u>SENATE MEMBERS</u></b>	<b><u>ASSEMBLY MEMBERS</u></b>
<b>Roger Roth, Co-Chair</b> Senate President Appleton	<b>Robert Brooks, Co-Chair</b> Assistant Majority Leader Saukville
<b>Alberta Darling</b> JFC Co-Chair River Hills	<b>Tyler August</b> Speaker Pro Tempore Lake Geneva
<b>Scott Fitzgerald</b> Majority Leader Juneau	<b>Joan Ballweg</b> Markesan
<b>Howard Marklein</b> President Pro Tempore Spring Green	<b>Peter Barca</b> Kenosha
<b>Mark Miller</b> Monona	<b>Dianne Hesselbein</b> Assistant Minority Leader Middleton
<b>Terry Moulton</b> Chippewa Falls	<b>Gordon Hintz</b> Minority Leader Oshkosh
<b>Jerry Petrowski</b> Marathon	<b>John Nygren</b> JFC Co-Chair Marinette
<b>Fred A. Risser</b> Madison	<b>John Spiros</b> Marshfield
<b>Jennifer Shilling</b> Minority Leader La Crosse	<b>Jim Steineke</b> Majority Leader Kaukauna
<b>Lena Taylor</b> JFC Ranking Minority Member Milwaukee	<b>Chris Taylor</b> JFC Ranking Minority Member Madison
<b>Van Wanggaard</b> Racine	<b>Robin Vos</b> Speaker Rochester

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 senators and 5 representatives appointed as are members of standing committees.



## Committee List

### Joint Legislative Council Study Committee on Child Placement and Support

**Chair Robert Brooks**, Representative  
204 E. Dekora St.  
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**STUDY ASSIGNMENT:** The Study Committee is directed to review the standards under current law for determining periods of physical placement and child support obligations. The committee may consider alternatives to current law concerning physical placement, including a rebuttable presumption that equal placement is in the child's best interest. The committee may also consider whether the current standard for determining child support adequately and equitably provides for the support of children and alternative models for determining child support obligations.

**13 MEMBERS:** 3 Representatives; 2 Senators; and 8 Public Members.

**LEGISLATIVE COUNCIL STAFF:** Rachel Letzing, Principal Attorney; Margit Kelley, Senior Staff Attorney; and Kelly Mautz, Support Staff.



## COMMITTEE MATERIALS LIST

*[Copies of documents are available at [www.legis.wisconsin.gov/lc](http://www.legis.wisconsin.gov/lc)]*

### **August 28, 2018 Meeting**

- Handout, Follow-Up Resources, NCSL Testimony to Legislative Council Study Committee on Child Placement and Support, National Conference of State Legislatures
- Memorandum, Relating to Possible Statutory Changes to Assist Courts in Investigating Incidents of Domestic Violence and Child Abuse in a Family Court Matter, by Commissioner Mark Fremgen (August 29, 2018)
- Presentation, Placement of Children in Family Cases, by Anthony J. Menting, Stafford Rosebaum LLP
- Presentation, Wisconsin's Child Support Guidelines Historical Perspective, by Constance M. Chesnik, Office of Legal Counsel, Department of Children and Families
- Presentation, Child Custody and Support Guidelines, by Meghan McCann, J.D., National Conference of State Legislatures
- Other Materials Distributed
- Staff Brief 2018-07, "Study Committee on Child Placement and Support," (August 7, 2018).
- Child Support Obligation of Low-Income Payers, Ch. DCF 150 App. C, Wis. Adm. Code
- Guidelines for Setting Child Support Orders, 45 C.F.R. s. 302.56
- Uniform Deployed Parents Custody and Visitation Act, by the Uniform Law Commission

### **September 25, 2018 Meeting**

- LC Study Committee Memorandum, Topics for Committee Discussion Relating to the Standards for Determining Periods of Physical Placement and Child Support in Actions Affecting the Family (September 18, 2018)
- Handout, Submitted by Shelly Anday, Family Court Counseling Services, LLC (September 25, 2018)
- Presentation by Maria Cancian and Daniel R. Meyer, Professors, Public Affairs and Social Work, UW Institute for Research and Poverty (September 25, 2018)

- Memorandum and Packet, by Kimberly Graff, President/Founder, Protecting Military Families in Wisconsin
- Handout, Modification of Child Support Due to Incarceration 2017/2018 Legislation and Existing Statutes, National Conference of State Legislatures
- Prison Project, by Milwaukee County Child Support Services
- Memorandum and proposal relating to physical placement, by Family Law Section, State Bar of Wisconsin (September 7, 2018)
- Memorandum, Family Law Section, State Bar of Wisconsin, Sept. 7th Memorandum, Ben Kain, Involved Fathers of Wisconsin (September 19, 2018)
- Memorandum from Amber Peterson, Legal Advisor, Director of State Courts Office of Court Operations, "Training Requirements for Judges and Guardians ad Litem (September 24, 2018)
- Memorandum from Steve Blake, Dads of Wisconsin, "Family Law Section of the Wisconsin State Bar Memo Sept. 7, 2018" (September 24, 2018)
- Memorandum and supporting documents, from Benjamin Kain, Involved Fathers of Wisconsin, "Birth Cost Recovery Program" (September 24, 2018)
- Other Materials Distributed
- Domestic Abuse Guidebook for Wisconsin Guardians ad Litem (March 2017)

#### **October 23, 2018 Meeting**

- LRB-0409/P1, relating to a Uniform Deployed Parents Custody and Visitation Act.
- LRB-0410/P1, relating to reduction of child support payments during incarceration.
- LRB-0411/P1, relating to proposed parenting plans in certain actions affecting the family.
- Follow-up materials from Kenneth H. Waldron, Ph.D.
- Handout, Uniform Deployed Parents Custody and Visitation Act, by National Conference on Commissioners on Uniform State Laws (October 15, 2018)
- Handout, A Social Science Research Review on Residential Placement Schedules, by Kenneth H. Waldron, Ph.D (October 2, 2018)
- Additional handouts from Kenneth H. Waldron, Ph.D. (October 23, 2018)
- Other Materials Distributed
- Presentation, Uniform Deployed Parents Custody and Visitation Act, by Lindsay Beaver, Legislative Counsel, Uniform Law Commission (October 22, 2018)

- Presentation, DCF 150 Percentage of Income Standard, by the Department of Children and Families (October 22, 2018)

#### **November 20, 2018 Meeting**

- LRB-0409/P3, relating to a uniform deployed parents custody and visitation act
- LRB-0410/P3, relating to reduction of child support payments during incarceration
- LRB-0411/P2, relating to proposed parenting plans in certain actions affecting the family
- LRB-0659/P2, relating to a presumption that equalizing physical placement to the highest degree is in the child's best interest.
- LRB-0660/P2, relating to modifications to legal custody or physical placement contingent upon a future event
- LRB-0662/P2, relating to judicial notice of certain court records relating to domestic violence or child abuse
- LRB-0665/P1, relating to parental authority in joint legal custody situations
- LRB-0667/P1, relating to elimination of family support
- LRB-0668/P1, relating to exclusion of certain military allowances in determining gross income for purposes of child support
- LRB-0707/P1, relating to calculating the child support obligation
- LRB-0708/P1, relating to equalizing physical placement
- LRB-0709/P1, relating to the best interest of the child in determining custody and physical placement
- LC Study Committee Memorandum, Description of the Birth Cost Recovery Program (November 9, 2018)
- Other Materials Distributed
- 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
- Memorandum, Birth Cost Recovery, from Wisconsin child Support Enforcement Association (November 12, 2018)

#### **December 18, 2018 Meeting [CANCELLED]**

#### **February 11, 2019 Meeting**

- Handout, Chapter SCR 35, Eligibility for Appointment as Guardian ad Litem for a Minor
- Chapter SCR 81, Court-appointed attorney compensation

- Memorandum, Wisconsin Birth Cost Recovery Program, from Maureen Atwell, Director, Child Support Division, Office of Corporation Counsel, Child Support Division, Waukesha County (November 26, 2018)
- 2017 Annual Report, Board of Bar Examiners
- LC Study Committee Memorandum, Factors in Legal Custody and Physical Placement Determinations (December 11, 2018)
- 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
- Amendment for Draft LRB09411/1
- Handout, Equal and Shared Parenting: The benefits of change far outweigh the outdated status quo, from Public Member Tony Bickel (January 14, 2019)
- Committee Draft Recommendations Regarding Parenting Plans
- Handout, Wisconsin's Birth Cost Recovery Policy: Implications for Health Disparities in Infant Mortality, Meghan Pesko (May 17, 2012), submitted by Bobby Peterson, Executive Director, ABC for Health, Inc.
- Other Materials Distributed
- Presentation, Birth Cost Recovery: A Birth Tax is Bad Policy for Wisconsin, ABC for Health, Inc.
- LRB-0409/1, relating to a Uniform Deployed Parents Custody and Visitation Act
- LRB-0410/1, relating to reduction of child support payments during incarceration
- LRB-0411/1, relating to proposed parenting plans in certain actions affecting the family
- LRB-0659/1, relating to a presumption that equalizing physical placement to the highest degree is in the child's best interest
- LRB-0660/1, relating to modifications to legal custody or physical placement contingent upon a future event
- LRB-0662/1, relating to judicial notice of certain court records relating to domestic violence or child abuse
- LRB-0667/1, relating to elimination of family support
- LRB-0668/1, relating to exclusion of certain military allowances in determining gross income for purposes of child support
- LRB-0707/1, relating to calculating the child support obligation
- LRB-0708/2, relating to equalizing physical placement



- LRB-0709/1, relating to the best interest of the child in determining custody and physical placement
- LRB-0976/1, relating to eliminating administrative rule limitation on recovery of birth costs
- LRB-1037/1, relating to requiring equalizing physical placement
- LRB-1350/1, relating to parenting time.

#### **February 15, 2019 Mail Ballot**

- 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
- LRB-0409/1, relating to a Uniform Deployed Parents Custody and Visitation Act
- LRB-0410/1, relating to reduction of child support payments during incarceration
- LRB-0411/2, relating to proposed parenting plans in certain actions affecting the family
- LRB-0660/1, relating to modifications to legal custody or physical placement contingent upon a future event
- LRB-0662/1, relating to judicial notice of certain court records relating to domestic violence or child abuse
- LRB-0667/1, relating to elimination of family support
- LRB-0668/1, relating to exclusion of certain military allowances in determining gross income for purposes of child support
- LRB-0707/1, relating to calculating the child support obligation
- LRB-0976/1, relating to eliminating administrative rule limitation on recovery of birth costs
- LRB-1984/1, relating to the involvement and cooperation of both parents in a physical placement schedule
- LRB-1985/1, relating to factors relating to the physical placement of a child
- Results of the February 15, 2019 Mail Ballot
- Memorandum, from Tiffany L. Highstrom, regarding 2018 Legislative Council Study Committee on Child Placement and Support (March 4, 2019)

#### **Recommendations to the Joint Legislative Council**

- LCR-2019-10, Study Committee on Child Placement and Support (February 26, 2019)

- 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
- LRB-0409/1, relating to a Uniform Deployed Parents Custody and Visitation Act
- LRB-0410/1, relating to reduction of child support payments during incarceration
- LRB-0411/2, relating to proposed parenting plans in certain actions affecting the family
- LRB-0660/1, relating to modifications to legal custody or physical placement contingent upon a future event
- LRB-0662/1, relating to judicial notice of certain court records relating to domestic violence or child abuse
- LRB-0667/1, relating to elimination of family support
- LRB-0668/1, relating to exclusion of certain military allowances in determining gross income for purposes of child support
- LRB-0707/1, relating to calculating the child support obligation
- LRB-0976/1, relating to eliminating administrative rule limitation on recovery of birth costs
- LRB-1984/1, relating to the involvement and cooperation of both parents in a physical placement schedule
- LRB-1985/1, relating to factors relating to the physical placement of a child

#### **Joint Legislative Council Recommendations to the 2019-20 Legislature**

- 2019 Assembly Bill 93
- 2019 Assembly Bill 94
- 2019 Assembly Bill 95
- 2019 Assembly Bill 96
- 2019 Assembly Bill 97
- 2019 Assembly Bill 98
- 2019 Assembly Bill 99
- 2019 Assembly Bill 100
- 2019 Assembly Bill 101
- 2019 Assembly Bill 102

- 2019 Assembly Bill 103
- Joint Legislative Council's Report of the Study Committee on Child Placement and Support