JESSIE RODRIGUEZ
STATE REPRESENTATIVE ★ 21ST ASSEMBLY DISTRICT

SB 474: Modifying Custody or Physical Placement Contingent on a Future Event
Testimony of State Representative Jessie Rodriguez
Senate Committee on Judiciary and Public Safety
January 11, 2018

Chairman Wanggaard and committee members, thank you for the opportunity to testify on Senate Bill 474, legislation that seeks to allow for modifications to a custody or physical placement order contingent on a reasonably likely future event.

In custody or physical placement orders there are often foreseeable events that will occur such as a child beginning school or improvement in a child or parent's health condition that would require changes in a placement schedule. Unfortunately, current law prohibits changes to a custody or placement order within two years of the final judgement even when the court understands a change will be necessary.

To illustrate such a scenario, say for example, parents live approximately two hours away from one another and share placement. If the child is to start school within two years of their judgement and they know the arrangement will no longer work, due to current law they have no other recourse but to return to court to work out an agreement after school commences.

This legislation would remedy that situation by allowing the court to incorporate anticipated future changes into an order without requiring the parents to return to court after the changes occur. The modifications to placement or custody can only be approved if both parents agree to the changes.

Accounting for future changes in placement will have multiple benefits including reduced costs associated with post-judgement litigation. The proposal also gives parents greater flexibility to negotiate orders based on the family's individual

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needs. Most importantly, making these changes will reduce the likelihood of parental conflict that can be harmful to a young child. This proposal will benefit parents, children and the family court system.

I encourage your support for this legislation. Thank you for your time.

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Luther S. Olsen
State Senator
14th District

TO: Senate Committee on Judiciary and Public Safety
FROM: Senator Olsen
DATE: January 11th, 2018
SUBJECT: Testimony for Senate Bill 474

Thank you Chairman Wanggaard and members of the Senate Committee on Judiciary and Public Safety for holding a hearing and allowing me to testify in support of Senate Bill 474. The idea for this legislation was brought to my attention by the State Bar of Wisconsin.

When separated parents are working out a custody or physical placement plan they are often aware that they may need to modify the plan in the future. Once a final custody or physical placement order is set in place, current law prohibits parents from changing a custody or placement order within two years of that final judgement.

It doesn't matter if both parties as well as the court acknowledge a change in placement or custody is likely necessary, or even if the change would be in the best interest of the child, under current law families must return to court to modify the final agreement. This can create a significant burden by forcing parents to return to court for post-judgement litigation.

Senate Bill 474 will modify current law by allowing a court to approve anticipated modifications to a custody or physical placement order that is likely to occur within two years of the stipulation that is agreed upon. This bill will give separated parents greater flexibility to negotiate these foreseeable changes based on their individual family needs, and allow separated parents to make changes to their agreement without returning to court.

Thank you members, I ask for your support on Senate Bill 474 and I am happy to answer any questions that you may have.

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To:	Members, Senate Judiciary Committee
From:	Attorney Cassel Villarreal
Date:	January 11, 2018
Re:	SB 474 – Contingent Placement

I am the Chair of the State Bar of Wisconsin's Family Law Section and the section requests your support of SB 474 as the bill addresses the ability of parents to make stipulations that are contingent upon the occurrence of a specified future event or change in conditions. Current case law does not allow the court to enforce an agreement between parents that is based on the occurrence of some stated contingency.

However, there are foreseeable changes that may and commonly do necessitate a change in the placement schedule. Probably the most common foreseeable changes are a child aging (infant to toddler), a child commencing school, a parent's change in work schedule or a parent moving closer to the child.

Because the law does not allow a future change to be enforceable parents are left to decide whether to fight for more placement that may not be developmentally appropriate, trust the other parent to act in good faith, or plan to return to court to litigate the matter again. Allowing contingent changes in a placement schedule to be enforceable is helpful for parents to accommodate a child's development needs and to plan for changes without returning to court.

The proposed bill still maintains court oversight in approving stipulations. The bill makes court's approval of the stipulation discretionary and provides that the court can reject a contingent stipulation if the court does not find it to be in the best interest of the child.

memo

To: Members of the Senate Committee on Judiciary and Public Safety
Date: January 11, 2018
From: Chase Tarrier, Public Policy Coordinator
Re: Opposition to SB 474

End Domestic Abuse Wisconsin
1245 E Washington Ave., Suite 150
Madison, Wisconsin 53703
Phone: (608) 255-0539 Fax: (608) 255-3560
chaset@endabusewi.org

Dear Chairman Wanggaard and members of the Senate Committee on Judiciary and Public Safety,

Thank you for the opportunity to provide testimony regarding Senate Bill 474, which would allow modifications to legal custody or physical placement contingent upon a future event. End Abuse is the statewide voice for survivors of domestic violence and the membership organization representing local domestic violence victim service providers throughout the state. We oppose this legislation and respectfully urge the Committee not to approve its passage.

First I would like to recognize and commend the bill's authors for their effort to create exceptions in the legislation for instances of domestic violence. At End Abuse, we recognize that there are cases in which custody or placement modifications predicated on a future event are appropriate and even helpful for parents. However, the fact remains that because of the way the family law system currently responds to domestic violence, this bill will put domestic violence victims at increased risk of victimization and harm.

End Abuse is currently undertaking a Family Law data collection project to help devise evidence-based strategies to improve outcomes for survivors and their children in the Family Law System. While this project is still incomplete, preliminary data confirms what we hear from advocates when it comes to family law, which is that the family law system tends to ignore instances of domestic violence and instead push litigants towards compromise and stipulations that minimize the nuances of often very complex cases. Therefore the process outlined in SB 474 will shift the family law system even further in a direction that is already problematic for victims by encouraging judges and commissioners to ignore the signs of domestic violence and use these stipulations to encourage litigants to "work out their issues," a response that puts victims and their children directly in increased contact with abusers.

Preliminary data strongly suggests that for a great majority of cases in which there has been a criminal felony or misdemeanor domestic violence-related conviction, there is no finding of domestic violence in family court. In 263 cases in which criminal convictions were filed before the final order on the subsequent family law case, only 9% of those cases made a domestic violence finding, and only 27% mentioned domestic violence at all. This fact is critical to

understanding why carving out exceptions for domestic violence in this proposal is not an adequate solution to the problems survivors face. Considering the fact that this data does not take into account cases in which there is no criminal finding of domestic violence or any protective orders filed at all, there is good reason to believe that even with exceptions, many victims could be forced into contact with abusers and pressured into agreements that put them in danger and potentially limit their rights in the future. These concerns are heightened when considering pro se litigants, who are unfortunately all too common in the family law system.

Advocates report that the only approach to modifications contingent on a future event that could adequately protect victims would be one that specified that modifications must only be permitted in cases in which the future event is related to the child's life, rather than the parents'. We recommend that the proposal be amended to allow modifications contingent on a future event related only to the developmental needs of the child. This would ensure that judges and commissioners are not able to make decisions based on future events in the parent's life that might put victims in harm's way.

Because domestic violence cases are so volatile and often life threatening, it is critically important that family court judges and commissioners make well-informed decisions that reflect current realities in order to protect the best interest of children. Any legislation that allows modifications based on future events in the parent's life, even with exceptions for domestic violence cases, will unfortunately not be able to adequately protect the many victims in the family law system who are unable to have their history as a survivor taken into consideration or even recognized.

We appreciate the authors' willingness to listen to our concerns, and we look forward to continuing to work with them in the future to address the broader issues in the family law system. If you have any questions about End Domestic Abuse Wisconsin's position on this issue, please contact me at 608.237.3985 or chaset@endabusewi.org.

FAMILY LAW SECTION

To: Members, Senate Judiciary and Public Safety Committee
From: State Bar of Wisconsin Family Law Section
Date: January 11, 2018
Re: SB 474 – contingent placement

The State Bar of Wisconsin's Family Law Section encourages your support on SB 474, sponsored by Sen. Luther Olsen, allowing for modification of legal custody or physical placement orders contingent upon the occurrence of a specified future event or change in conditions.

In custody or placement cases, there are often foreseeable changes, such as the child aging, commencing school, or the improvement of a parent's or child's health that may necessitate changes in a placement schedule. Current law prohibits changes to custody or placement orders within two years of a final judgement, even if the court determines a likelihood of foreseeable events within a two year timeframe that would necessitate a change in placement or custody, or if the child would benefit from the change in arrangement. Even an agreement between the parties regarding such events is unenforceable.

SB 474 would allow parents and the court to incorporate those anticipated changes in an order without the necessity of returning to court after the changes actually occur.

Incorporating contingent changes in a placement schedule would be particularly helpful for parents of young children because infants and toddlers need a different type of schedule than older children. As the child ages, the placement schedule could modify to accommodate the child's development without the need to return to court.

The Family Law Section supports this legislation because the provisions are likely to reduce post-judgment custody and placement litigation. This proposal also allows greater flexibility for the parents to negotiate and allows the court to issue orders that can be more adaptable as families go through predictable changes. This will benefit children greatly by reducing the frequency and intensity of litigation. Studies have clearly documented the damaging effect of parental conflict on their children. This legislation is a significant improvement in helping avoid that damage by providing parents and the court with an important tool to reduce litigation and tailor provisions specific to the individual family.

For these reasons, the **Family Law Section respectfully requests your support of SB 474.**

For more information, please do not hesitate to contact our Government Relations Coordinator, Lynne Davis, ldavis@wisbar.org or 608.852.3603.

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.

STATE BAR OF WISCONSIN

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To: Members, Senate Judiciary and Public Safety Committee

From: Mark G. Schroeder – Family Court Commissioner Outagamie County Wisconsin

Date: January 11, 2018

Re: Written testimony in support of SB 474 – contingent placement

Wisconsin families who are co-parenting children from separate households often find themselves with disputes over how much time the child should spend with each of their parents. While those disputes often end up in courts and are resolved after contested hearings, the long experience of Wisconsin citizens, courts, and child advocacy experts demonstrates that when those disputes are resolved by agreement between the parents, the child's schedule is more likely to stabilize long term and the disputes and tension between the parties are reduced. This is more likely to result in a healthier, child centered approach to co-parenting moving forward instead of one where the parents are looking for events and evidence they can use against the other parent the next time they return to court.

Under current Wisconsin law, those families able to reach an agreement can have those agreements adopted by a court Order, but they cannot do so when they want to change placement once some future event occurs, even when the parties recognize and agree that an upcoming event will require them to change their placement schedule. A Wisconsin family might share placement equally for a 3 year old even when one lives in Eau Claire and the other in Appleton, and know that such a plan won't be workable when the child begins school. They might talk about what changes to make and they might come up with a plan, but under current law they must wait until the child actually begins school to have that plan reduced to a binding Order, even if they reached an agreement 2 years before. Other families might anticipate that a Mother in Superior intends to move to Madison where the Father resides in a year, and they might agree that placement should be equally divided between the parties when that move occurs. Under current law, they would have to actually wait until the move occurs before their agreement can be reduced to an Order.

The lack of an order in those cases and the uncertainty that results can increase the tension and distrust in their co-parenting relationship and bring them back to court with a dispute that otherwise might have been avoided. This bill would provide Wisconsin families with the opportunity to formalize their agreements on what placement should look like when a future event occurs. It allows them to plan. It lets them reduce the chances that they'll return to court with a dispute that makes co-parenting a more challenging experience. The structure of the bill, which would permit a court to approve a stipulation to change placement only when the future event is 2 years or less away from the date of the agreement, prevents them from looking so far down the road they're traveling that such agreements are of less value. Moreover, the bill provides other protections consistent with current Wisconsin law. The bill indicates that courts "may approve" a stipulation with a contingent change in placement and then indicates that the courts may reject such a stipulation "if the court finds that the modification is not in the best interests of the child." These protections incorporate existing legal standards designed to

ensure that any placement order, whether produced by stipulation or contested hearing, is made with the best interests of the child as its chief objective.

While those protections are needed and they permit the courts to intervene when an agreement might be the product of coercion or are contrary to the child's interests, there are many Wisconsin families who co-parent effectively and know their child and themselves well enough to reach agreements that provide for the best interests of their child. Those families know that a change in schedule might be inevitable when school begins, or when parents move into the same city, town or school district. This bill empowers those parents to make those decisions and to have them reduced to a court order when those agreements are reached. It encourages parents to have these conversations well in advance of events they know are coming that will dictate a change in their placement schedule, and it provides the stability and support for the kind effective co-parenting Wisconsin law should encourage.

I am asking you to support Senate Bill 474 and allow the courts to approve contingent agreements that well-meaning Wisconsin families want to enter into. This change is a targeted solution to a very specific issue and would be beneficial to many parents in the family court system, while continuing to allow judges and court commissioners to retain their discretion.

Kids NEED *BOTH* Parents

WISCONSIN FATHERS FOR CHILDREN AND FAMILIES

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For Help: http://www.wisconsinfathers.org/contact-form.htm

I've included the placement outcome statistics for WI from a study done at the UW. This data shows that while Wisconsin is one of the leading states in the nation for equal (*35%/2010*) or shared parenting (*50%/2010*) for divorced parents, unwed parents fare much worse. Children of unwed parents have equal access to both parents only 9% of the time as of 2008, and these children had shared access to both parents only 15% of the time. Currently **more than half of all births** in the US are to unwed parents.

Senate Bill 474 (Future Contingency)

Adding a future contingency component to placement orders will positively affect **a large number of people who have a child out of wedlock**. Currently with unwed parents, full custody and placement automatically defaults to the mother at birth without any court action.

Many unmarried fathers may not feel well suited to care for a newborn child, so they wait to file for ordered placement/custody at a later date. At that **later date** they must overcome the presumption in statute 767 that states', continuing with a previous placement order is ***in the best interest of the child***.

This change in the law will make it possible for parents to agree to have the majority of placement with the mother during infancy possibly, and then have placement *automatically change* when a child becomes a toddler. At the toddler stage both parents would carry the responsibilities for care, leading to shared placement parenting or equally shared parenting responsibilities going forward.

With this law change this *pre decided* parenting choice agreed on **by both parents and the court**, could automatically take place without having to involve the court system and the significant costs involved often with that family court process.

The shared child wins, the parents win, and the courts (*including the taxpayers who pay for our courts*) win.

Our estimates indicate that in 2017, approximately **2/3** of divorced fathers are living and practicing an **involved** *(25-50%)* **placement situation with their children.** Conversely we estimate only **1/4** of unmarried fathers are practicing an **involved** *(25-50%)* **placement situation** with their children.

More two (*involved*) parent families in Wisconsin, benefits everyone. This change in our law would make that easier to happen for unwed parents.

Thank you for listening.

WFCF hosts "***Father's Night Out***" network and support meetings throughout Wisconsin scan QR Code or visit our website for locations, schedule, contacts

Kids NEED *BOTH* Parents

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Latest statistics on Child Placement outcomes in WI: (*through 2010*)

HUGE difference in placement orders between divorce and never married situations:

Divorced Fathers:

2017: (est.)	*50/50 placement (42%)*	*Sole (7%)*	*Unequal (25-49%) placement (16%)*	***LESS** than 25% placement (35%)*
2010:	50/50 placement (35%)	Sole (6%)	Unequal *(25-49%)* placement (15%)	**Less** than *25% PLACEMENT* (42%)
2008:	50/50 placement (33%)	Sole (6%)	Unequal *(25-49%)* placement (18%)	**Less** than *25% PLACEMENT* (41%)
1998:	50/50 (16%)	Sole (9%)	Unequal *(25-49%)* placement (13%)	**Less** *than 25% placement* (57%)
1989:	50/50 (5%)	Sole (9%)	Unequal *(25-49%)* placement (7%)	**Less** *than 25% placement* (76%)

SOURCE: THE GROWTH IN SHARED CUSTODY IN THE US: PATTERNS AND IMPLICATIONS March 2017* :

http://www.wisconsinfathers.org/Placement_Outcomes_Draft_Meyer Cancian Cook_27 March 2017 (2).pdf

Never Married Fathers: Voluntary Paternity (VPA)

2008:	50/50 placement (9%)	Sole (1%)	Primary (1%) Unequal *(25-49%)* (**7%**)	LESS *than 25% PLACEMENT* (81%)
2000:	50/50 placement (3%)	Sole (2%)	Primary (.2%) Unequal *(25-49%)*(3%)	**Less** *than 25% placement* (92%)

SOURCE: Children's Placement Arrangements in Divorce and Paternity Cases in WI (2011) :

http://www.irp.wisc.edu/research/childsup/cspolicy/pdfs/2009-11/Task4A_CS_09-11_Final_revi2012.pdf

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