JESSIE RODRIGUEZ
STATE REPRESENTATIVE ★ 21ST ASSEMBLY DISTRICT

AB 551: Updating State Law Regarding the Process for Relocating With a Child

Testimony of State Representative Jessie Rodriguez
Assembly Committee on Children and Families
November 15, 2017

Good morning,

Chairman Kitchens and fellow committee members, thank you for the opportunity to testify on Assembly Bill 551, legislation that will clarify and ease the process for separated parents when one parent seeks to move to another location outside of their current living arrangement.

Under current law, if separated parents have joint placement and live near one another, a parent wishing to move with the child more than 150 miles away from the other parent or out of state must provide written notice to the other parent at least 60 days prior to the move. If the non-moving parent objects then a guardian ad litem is appointed in an effort to determine if the parent should be able to move based on the best interest of the child.

However, current law lacks clarity in certain areas that has created confusion. This proposal seeks to clarify and improve the current law in several ways:

- Current law makes it clear that the provisions within the statute apply to divorced parents but is not clear for parents who have never been married and whether or not they must provide notice to the non-moving parent may depend on the county where the judgement was entered. This proposal will make it clear the law applies to all parents.
- Secondly, the proposal creates a clear process for modifying placement when the non-moving parent does not object to the move. If the parents agree, this proposal allows the parents to file a stipulation with the court updating the new placement schedule.

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- Additionally, this bill eliminates the requirement that a parent who wishes to move with the child must provide a written notice to the non-moving parent if they move out of state. This requirement is no longer necessary as out-of-state moves fall under the Uniform Child Custody Jurisdiction and Enforcement Act, passed in Wisconsin in 2006. Eliminating the requirement will ease the burden for parents living along the border that are simply looking to move to another city on the other side of the state border.
- Lastly, this legislation will reduce the number of miles required for a change to relocation from 150 to 100 miles. The moving parent will file a motion with the court rather than providing written notice to the other parent. This will ensure the process is followed correctly.

Not only will this legislation clarify a confusing law but it will also reduce litigation in instances where parents are able to work out an agreement without involving the court. This will allow for a more efficient court process and reduced costs to families by eliminating the need for costly litigation. Most importantly, this legislation will reduce the occurrence of prolonged litigation that can have a harmful impact on families and their children.

I will answer any questions you may have at this time.

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Alberta Darling

Wisconsin State Senator

Co-Chair, Joint Committee on Finance

Testimony before the Assembly Committee on Children and Families
Assembly Bill 551
Wednesday, November 15, 2017

Thank you Chair Kitchens and committee members for holding a public hearing on Assembly Bill 551. This important piece of legislation clarifies relocation procedures for parents with partial custody. The current process is outdated and confusing for parents.

Under current law, a parent needs to file a motion with the court to relocate out of state or to move 150 miles away from the other parent. This language is troublesome for three reasons. First, only requiring notification for a move of more than 150 miles from the other parent is a very large margin to trigger a notification requirement. A child could go from being neighbors with their other parent to living two and a half hours away, without the parent even receiving notification of the change. Second, while it allows excessive movement without notification for some parents, it creates unnecessary burdens for parents living along state lines. Custodial parents could be prevented from a short relocation simply because the move crosses a state line. Finally, due to vague language in the statute, it is unclear if all parents or only parents that were previously married who now share custody need to notify upon moving more than 150 miles. These flaws lead to unnecessary burdens, costly court battles, and confusion for parents.

Assembly Bill 551 corrects the faults in the current language. First, the bill reduces the distance that triggers a notification requirement from 150 miles to 100 miles. Next, the bill removes language restricting movement across state lines, so long as the move is still within 100 miles of the other parent. Finally, Assembly Bill 551 makes clear that all parents with shared custody must follow the notification requirements for relocation regardless of if the parents had been previously married.

This bill makes simple changes to ensure parents have a say in where their kids are moving, while ensuring that parents are not faced with unnecessary obstacles to relocating. This bill has the support of the State Bar of Wisconsin's Family Law Section.

I'd like to thank Representative Rodriguez and Senator Harsdorf for their work on this important piece of legislation. Thank you again committee members for your time and consideration. I hope I can count on your support for Assembly Bill 551.

To: Members, Assembly Committee on Children & Families

From: Jared M. Potter – Chair of the Collaborative Family Law Council of Wisconsin

Date: November 15, 2017

Re: Written testimony in support of AB 551 – relocation with a child

The Collaborative Family Law Council of Wisconsin requests your support of AB 551, sponsored by Rep. Jessie Rodriguez, which provides a clear process when one parent wants to move with a child or children more than 100 miles away from the other parent.

The Collaborative Family Law Council of Wisconsin is a statewide association of lawyers, mental health professionals and financial advisors who work together to promote a respectful and problem solving focused solution to family law issues.

The current law leaves Wisconsin parents with significant uncertainties when one of the parents want to move. First, it is uncertain whether the relocation statutes apply to parents who have never married. Second, if the non-moving parent does not object, and the moving parent moves, there is no court order that changes the placement schedule which creates great uncertainty with the non-moving parent's placement time with the children.

The Collaborative Family Law Council of Wisconsin supports the clarification of these uncertainties. This bill definitely applies to all actions affecting the family, not just divorce actions. This will eliminate confusion with families and inconsistent application by the courts. Second, this bill requires the moving parent to submit a proposed placement schedule, so if the non-moving parent does not object, the court can order the moving parent's proposed placement schedule. As a result, the non-moving parent will clearly know, by way of the new placement order, what their rights are for future placement.

FAMILY LAW SECTION

To: Members, Assembly Committee on Children & Families
From: State Bar of Wisconsin Family Law Section
Date: November 15, 2017
Re: AB 551 – relocation with a child

The State Bar of Wisconsin's Family Law Section requests your support of AB 551, sponsored by Rep. Jessie Rodriguez. This bill provides a clear process for a separated couple when one parent wants to move with their child(ren) more than 100 miles away from another parent.

Under current law, if there is a judgment awarding separated parents placement with their child(ren), the parties live close to each other, and one parent wants to move with the child(ren) more than 150 miles away from the other parent or out of the state of Wisconsin, that parent needs to provide the other parent with a written notice of the move at least 60 days prior to the move. The non-moving parent has the right to object to the proposed move. If the non-moving parent objects, the objection must be filed with the court, which will appoint a guardian ad litem and determine whether the parent should be able to move with the child(ren) based on the best interests of the child(ren).

There are several issues with current law which have resulted in the Family Law Section drafting a new procedure for parents who want to move with their minor child(ren) away from the other parent.

- Under current law, these provisions clearly apply to all divorced parents, however, it is not clear whether it applies to never-married parents. Given this lack of clarity, whether never-married parents are required to provide this notice may depend on which county the placement judgment was entered.
- Currently, there is no clear provision for what should happen to the placement order if the non-moving parent does not object. The parent may be allowed to move with the child(ren) if the other parent does not object, but that does not necessarily change the placement schedule, so under current law the moving parent may have to also file a motion to modify the placement schedule.
- Current law requires the moving parent to provide notice if they move out of state, regardless of how far away they are moving from the other parent. This requirement is no longer necessary given that jurisdictional issues are now well-clarified under the Uniform Child Custody Jurisdiction and Enforcement Act. For many parents who live along Wisconsin's borders with neighbor states, they are now required to provide this formal notice even if they move a few miles away (i.e. La Crosse, WI to La Crescent, MN; Beloit, WI to Rockford, IL; Hudson, WI to St. Paul, MN; Hurley, WI to Ironwood, MI). This impractical requirement is no longer necessary.

The Family Law Section's proposed change clarifies these uncertainties in the law. The new process also clearly applies to all family law actions, not just divorce cases. If parents already live far apart, this process does not apply. If parents agree on the move, they can simply file a stipulation with the court. If parents do not agree, then the new process requires a parent who wants to move with their child(ren) more than 100 miles away from the other parent to file a motion with the court, rather than simply provide written notice. The motion will require the moving parent to provide information about where, when, and why they are moving, as well as proposing a new placement schedule if the move is approved. The motion will provide the non-moving parent with a standard court form to file if they object to the move. There is a clear process for the court to use in scheduling these motions. If the non-moving parent does not object, then the court can approve the move and modify the placement schedule to the proposed schedule.

If the non-moving parent objects to the move, the standards for the court to decide the motion are clarified. The general standard is that the court should decide the motion based on the best interests of the minor. If, however, the objecting parent has not been exercising their periods of court ordered placement, then there is a presumption in favor of allowing the move. There is also an

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additional presumption which provides that if the moving parent is moving due to serious domestic abuse or child abuse, the court should approve the plan.

For these reasons, the **Family Law Section respectfully requests the Children & Families committee members' support AB 551.**

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.

The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.

To:	Members, Assembly Committee on Children & Families
From:	Attorney Cassel Villarreal
Date:	November 14, 2017
Re:	AB 551 – Relocation with a Child

I am the Chair of the State Bar of Wisconsin's Family Law Section and the section requests your support of AB 551 as the bill provides a clear process for a separated couple when one parent wants to move with their child(ren) more than a 100 miles from the other parent.

The current law is a confusing process. AB 551 provides a clear process and eliminates areas of ambiguity.

- The current law is unclear if the provision applies to never-married parents. This results in different requirements in different counties. AB 551 specifically applies to paternity cases as well as divorce cases.

- The requirement to provide notice if moving out of state, regardless of the distance of the move, is impractical and is no longer necessary as jurisdictional issues are now clarified under the Uniform Child Custody Jurisdiction Act and Enforcement Act. This bill allows parents who live along Wisconsin's borders with neighbor states who do not move a significant distance that has a practical implication to the placement schedule is relieved of this requirement.

- The current laws process for providing notice, objection and court action is difficult to navigate. AB 551 provides a clear process and treats a parent's request to move the child like a motion to modify placement and applies the best interest standard to a proposed move.

  A parent who want to move has to do more than provide written notice. A parent now has to file a motion with the court. The motion requires the moving parent to provide information about where, when, and why they are moving, as well as proposing a new placement schedule if the move is approved. The motion will provide the non-moving parent with a standard court form to file if they object to the move. There is a clear process for the court to use in scheduling these motions. If the non-moving parent does not object, then the court can approve the move and modify the placement schedule to the proposed schedule.

- If the non-moving parent objects to the move, the standards for the court to decide the motion are clarified. The general standard is that the court should decide the motion based on the best interests of the minor.

- The current law places the burden on the parent objection to a child's move to prove why a child's move is not in their best interest. All other modifications of custody or placement schedules place the burden on the parent who wants the change.

  AB 551 places the burden on the moving parent to show that it is in the child's best interest to move and that the placement schedule should change. This is in accord with other placement modifications in family cases.

  AB 551 does provide presumptions that shift the legal burden to the objecting party. If an objecting parent has not exercised their court ordered placement the court is to presume the proposed move is in the child's best interest. Or, if a parent's proposed move is due to serious domestic or child abuse the court is to presume the move is in the child's best interest.

To: Members, Assembly Committee on Children & Families
From: Hon. Sally-Anne Danner, Court Commissioner Fond du Lac County
Date: November 15, 2017
Re: AB 551 – relocation with a child

I am respectfully requesting your support of AB 551, sponsored by Rep. Jessie Rodriguez. This bill significantly clarifies and simplifies the process for a separated couple when one parent wants to move with their child(ren) more than 100 miles away from another parent.

As a Court Commissioner responsible for hearing all family related cases, I am certain that the proposed legislation will result in a much more efficient court process, which in turn will reduce litigation and costs for families. The current law is a confusing process, especially given the high number of self-represented litigants in family court. The proposed changes provide a clear process that eliminates several areas of ambiguity and can be easily understood by self-represented parties.

For example, the proposed bill clarifies that relocation provisions apply to paternity cases. Previously, parties in paternity cases would often argue that he or she was not required to provide any notice to the other parent of intent to move. This puts a never-married parent who may be objecting to a move at a disadvantage and creates another issue for litigation. This becomes more confusing, because the Child Support Agency, at least in Fond du Lac County, routinely includes removal notice requirement language in its paternity orders. Parties in private paternity actions, however, may not include removal language in paternity judgments. This results in inconsistent application of the removal provisions in paternity actions. The proposed bill eliminates this ambiguity.

The proposed changes eliminate other opportunities for litigation. The proposed bill will eliminate border disputes wherein one party intends to move only a few miles away, but the move is across a state border. In such a circumstance, even though the move may be *de minimis* and would have no practical implications on the placement schedule, because the move is across a state border, the moving parent must still comply with the same notice requirement as the parent moving a significant distance and requesting a substantial change in the placement schedule. In addition, in the proposed bill, if the parents already live more than 100 miles away from each other, the motion requirements do not apply. The requirements under the current law in such a situation are unclear. I recently had a case where one parent lived in Texas with the children and wanted to move to Kentucky. Even though the move would bring the children closer to the parent in Wisconsin, the Wisconsin parent objected to the move on the basis that statutory provision were not followed. This case also highlighted another problem the proposed bill helps to resolve: if a parent has not significantly exercised court-ordered placement, the proposed bill creates a presumption in favor of allowing the move. In the case mentioned above, the objecting party had not regularly exercised court ordered placement for several years, but was objecting to the move. All of these improvements will help to eliminate the opportunity for unnecessary, drawn-out litigation, thus reducing court involvement. Likewise, less court involvement results in a reduction of conflict and expense for families.

The most significant improvement the proposed bill provides, however, is replacing a *notice* based process with a *motion* based process. The procedure for a parent to move away with the children is elevated to the same process as all other placement modifications. As a result, a request to relocate with the children is afforded all of the same procedural protections required to file a motion, e.g. proof of service, the requirement of a court hearing where both parties can be heard prior to the move occurring, and a dispositional order.

One of the most problematic aspects of the current law is that it is not clear what happens to placement if an objection is not filed. The typical situation that I encounter is a disagreement over whether either party complied with the notice requirements. For example, I had a recent case where the moving parent sent notice of an intent to move by a certified letter. However, the other parent never retrieved the certified letter from the post office – the objecting parent's work hours and job duties prevented him from being available during regular post office hours. Therefore, although the notice to move may have satisfied the current statutory requirements, the objecting party did not actually receive notice. Or, the parties communicate regularly and one parent simply tells the other parent of his or her intent to move via text message, a note in the child's backpack, an email, etc. The other party responds by simply telling the other parent during child exchange that he or she disagrees with the move. In both situations, the parent who wants to relocate, believes that the *notice* requirements have been met. As a result, he or she moves with the child without any opportunity for the objecting party to have a court hearing.

The proposed bill creates a clear process. It requires the moving parent to file a motion. The motion must include information about where, when and why he or she wants to move and requires a detailed parenting plan. This requires the moving party to think about the implications, the logistical challenges and remedies to maintain the other parent's contact with child prior to filing the motion. The motion will include a standard form for the non-moving parent to file if there is an objection to the move. This provides an easy and specific way for an objection to be filed with the court. The proposed bill creates a definite timeline and process for the court and for the parties for scheduling the motions. Likewise, the proposed bill creates an explicit and quick remedy if the other party does not object or if the parties agree that relocation is acceptable. Finally, the proposed bill contains several presumptions to resolve issues that would otherwise provide opportunity for unnecessary litigation or for the purpose of harassment, e.g., a presumption in favor of the move if the objecting party has not exercised periods of placement, the proposed move will not effect the existing placement schedule, or the move is in response to domestic violence.

AB 551 as proposed will provide beneficial changes to the existing relocation procedures. By providing a clear procedure based on regular motion practices, AB 551 provides an efficient method, especially for self-represented litigants, to address an increasingly common request. AB 551 will replace a vague, confusing and cumbersome process, thereby reducing the harmful effects of prolonged adversarial disputes on families and on children. This in turn reduces the burden on court resources. For these reasons, I am respectfully requesting that you support AB 551.

Thank you,

Hon. Sally-Anne Danner
Fond du Lac County Court Commissioner