ROBERT BROOKS

STATE REPRESENTATIVE • 60TH ASSEMBLY DISTRICT

Senate Committee on Insurance, Financial Services, Government Oversight and Courts
Thursday, February 20, 2020

Thank you for holding a hearing on Assembly Bills 93, 95, 96, 97, 98, 99, 100, 101, and 102 and allowing me to testify in favor of this legislation.

Last session, I served as the Chair of the Study Committee on Child Placement and Support. Senator Lena Taylor was the committee's vice chair.

The committee was tasked with reviewing current standards for determining physical placement and child support obligations.

The committee was composed of 5 legislators and 8 public members, including a judge, court commissioner, private family law attorney, domestic violence advocate, fathers' rights activists, and county child support agency directors.

The diverse membership of the committee allowed us to hear from multiple stakeholders. It was important for us to receive feedback from both practitioners and parents that would be directly impacted by policy change – both of which were represented on the committee.

Each of the bills before you today received bipartisan support in the Assembly Committee on Family Law and was passed via voice vote on the Assembly floor in January.

Assembly Bill 93

Assembly Bill 93 is a piece of Uniform Law Commission legislation, which has already been enacted in 14 states. It creates a process and standards for temporary delegation of custodial responsibilities when a parent is deployed in military or national service. During deployment, that parent may grant his or her custodial responsibilities or visitation to stepparents, grandparents, great-grandparents, or adults who have a parent-like relationship with the child. The bill also establishes a timeframe for termination of these temporary custodial responsibilities when the deployed parent returns. The timeframe depends on the length of deployment.

The study committee heard testimony that temporary custody and placement arrangements are challenging for military families during deployment. This bill would help give these families a sense of certainty during deployment.

Assembly Bill 95

Assembly Bill 95 allows courts to approve contingency placement agreements. These would lead to modifications to legal custody or physical placement based upon future events that are certain to occur within two years' time. For example, a change in a child's school or extra-curricular activities.

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Based on feedback during the study committee process, contingency placements cannot be based on anticipated parental behavior modification, such as, completion of domestic violence or AODA treatment.

The study committee heard testimony regarding the value of encouraging parents to engage in advance discussion about anticipated issues and changes in the family and to attempt to resolve those issues together.

Current limitations on modifying orders favor the status quo on placement arrangements, but these limitations are not realistic in situations when change in life events and a child's need can be anticipated in the near future.

Assembly Bill 96

Assembly Bill 96 updates current DCF administrative rules relating to child support formulas to reflect that shared physical placement arrangements are now very common and should not be considered special circumstances.

This is a technical cleanup bill that codifies current practice in statute. Statute should be updated to reflect that shared physical placement arrangement are no longer "special circumstances." This bill will help avoid switching to a new methodology for calculating child support payments. It is important to note that formulas used to calculate child support amounts are not changed.

The committee heard testimony that the modern 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. Assembly Bill 96 makes updates to reflect current practice.

Assembly Bill 97

Assembly Bill 97 adds a new statement to the general principles for child custody and placement. It states that any order 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.

The study committee wanted to emphasize that cooperation in parenting and involvement by both parenting parties is usually in the child's best interest.

Assembly Bill 98

Assembly Bill 98 specifies that if a court grants less than 25% physical placement to a parent, a finding of fact must be entered as to the reason greater placement with said parent is not in the best interest of the child.

Currently, parents have no understanding of why they are not being awarded placement. This bill allows parents to have clear knowledge of which factors they are not meeting. This allows them

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to work on these issues. Given the trend in shared and substantially equal placement arrangements, the committee found value in having a court explain the reasoning when physical placement with one parent is limited.

In addition, Assembly Bill 98 reorders statutory best-interest factors, but specifies that the factors are not necessarily listed in order of importance. The study committee heard testimony suggesting that the factors be rearranged for easier application. This bill eliminates two considerations: the stability in placement and availability of child care services. Study committee members thought these considerations were already covered in other factors. These two factors kept placement in place without allowing for parents to adjust to a new way of life after divorce.

Assembly Bill 99

Under current law, divorcing parties are required to file a parenting plan with the court only after mediation fails or if mediation is waived. Assembly Bill 99 requires parents to submit proposed parenting plans to family court services or the mediator at least 10 days before mediation. Parents are not required to exchange parenting plans with each other prior to mediation.

The parenting plans must include more focus on co-parenting, rather than financial arrangements. The study committee heard testimony that co-parenting proposals are effective in helping parents focus on a child's need and determining arrangements that work best for the family, without litigation. The effectiveness of the current parenting plan process is largely lost and this bill remedies the current system's failure.

Assembly Bill 100

This bill would allow courts in a family law action involving minor children to take judicial notice of records for specific convictions and restraining orders. The convictions must involve crimes subject to domestic abuse surcharge, crimes against the convicted individual's child, or retraining orders that were ordered by the other parent.

The study committee heard testimony that the court is frequently unaware if a family has a history of domestic violence, even when a parent has a conviction or injunction that is publicly available in court records. Judges do not always ask a party about possible history of domestic violence, unless prompted by something in the case file. Additionally, victims of domestic violence are often hesitant to speak up about past instances, so judges would be able to look at records themselves.

This bill would allow judges to have all of the relevant information when determining periods of physical placement of a child.

Assembly Bill 101

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Currently, family support combines portions of child support and maintenance into a single payment. For tax purposes, family support payments are considered to be maintenance payments, so the payment is deductible to the payor-spouse and taxable to the recipient-spouse.

Under the federal Tax Cuts and Jobs Act of 2017, maintenance payments, such as family support, are no longer deductible for the payor and not included as income to the recipient.

Due to this tax change at the federal level, the study committee introduced Assembly Bill 101. This bill eliminates new family support orders in order to ensure that these payments are consistent with current state and federal tax laws.

Assembly Bill 102

Under Assembly Bill 102, DCF would no longer be able to include variable housing costs for determining gross income for child support. The department would continue to calculate gross income using veterans' disability compensation benefits and military basic allowance for subsistence and housing.

The study committee heard testimony that using 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. The use of base housing costs would create stability and better reflect the variable housing costs purpose.

Thank you for your time and attention and I ask that you support these bills. I would be happy to answer any questions.

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LEGAL Action
OF WISCONSIN

TO:	**Members of the Senate Committee on Insurance, Financial Services, Government Oversight and Courts**
FROM:	**Abby Bar-Lev Wiley, Legislative & Compliance Director, Legal Action WI**
RE:	**Impact of AB 98 on Legal Action's Clients**
DATE:	**February 20, 2020**

My name is Abby Bar-Lev Wiley, and I am the Legislative & Compliance Director of Legal Action of Wisconsin. Legal Action of Wisconsin (LAW) is a nonprofit law firm that provides free civil legal aid to low-income people in Wisconsin's 39 southern counties. One of our priority areas is serving low-income, domestic abuse victims with their family law needs; we work to help victims become safe. Our Family Law attorneys may handle a variety of types of cases for domestic abuse victims, including domestic abuse and child abuse injunctions; divorce cases; maintenance and child support; child custody and placement; paternity, and modification of divorce, paternity, custody, placement, maintenance, or child support judgments, among other types of cases.

Legal Action is concerned that AB 98 needlessly alters the law on child placement. Courts are already taking the child's best interests into account when determining the child's physical placement. In reorganizing the statutory best-interest factors, the bill states that the reorganization is "not necessarily listed in order of importance." This language could easily be interpreted by a court to determine that factors *are*, in fact, listed in order of importance: after all, the statutory language does not rule that out, and it is otherwise unclear why the legislature would rearrange the factors. In fact, putting cooperation and communication issues between parents as the first factor would disproportionately impact people like our clients—victims of domestic violence and abuse, where high conflict exists between the parties.

Additionally, Legal Action finds it problematic that AB 98 requires courts to make a specific finding regarding why it is not in the child's best interest to have the child with a parent less than 25% of the time. This requirement is arbitrary, onerous on the courts' time, and reverses the requirement that courts only consider what *is* in the child's best interests rather than what *is not* in the child's best interests. This does look towards what is best for Wisconsin's children. Rather, it is designed to coerce the courts into giving parents more time with their children, which may not be problematic for many low-conflict families, but could be devastating to children in families with histories of violence and abuse.

Legal Action is in court everyday, working with our clients on child placement, and we have not witnessed any concerns with the order of best-interest factors that would warrant legislative intervention.

Thank you for your consideration. Please do not hesitate to contact me at abw@legalaction.org or (414) 274-3425 if I can be of further assistance as you evaluate this bill.

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To: Senate Committee on Insurance, Financial Services, Government Oversight and Courts
Date: February 20th, 2020
From: Jenna Gormal, Director of Public Policy and Systems Change, End Domestic Abuse Wisconsin
Re: Bills from Legislative Study Committee on Child Placement and Support

Dear Chairperson Craig and Members of the Senate Committee on Insurance, Financial Services, Government Oversight and Courts. Thank you for the opportunity to provide testimony today regarding several proposals that were recommended by the Legislative Council Study Committee on Child Placement and Support. My name is Jenna Gormal and I am the Director of Public Policy at End Domestic Abuse Wisconsin. End Abuse is the statewide voice for survivors of domestic violence and the membership organization representing local domestic violence victim service providers throughout Wisconsin.

Before I begin, I would like to thank Rep. Brooks, Sen. Taylor and fellow members of the Study Committee for their diligent work on these proposals. I was fortunate enough to be a member of this committee prior to joining End Abuse, therefore I recognize the challenges of finding common ground for reform on issues that have to do with such personal matters. I would also like to thank my fellow members for paying attention to the experience of victims of domestic abuse in the Family Law system, who face unique obstacles to safe outcomes in their custody and placement decisions.

End Abuse's 2017/2018 Family Law Research Project

For nearly forty years, the policy work of End Domestic Abuse WI has been grounded in the experience of survivors and the advocates who serve them. Throughout that period, survivors and advocates have consistently reported that one of the main challenges survivors face is navigating the often unfriendly, rigorous, and officious family law system to keep themselves and their children safe. Over the years, horror stories about survivors' experiences in court have driven us to search for innovative solutions to inspire the Family Law system to become more victim-friendly.

To have a more complete understanding of the outcomes of cases involving domestic abuse, End Abuse researched family law cases in which one parent had a prior criminal conviction for domestic abuse a felony or misdemeanor battery against the other parent[1]. Using the Wisconsin Circuit Court Access Platform (WCCA, also known as CCAP), we identified the matches in a random selection of twenty counties from all ten judicial districts across the state. Small, medium, and large counties were all included in the sample, from the smallest, Ashland County, to the largest, Milwaukee County.

Since all examined cases involved a documented history of domestic abuse before the divorce filing, researchers expected to see evidence of the family law process accounting for domestic abuse in child custody and placement outcomes in most of the cases. However, the findings call into question the extent to which the family law system is appropriately identifying and responding to domestic abuse in accordance with statutory protections for victims and their children.

One of our key findings was that many judges, and court personnel in general, do not recognize domestic abuse in family court. We know this because of the 361 cases reviewed, all with a criminal history of domestic abuse (of no less than battery), the court made formal domestic violence findings in only 8% (29) of these cases. We expected domestic violence findings in more than half of all the cases we reviewed, so this statistic was alarming. We also expected to find that the custody and placement outcomes in these cases would favor the victims, but that was not the case. Placement decisions were the most favorable to victims (sole or primary placement awarded to the victim), but even that percentage was lower than we expected, at about 65% of all the cases reviewed. Moreover, eighty percent of final orders in these cases did not include any explicit provisions for the safety of the victim or children, despite statutory language directing courts to order provisions related to safety when it is found that domestic abuse occurred. Wis. Stat. s. 767.41(6)(g)

The results of this study provide the backdrop for our general position on the need for reform to the family law system, as well as our specific positions on the legislation before you today. The fact that the court often fails to take domestic violence into account when making placement and custody determinations, even when there has been a criminal conviction of a domestic violence crime, is a troubling trend that must be addressed if we are ever to ensure that family law decisions are really in the best interest of children. With these considerations in mind, here is a brief description of our position on several of the bills before you today:

AB 97 Relating to: the involvement and cooperation of both parents in a physical placement schedule. – Oppose

End Abuse oppose this legislation because of its potential to further entangle non-abusive parents with their abusers, ignoring important factors related to domestic abuse. Implying that - because a parent has "any allocation of physical placement," - then maximum involvement and cooperation of both parents is in the best interest of the child goes against the currently existing best interest factors and will coerce victims into increased contact and communication with abusers. It also has the potential to create confusion as it can be interpreted to provide an alternative definition of the best interest of the child separate from the current definition determined by the factors. Obviously, we want parents to be encouraged to get along and cooperate, but simply because an abuser has any allocation of placement (which happens frequently), maximum involvement and cooperation of both parents is often not appropriate nor in the best interest of the child. Abusers are highly adept at using the court system and their children as tools of control and manipulation. Providing them with a statutory reason to argue that their victim must communicate and collaborate with them more is simply not in the best interest of children. Courts need increased flexibility to determine what is safe for children and non-abusive parents, not broad statements about how parents should behave that ignore the realities of cases with domestic abuse as a factor.

AB 98 factors relating to the physical placement of a child – Oppose

End Abuse oppose this legislation because while the intent may be good, it is based on two fundamentally misguided ideas. The first is that judges are not awarding physical placement to able bodied, non-abusive parents enough and need to be directed to account for the cases in which they limit placement to one of the parents. In fact, as the study committee heard from various experts, courts award equalized placement regularly and increasingly as time goes on (often in cases in which it is clearly not appropriate given the history of domestic violence). Limiting the courts discretion to make placement decisions will only discourage Judges and Commissioners from making decisions based solely on the best interest factors, rather than some notion of what amount of placement parents deserve. The second is that rearranging the order of the factors is a meaningful change that will result in better outcomes for families. At this time, we see no evidence that this change will result in anything but increased confusion, especially for pro se litigants. This is particularly true given that the language states that the order of the factors has no bearing on their importance. The court system is already extremely confusing for pro se litigants, and we want judges and commissioners to utilize all the factors appropriate in any given case.

AB 100 Relating to: judicial notice of certain court records relating to domestic violence or child abuse. – Neutral

In theory, this could be a good idea. We learned from the End Abuse family law study that findings of domestic violence were not made in family court, so a need was identified to get this information from judges. We do have concerns that this could create a precedent where if there's nothing on CCAP, a determination is made by the judge that domestic violence must not exist in the relationship, that the survivor is either lying or shouldn't try to bring DV up, because there's no record.

This is not an adequate way of determining whether there is domestic violence present between two individuals. It may be necessary or good but it certainly isn't sufficient and there are so many cases where you're not going to have anything show up in CCAP where there still ought to be a finding of domestic violence made or at least considered in the case. It could give judges a pass to be less diligent about these cases if there is no official CCAP record for DV or child abuse.

I think this is a good faith effort by the study committee to create legislation based on a problem from the information gathered but we need to think more carefully on it. Overlooks important factors like coercive control, stalking, (maybe convicted of battery but not DV or you pled down to aggravated assault and didn't get the DV surcharge – that would not fall under this bill.) I think we just need more time to really think about the unintended consequences here. At the very least it would be helpful to include an amendment to reflect that this is not enough information to determine that DV has not occurred.

Thank you for your consideration of our views on these proposals. If you have any questions about End Domestic Abuse WI's position on these issues, please contact Jenna Gormal at 608.237.3985 or jennag@endabusewi.org.