

JESSIE RODRIGUEZ

STATE REPRESENTATIVE ★ 21ST ASSEMBLY DISTRICT

AB 113: Modifications to Legal Custody or Physical Placement Contingent upon a Future Event

Testimony of State Representative Jessie Rodriguez

Assembly Committee on Family Law

Tuesday, March 9, 2021

Thank you Chairwoman Magnafici, Ranking Member Doyle and members of the Assembly Committee on Family Law for the opportunity to testify on Assembly Bill 113, 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 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. I welcome any questions you may have.



JOAN BALLWEG

STATE SENATOR · 14TH SENATE DISTRICT

Assembly Bill 113: Modifications to Legal Custody or Physical Placement Contingent
upon a Future Event
Assembly Committee on Family Law
Testimony of Senator Joan Ballweg
March 9, 2021

Good afternoon, Chair Magnafici and members of the committee. Thank you for hearing this important piece of legislation.

There are many instances where separated parents may be aware they will need to alter their custody and child placement orders in the future. The child may begin school, a parent's work schedule could change or there could be other circumstances that would necessitate a change in placement.

Current law prohibits modification of custody or physical placement orders within two years of final judgement, even if both parents and the court anticipate a change would be necessary. This legislation would allow families flexibility to negotiate these foreseeable changes without needing to appear in court, avoiding a long, stressful and costly process.

I believe this legislation keeps the best interests of the child, parents and courts in mind. Only modifications agreed upon by both parties can be approved, and upon request of groups such as End Domestic Abuse and Legal Action of Wisconsin, the bill was amended last session so any change in orders cannot be dependent on factors such as completing a drug or alcohol related rehabilitation program, anger management course or prison term.

This legislation is a result of the 2018 Study Committee on Child Placement and Support and was originally introduced in 2019. It passed the Assembly unanimously but failed to be taken up by the Senate before the end of session.

Thank you for your time. I am happy to answer any questions you may have.

FAMILY LAW SECTION

To: Members, Assembly Family Law Committee
From: Family Law Section, State Bar of Wisconsin
Date: March 9, 2021
Re: AB 113 – support for contingent placement

The State Bar of Wisconsin's Family Law Section encourages your support of Assembly Bill 113, sponsored by Rep. Jessie Rodriguez and Sen. Joan Ballweg. AB 113 combines the work of both the Legislative Council Study Committee on Child Placement and Support, chaired by Rep. Rob Brooks, and legislation previously introduced by Rep. Jessie Rodriguez and former Sen. Luther Olsen. The legislation allows for the modification of legal custody or physical placement orders contingent upon the occurrence of a specified future event or change in conditions within two years of a finalized placement order. Contingent placements based on behavior modifications, however, are prohibited.

In custody or placement cases, there are often foreseeable changes, such as the child(ren) aging, starting or changing schools, or the improvement of a parent's or child(ren)'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(ren) would benefit from the change in arrangement. Even an agreement between the parties regarding such events is unenforceable.

AB 113 would allow parents and the court to incorporate anticipated life events of the adult parties or child(ren) or developmental/educational needs of the child(ren) in an order without the necessity of returning to court after the changes occur. Attorneys are encountering more and more situations in which families would benefit from this allowance, including job changes, health issues, and caretaking for aging/elderly parents. 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. In addition, 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.

This legislation previously received unanimous support from Assembly and Senate committees and passed out of the Assembly unanimously as well. The Family Law Section respectfully requests your continued support of this legislation, AB 113, so that families throughout Wisconsin can find a workable solution to a situation far too many encounter with growing frequency.

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

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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.



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