



RACINE OFFICE

4900 Spring Street

Racine, WI 53406

www.legalaction.org | tel 262-635-8836 | fax 262-635-8838

TO: Members of the Senate Committee on Committee on Human Services, Children and Families
FROM: Legal Action WI
RE: Impact of SB 112 on Legal Action's Clients
DATE: March 2, 2021

My name is Robert Held, and I am the Family Law Priority Coordinator of Legal Action of Wisconsin, Inc. Legal Action of Wisconsin (LAW) is a nonprofit law firm that provides free civil legal aid to low-income people in 39 of Wisconsin's 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 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 custody, placement, maintenance, or child support judgments, among other types of cases.

Legal Action is concerned that SB 112 would negatively impact our clients and their children. Currently, Courts are directed to enter an order for physical placement of a child that maximizes the amount of time the child has with each parent and that is in the child's best interests, following the statutory guidelines. However, SB 112 takes the emphasis away from what is best for children. Instead of the current statutory guidelines, which encourage courts to take an individualized approach to determining physical placement, SB 112 creates a floor for placement, requiring courts to take an extra step to justify an amount of placement time for a parent less than 25%, roughly equivalent to four overnights in a two-week period.

For our client population, especially victims of domestic violence and child abuse, SB 112 could have negative consequences. It would signal to courts that they should not grant less than 25% placement to a parent unless there are extraordinary circumstances that the court can justify in a written order. Courts with concerns about child neglect or abuse might be reluctant to spell out those concerns, especially early in a case before a Guardian ad Litem has been appointed. The resulting physical placement orders could unnecessarily put children in danger of neglect or abuse.

Further, SB 112 adds language that a court shall consider "all of" the statutory factors listed in Wis. Stat. 767.41(5), which are "not necessarily listed in order of importance" when making child custody and physical placement determination. 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.

Legal Action is in court every day, working with our clients on child custody and physical placement, and we have not witnessed any concerns that would warrant legislative intervention on these issues. Thank you for your consideration.

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