State of Wisconsin
1997 - 1998 LEGISLATURE

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1997 SENATE BILL 202

May 13, 1997 – Introduced by Senators GEORGE, RUDE, BRESKE, WELCH and COWLES, cosponsored by Representatives MUSSER, GRONEMUS and RYBA. Referred to Committee on Judiciary, Campaign Finance Reform and Consumer Affairs.

AN ACT ***to repeal*** 767.001 (2) (b), 767.11 (8) (b) 3., 767.11 (9) (a), 767.11 (10) (e) 1. to 3., 767.11 (14) (a) 3., 767.23 (1) (bm), 767.24 (3), 767.24 (4) (cm), 767.24 (5), 767.24 (6) (a) and (am), 767.245 (2), 767.325 (2), 767.325 (3), 767.325 (4), 767.33 (1m) (b), 767.45 (2), 767.458 (1m), 767.51 (5) (i), (im) and (j) and 891.39 (1) (b); ***to renumber*** 767.23 (1) (c), 767.23 (1) (d), 767.23 (1) (e), 767.23 (1) (f), 767.23 (1) (g), 767.23 (1) (h), 767.23 (1) (i), 767.23 (1) (k) and 767.23 (1) (L); ***to renumber and amend*** 767.24 (2) (a), 767.33 (1m) (a) and 891.39 (1) (a); ***to consolidate, renumber and amend*** 767.001 (2) (intro.) and (a), 767.11 (9) (intro.) and (b) and ; ***to amend*** 20.921 (2) (a), 49.141 (1) (b), 51.30 (5) (bm), 55.07 (2), 102.27 (2) (a), 115.81 (9) (c), 146.835, 757.48 (1) (a), 758.19 (5) (a) 2., 767.001 (1s), 767.001 (2m), 767.001 (3), 767.02 (1) (k), 767.05 (1m), 767.081 (2) (a) (intro.), 767.083 (2), 767.085 (1) (a), 767.085 (1) (j) (intro.), 767.085 (1) (j) 1., 767.085 (1) (j) 2., 767.085 (2) (a), 767.087 (1) (c), 767.087 (2), 767.087 (3) (b), 767.10 (1), 767.11 (8) (b) (intro.), 767.11 (8) (b) 1., 767.11 (8) (b) 2., 767.11 (8) (b)

4., 767.11 (10) (intro.), 767.11 (10) (a), 767.11 (10) (b), 767.11 (12) (a) and (b), 767.11 (14) (a) 1., 767.11 (14) (a) 2., 767.11 (14) (b), 767.115 (title) and (1), 767.14, 767.23 (1) (intro.), 767.23 (1) (a), 767.23 (1n), 767.23 (2), 767.24 (1), 767.24 (4) (a), 767.24 (4) (d), 767.24 (6) (b), 767.24 (6) (c), 767.245 (1), 767.245 (3) (intro.), 767.245 (3) (f), 767.245 (3m) (c), 767.25 (2), 767.255 (1), 767.265 (3h), 767.265 (4), 767.265 (6) (a), 767.265 (6) (b), 767.265 (6) (c), 767.45 (1) (d), 767.45 (1) (i), 767.458 (1) (b), 767.458 (1) (c), 767.458 (1) (d), 767.46 (2) (c), 767.46 (4), 767.46 (5), 767.465 (2m) (a), 767.475 (1), 767.51 (3), 767.51 (4), 767.51 (5) (e), 767.51 (6), 767.52 (1), 769.302, 802.12 (3) (b), 803.01 (3) (b) 1., 803.01 (3) (b) 2., 814.61 (1) (c), 814.61 (7) (c), 977.05 (4) (i) 7. and 977.05 (6) (b) 1.; ***to repeal and recreate*** 767.045, 767.23 (1) (am), 767.24 (2) (b), 767.24 (4) (b), 767.325 (1) and 767.327; and ***to create*** 767.001 (4m), 767.23 (1c) (intro.), 767.24 (2) (a) 1. and 2., 767.24 (6) (bm) and 767.53 (3) of the statutes; **relating to:** standards for determining legal custody and physical placement of children in actions affecting the family, jurisdictional requirements in actions affecting the family, prohibitions against moving a child outside of a school district after divorce, standards for modifying custody and physical placement orders, temporary orders in actions affecting the family, visitation rights of 3rd parties, prohibiting the appointment of a guardian ad litem in all but certain actions affecting the family and making records of paternity proceedings open records.

Analysis by the Legislative Reference Bureau

This bill makes a number of changes to the provisions of the statutes that apply to actions affecting the family, the 2 most common of which are divorce and paternity actions. The changes relate especially to procedure and custody and physical placement determinations, including revisions to custody and physical placement orders, and apply to all actions affecting the family, including paternity actions after paternity has been determined, unless otherwise indicated.

SENATE BILL 202

CUSTODY AND PHYSICAL PLACEMENT

Under current law, a court must make a custody determination based on the best interest of the child. The court may grant sole custody to one parent or joint custody to both parents, but the court may grant joint custody only if the parents agree to it or if the court finds that both parents are capable of caring for the child, that no conditions exist that would interfere with the exercise of joint custody and that the parents will be able to cooperate in the future decision making required under an award of joint custody. The court may also find that neither parent is fit and proper to have custody, declare the child to be in need of protection or services and transfer legal custody to a county social services or human services department or licensed child welfare agency. Joint legal custody means that both parents have the right and responsibility to make major decisions concerning the child, and major decisions include decisions regarding consent to marry, consent to obtain a driver's license, authorization for nonemergency health care and the choice of school and religion. Current law provides that in a paternity matter the mother is to have sole legal custody unless the court orders otherwise.

This bill removes the best interest of the child as the basis for a court's determination regarding custody and provides that there are rebuttable presumptions that both parents are fit and have the ability to rear their children and that joint legal custody and equal periods of physical placement are fundamental rights of each parent and child. A court may order sole legal custody only if the parents agree that one parent should have sole legal custody or if the parental rights of one parent have been terminated. The court must order joint legal custody if one or both parents request it. The provision that authorizes the court to transfer legal custody to a county department or licensed child welfare agency is eliminated, as well as the provision related to awarding sole custody to the mother in a paternity matter.

Under current law, a court must allocate periods of physical placement (the time that a child is actually placed with a parent) after considering a number of factors, such as the wishes of the child and of each parent, the child's interaction and interrelationship with each parent, the child's adjustment to the home and community, the mental and physical health of the parties, the availability of child care services and whether either of the parties has a problem with alcohol or drug abuse. A child is entitled to periods of physical placement with each parent unless the court finds that physical placement with a parent would endanger the child's physical, mental or emotional health. The bill removes these provisions and provides that, if the court orders sole legal custody because the parties have agreed to it or joint legal custody, the court must approve any schedule for the allocation of physical placement that the parties agree to and submit to the court in writing. If the parties do not agree, the court must order each party to submit a schedule and the court must order the schedule that sets forth the most equal allocation of physical placement. If neither schedule submitted by the parties is substantially equal and each proposes a greater amount of time for himself or herself, the court must order equal periods and require the parties to alternate spending with the child specified holidays and the child's birthday.

The bill changes the definition of major decisions (those decisions that any parent with legal custody may make) by excluding choice of school and religion and removes from the court the authority to specify any major decisions in addition to the ones specified in the definition. Although the parties may stipulate that one party has the sole power to make specified decisions, the bill removes from the court the authority to give one party that power and limits the court to specifying one parent as the primary caretaker of the child for the purpose of determining eligibility for aid to families with dependent children (AFDC) or benefits under the Wisconsin works program (W–2) only if both parents are eligible for public assistance funded by a relief block grant. The court may determine and specify a child's primary provider for health care if the parties do not agree.

MODIFICATIONS TO CUSTODY AND PHYSICAL PLACEMENT ORDERS

Under current law, a court may not, within the first 2 years after the initial order is entered, modify a physical placement order if the modification would substantially alter the amount of time that a parent spends with a child, or modify a custody order, unless the modification is necessary because the current custodial conditions are physically or emotionally harmful to the best interest of the child. After 2 years after the initial order is entered, a court may modify a custody order, or modify a physical placement order even if the modification would substantially alter the amount of time that a parent spends with a child, if there has been a substantial change in circumstances since the entry of the last order and if the modification is in the child's best interest. The court may modify a physical placement order if the modification does not substantially alter the amount of time that a parent spends with a child or if the parents have substantially equal periods of physical placement and that arrangement becomes impractical on the basis of the best interest of the child. This bill removes those provisions and provides that a court must modify a physical placement order in a way that alters the time a parent spends with a child, and must modify a custody order, if a parent requests a modification and the current order is not in compliance with the statutory provision that specifies the manner in which the court must award custody and physical placement, if a parent's parental rights have been terminated or if the parents agree to a modification.

Under current law, a parent who has legal custody of and physical placement with a child must provide notice to the other parent if he or she intends to establish his or her legal residence with the child at any location outside the state or at any location within the state at a distance of 150 miles or more from the other parent or if he or she intends to remove the child from the state for more than 90 consecutive days. If the other parent sends a notice of objection, the court or family court commissioner must refer the parties to mediation and appoint a guardian ad litem for the child. The parent proposing the move or removal is prohibited from taking the proposed action until the dispute is resolved, unless the parent obtains a temporary order from the court or family court commissioner allowing the move or removal. If mediation is not successful, the parent objecting to the proposed action may file a petition, motion or order to show cause for modification of legal custody or physical placement, and the matter proceeds to a hearing before the court. The court may modify legal custody or physical placement if the move will result in a

substantial change of circumstances since the last order affecting legal custody or physical placement and if modification is in the child's best interest. As an alternative to modification of legal custody or physical placement, the objecting parent may request an order prohibiting the move or the removal of the child. The court must consider whether the proposed action is reasonable; the nature and extent of the child's relationship with the other parent and the disruption to the relationship that the proposed action may cause; and the availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent in making its determination of whether to prohibit the move or the removal of the child. The court may prohibit the move or the removal if it finds that doing so is in the child's best interest. The burden of proof is on the parent objecting to the move or removal. There is a rebuttable presumption that it is in the child's best interest to remain with the parent with whom the child currently resides for the greater period of time, which may be overcome by a showing that the move or the removal is unreasonable and not in the child's best interest.

This bill provides that, if both parents are awarded physical placement with the child in any action affecting the family, neither parent may establish a legal residence for the child that is outside the school district in which the child resided on the 180th day before the commencement of the action affecting the family, or since birth if the child is less than 6 months old, or other school district agreed upon by the parties. The court may, however, allow a parent to establish a legal residence for the child outside of that school district if the parent shows that for at least one year the other parent has exercised his or her physical placement rights for less than 10% of the amount of time awarded by the court. If one of the parents wishes to establish his or her legal residence outside of the child's school district, that parent must provide at least 60 days' written notice to the other parent. If the proposed move would make it difficult or impractical for the physical placement arrangement to continue and at the same time for the child to remain in the same school district, either parent may request a modification to the physical placement order. The court must approve any modified physical placement schedule that the parents agree to. If the parents do not agree, the court may modify the physical placement schedule in such a way that the parent not proposing the move is awarded physical placement with the child during weekdays and weeknights while school is in session, at least one weekend per month, at least 4 weeks during the summer and alternating holidays. The parent proposing the move must be responsible for transportation costs incurred in exercising his or her physical placement rights and must be awarded the maximum amount of physical placement that is reasonable under the circumstances. If both parents wish to establish their legal residences or a legal residence for the child outside of the child's current school district and do not agree on a new school district, the court may designate one of the parents' new legal residences as the child's legal residence for the purpose of establishing a new school district for the child. The court must choose the legal residence that the court determines will maximize the amount of time that each parent may spend with the child. If one of the parents has already established a legal residence outside of the child's current school district, the court may allow the other parent to establish a

legal residence for the child in a different school district if the parent who moved first does not wish to move back to the child's current school district and if the move does not increase the distance from the parent who moved first.

PATERNITY ACTIONS

In addition to the changes that the bill makes with respect to actions affecting the family in general, the bill makes some changes that relate to paternity actions alone. Under current law, in a paternity action that is commenced by a man who claims to be the father of a child who was born to a woman while she was married to another man, a party may allege that a judicial determination that a man other than the mother's husband is the child's father is not in the child's best interest. If the judge or family court commissioner agrees that such a determination is not in the child's best interest, no genetic tests may be taken and the action is dismissed. The bill eliminates this provision and provides that a man against whom a paternity action was dismissed, on the basis of the eliminated provision, before the date on which the bill is enacted may commence another paternity action.

Current law provides that the liability of an adjudicated father of a child for past support is limited to support for the period after the birth of the child. The bill changes this to support for the period after the man is adjudicated to be the father.

Current law provides that, with certain exceptions, records of paternity proceedings are closed. The bill provides that the records are open to public inspection if the alleged father was adjudicated to be the father.

MISCELLANEOUS CHANGES

The bill makes an important change related to the appointment of a guardian ad litem. Under current law, a court in an action affecting the family must appoint a guardian ad litem for a minor child to represent the interests of the minor child if the court has reason for special concern as to the welfare of the child or if legal custody or physical placement is contested. The court must also appoint a guardian ad litem to bring a paternity action on behalf of a minor nonmarital child if the child is receiving AFDC, if the child's custodian is receiving benefits under W–2 or if an application for legal services has been filed on behalf of the child with the state child support program, and the state is barred from commencing a paternity action by a statute of limitations. The bill retains the requirement that the court appoint a guardian ad litem to bring a paternity action on behalf of a minor nonmarital child under the same circumstances as under current law, but prohibits the court from appointing a guardian ad litem under any other circumstances in an action affecting the family. Under the bill, if the court has reason for special concern as to the welfare of a minor child, the court must order one or both parents to file a petition alleging that the child is in need of protection or services. If the court takes jurisdiction of the child on the basis of that petition, the court may appoint a guardian ad litem for the proceedings related to that petition.

Another important change relates to temporary orders. Under current law, the court or family court commissioner may, upon request, make temporary orders pending the final judgment in an action affecting the family concerning such matters as custody and physical placement of minor children, child support and payment of debts. Under the bill, the court or family court commissioner is required in every

action affecting the family to make a temporary order that grants joint legal custody of any minor children to the parties and that grants the parties equal periods of physical placement with any minor children of the parties.

The bill makes a number of other miscellaneous changes. Under current law, a divorce action may not be commenced unless at least one of the parties has been a resident of the county in which the action is brought for not less than 30 days. This residency requirement is lengthened to 6 months. Stipulations under current law are subject to the approval of the court. The bill generally removes this approval requirement and requires the court to incorporate into the appropriate judgment or order any stipulation of the parties. Under current law, the parties to an action affecting the family are prohibited from certain actions during the pendency of the action, including establishing a residence with a minor child of the parties outside the state or more than 150 miles from the residence of the other party within the state, removing a minor child of the parties from the state for more than 90 consecutive days or concealing a minor child of the parties from the other party. The bill instead prohibits any party from establishing a legal residence for a minor child of the parties outside the school district in which the child resided on the 180th day before the commencement of the action, or since birth if the child is less than 6 months old, or other school district agreed upon by the parties, and from removing a minor child of the parties from the state for 14 consecutive days or more without the written approval of the other party. The bill also makes some changes in the mediation procedure under current law and requires the court to approve any agreement that the parties reach as a result of mediation, as long as it is knowingly and voluntarily made and not unconscionable.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.921 (2) (a) of the statutes is amended to read:

20.921 **(2)** (a) Whenever it becomes necessary in pursuance of any federal or state law or court–ordered assignment of income under s. 46.10 (14) (e), 767.23 ~~(1) (L)~~ (1c) (i), 767.25 (4m) (c), 767.265 or 767.51 (3m) (c) to make deductions from the salaries of state officers or employes or employes of the University of Wisconsin Hospitals and Clinics Authority, the state agency or authority by which the officers or employes are employed is responsible for making such deductions and paying over

the total thereof for the purposes provided by the laws or orders under which they were made.

SECTION 2. 49.141 (1) (b) of the statutes is amended to read:

49.141 **(1)** (b) "Custodial parent" means, with respect to a dependent child, a parent who resides with that child and, if there has been a determination of legal custody with respect to the dependent child, has legal custody of that child. For the purposes of this paragraph, "legal custody" has the meaning given in s. 767.001 (2) ~~(a)~~.

SECTION 3. 51.30 (5) (bm) of the statutes is amended to read:

51.30 **(5)** (bm) *Parents denied physical placement.* A parent who has been denied periods of physical placement with a child under s. 767.24 ~~(4) (b)~~ or 767.325 ~~(4)~~ may not have the rights of a parent or guardian under pars. (a) and (b) with respect to access to that child's court or treatment records.

SECTION 4. 55.07 (2) of the statutes is amended to read:

55.07 **(2)** A parent who has been denied periods of physical placement under s. 767.24 ~~(4) (b)~~ or 767.325 ~~(4)~~ may not have the rights of a parent or guardian with respect to access to a child's records under this chapter.

SECTION 5. 102.27 (2) (a) of the statutes is amended to read:

102.27 **(2)** (a) A benefit under this chapter is assignable under s. 46.10 (14) (e), 767.23 ~~(1) (L)~~ (1c) (i), 767.25 (4m) (c), 767.265 (1) or 767.51 (3m) (c).

SECTION 6. 115.81 (9) (c) of the statutes is amended to read:

115.81 **(9)** (c) Notwithstanding ss. 48.345, 48.363, 48.427 (3), ~~767.24 (3),~~ 880.12, 880.15, 938.183, 938.34 (4), (4h), (4m) and (4n), 938.345 and 938.363, a surrogate parent has the authority to act as the child's parent in all matters relating to this subchapter.

SECTION 7. 146.835 of the statutes is amended to read:

146.835 Parents denied physical placement rights. A parent who has been denied periods of physical placement under s. 767.24 ~~(4) (b)~~ or 767.325 ~~(4)~~ may not have the rights of a parent or guardian under this chapter with respect to access to that child's patient health care records under s. 146.82 or 146.83.

SECTION 8. 757.48 (1) (a) of the statutes is amended to read:

757.48 **(1)** (a) Except as provided in s. 879.23 (4), in all matters in which a guardian ad litem is appointed by the court, the guardian ad litem shall be an attorney admitted to practice in this state. ~~In order to be appointed as a guardian ad litem under s. 767.045, an attorney shall have completed 3 hours of approved continuing legal education relating to the functions and duties of a guardian ad litem under ch. 767.~~

SECTION 9. 758.19 (5) (a) 2. of the statutes is amended to read:

758.19 **(5)** (a) 2. Fees for expert witnesses called by the guardian ad litem under s. 767.045 (6), 1995 stats., if either or both parties are unable to pay those fees.

SECTION 10. 767.001 (1s) of the statutes is amended to read:

767.001 **(1s)** "Joint legal custody" means the condition under which both parties share legal custody and neither party's legal custody rights are superior, except with respect to specified decisions as ~~set forth~~ stipulated by the ~~court or the~~ parties and set forth in the final judgment or order.

SECTION 11. 767.001 (2) (intro.) and (a) of the statutes are consolidated, renumbered 767.001 (2) and amended to read:

767.001 **(2)** "Legal custody" means~~: (a) With~~,with respect to any person granted legal custody of a child, ~~other than a county agency or a licensed child welfare agency under par. (b),~~ the right and responsibility to make major decisions

concerning the child, except with respect to specified decisions as ~~set forth~~ stipulated by the ~~court or the~~ parties and set forth in the final judgment or order.

SECTION 12. 767.001 (2) (b) of the statutes is repealed.

SECTION 13. 767.001 (2m) of the statutes is amended to read:

767.001 **(2m)** "Major decisions" ~~includes, but is not limited to,~~ means decisions regarding consent to marry, consent to enter military service, consent to obtain a motor vehicle operator's license~~,~~ and authorization for nonemergency health care ~~and choice of school and religion~~.

SECTION 14. 767.001 (3) of the statutes is amended to read:

767.001 **(3)** "Mediation" means a cooperative process involving the parties and a mediator, the purpose of which is to help the parties, by applying communication and dispute resolution skills, define and resolve their own disagreements~~, with the best interest of the child as the paramount consideration~~ and to encourage the parties to cooperate in making decisions regarding their minor children, based on the principle that each parent has an equal right of access to and equal responsibility to provide care for their minor children.

SECTION 15. 767.001 (4m) of the statutes is created to read:

767.001 **(4m)** "Nonemergency health care" means routine health care and includes such care as acute illness care, physical examinations and dental care.

SECTION 16. 767.02 (1) (k) of the statutes is amended to read:

767.02 **(1)** (k) Concerning periods of physical placement or visitation rights to children~~, including an action to prohibit a move with or the removal of a child under s. 767.327 (3) (c)~~.

SECTION 17. 767.045 of the statutes is repealed and recreated to read:

767.045 Petition to juvenile court; guardian ad litem. (1) Notwithstanding s. 803.01 (3) and except as provided in sub. (2), the court may not appoint a guardian ad litem for a minor child in an action affecting the family. If at any time during the pendency of an action affecting the family in which a minor child is involved the court has reason for special concern as to the welfare of the minor child, the court shall order a parent or the parents to file a petition under s. 48.25 (1) to initiate proceedings under s. 48.13. If the court takes jurisdiction over the child under s. 48.13, the court may appoint a guardian ad litem as provided in s. 48.235.

(2) (a) The attorney responsible for support enforcement under s. 59.53 (6) (a) may request that the court or family court commissioner appoint a guardian ad litem to bring an action or motion on behalf of a minor who is a nonmarital child whose paternity has not been adjudicated for the purpose of determining the paternity of the child, and the court or family court commissioner shall appoint a guardian ad litem, if any of the following applies:

1. Aid is provided under s. 46.261, 48.57 (3m), 49.19 or 49.45 on behalf of the child, or benefits are provided to the child's custodial parent under ss. 49.141 to 49.161, but the state and its delegate under s. 49.22 (7) are barred by a statute of limitations from commencing an action under s. 767.45 on behalf of the child.

2. An application for legal services has been filed with the child support program under s. 49.22 on behalf of the child, but the state and its delegate under s. 49.22 (7) are barred by a statute of limitations from commencing an action under s. 767.45 on behalf of the child.

(b) A guardian ad litem appointed under par. (a) shall bring an action or motion for the determination of the child's paternity. The appointment of a guardian ad

litem under par. (a) terminates upon the entry of the court's order determining the existence or nonexistence of paternity.

SECTION 18. 767.05 (1m) of the statutes is amended to read:

767.05 **(1m)** RESIDENCE. No action under s. 767.02 (1) (a) or (b) may be brought unless at least one of the parties has been a bona fide resident of the county in which the action is brought for not less than ~~30 days~~ 6 months next preceding the commencement of the action, or unless the marriage has been contracted within this state within one year prior to the commencement of the action. No action under s. 767.02 (1) (c) or (d) may be brought unless at least one of the parties has been a bona fide resident of the county in which the action is brought for not less than ~~30 days~~ 6 months next preceding the commencement of the action. No action under s. 767.02 (1) (c) may be brought unless at least one of the parties has been a bona fide resident of this state for not less than 6 months next preceding the commencement of the action.

SECTION 19. 767.081 (2) (a) (intro.) of the statutes is amended to read:

767.081 **(2)** (a) (intro.) The family court commissioner shall, ~~with or~~ without charge, provide the party with written information on the following, as appropriate to the action commenced:

SECTION 20. 767.083 (2) of the statutes is amended to read:

767.083 **(2)** An order by the court, after consideration of the recommendation of the family court commissioner, directing an immediate hearing on the petition for the protection of the health or safety of either of the parties or of any child of the ~~marriage~~ parties or for other emergency reasons consistent with the policies of this chapter. The court shall upon granting such order specify the grounds therefor.

SECTION 21. 767.085 (1) (a) of the statutes is amended to read:

767.085 **(1)** (a) The name and birthdate of the parties, the social security numbers of the ~~husband and wife~~ parties and their occupations, the date and place of marriage and the facts relating to the residence of both parties.

SECTION 22. 767.085 (1) (j) (intro.) of the statutes is amended to read:

767.085 **(1)** (j) (intro.) Unless the action is one under s. 767.02 (1) (g) or (h), that during the pendency of the action, the parties are prohibited from, and may be held in contempt of court for, doing any of the following without the consent of the other party ~~or an order of the court or family court commissioner~~:

SECTION 23. 767.085 (1) (j) 1. of the statutes is amended to read:

767.085 **(1)** (j) 1. Establishing a residence ~~with~~ for a minor child of the parties outside the ~~state or more than 150 miles from the residence of the other party within the state~~ school district in which the child resided on the 180th day before the commencement of the action, or since birth if the child is less than 6 months old, or other school district agreed upon by the parties.

SECTION 24. 767.085 (1) (j) 2. of the statutes is amended to read:

767.085 **(1)** (j) 2. Removing a minor child of the parties from the state for ~~more than 90~~ 14 consecutive days or more without the written approval of the other party.

SECTION 25. 767.085 (2) (a) of the statutes is amended to read:

767.085 **(2)** (a) Either or both of the parties ~~to the marriage~~ may initiate the action. The party initiating the action or his or her attorney shall sign the petition. Both parties or their respective attorneys shall sign a joint petition.

SECTION 26. 767.087 (1) (c) of the statutes is amended to read:

767.087 **(1)** (c) Unless the action is one under s. 767.02 (1) (g) or (h), without the consent of the other party ~~or an order of the court or family court commissioner~~, establishing a residence ~~with~~ for a minor child of the parties outside the ~~state or more~~

~~than 150 miles from the residence of the other party within the state~~ school district in which the child resided on the 180th day before the commencement of the action, or since birth if the child is less than 6 months old, or other school district agreed upon by the parties, removing a minor child of the parties from the state for ~~more than 90~~ 14 consecutive days or more without the written approval of the other party or concealing a minor child of the parties from the other party.

SECTION 27. 767.087 (2) of the statutes is amended to read:

767.087 **(2)** The prohibitions under sub. (1) shall apply until the action is dismissed~~,~~ or until a final judgment in the action is entered ~~or until the court or family court commissioner orders otherwise~~.

SECTION 28. 767.087 (3) (b) of the statutes is amended to read:

767.087 **(3)** (b) An act in violation of sub. (1) (c) is not a contempt of court if the court finds ~~that the action was taken to protect a party or~~ by clear and convincing evidence that the party took the action to protect a minor child of the parties from physical abuse ~~by the other party and that there was no reasonable opportunity under the circumstances for the party~~ and that the party obtained or made a reasonable attempt to obtain an order ~~under sub. (2)~~ authorizing the action.

SECTION 29. 767.10 (1) of the statutes is amended to read:

767.10 **(1)** The parties in an action for an annulment, divorce or legal separation may~~, subject to the approval of the court,~~ stipulate for a division of property, for maintenance payments, for the support of children, for periodic family support payments under s. 767.261 or for legal custody and physical placement, in case a divorce or legal separation is granted or a marriage annulled.

SECTION 30. 767.11 (8) (b) (intro.) of the statutes is amended to read:

767.11 **(8)** (b) (intro.) A court ~~may, in its discretion,~~ shall hold a trial or hearing without requiring attendance at the session under par. (a) if the court finds that attending the session will cause undue hardship or would endanger the health or safety of one of the parties. In making its determination of whether attendance at the session would endanger the health or safety of one of the parties, the court shall consider ~~evidence~~ all of the following:

SECTION 31. 767.11 (8) (b) 1. of the statutes is amended to read:

767.11 **(8)** (b) 1. ~~That~~ Whether a party ~~engaged in~~ has been convicted of a crime involving abuse, as defined in s. ~~813.122 (1) (a)~~ 48.02 (1), of the child, as defined in s. 48.02 (2).

SECTION 32. 767.11 (8) (b) 2. of the statutes is amended to read:

767.11 **(8)** (b) 2. ~~Interspousal~~ Whether a party has been convicted of battery as described under s. 940.19 or 940.20 (1m) ~~or domestic abuse as defined in s. 813.12 (1) (a)~~ against the other party.

SECTION 33. 767.11 (8) (b) 3. of the statutes is repealed.

SECTION 34. 767.11 (8) (b) 4. of the statutes is amended to read:

767.11 **(8)** (b) 4. Any other clear and convincing evidence indicating that a party's health or safety will be endangered by attending the session.

SECTION 35. 767.11 (9) (intro.) and (b) of the statutes are consolidated, renumbered 767.11 (9) and amended to read:

767.11 **(9)** PROHIBITED ISSUES IN MEDIATION. If mediation is provided by a mediator assigned under sub. (6), no issue relating to property division, maintenance or child support may be considered during the mediation unless ~~all of the following apply: (b) The~~ the parties agree in writing to consider the property division, maintenance or child support issue.

SECTION 36. 767.11 (9) (a) of the statutes is repealed.

SECTION 37. 767.11 (10) (intro.) of the statutes is amended to read:

767.11 **(10)** POWERS AND DUTIES OF MEDIATOR. (intro.) A mediator assigned under sub. (6) shall ~~be guided by the best interest of the child and may~~ do any of the following, at his or her discretion:

SECTION 38. 767.11 (10) (a) of the statutes is amended to read:

767.11 **(10)** (a) Include the counsel of ~~any party or any appointed~~ both parties and any guardian ad litem appointed under s. 48.235 in the mediation.

SECTION 39. 767.11 (10) (b) of the statutes is amended to read:

767.11 **(10)** (b) Interview any child of the parties~~,~~ with ~~or without a party~~ neither of the parties present or with both of the parties present.

SECTION 40. 767.11 (10) (e) (intro.) and 4. of the statutes are consolidated, renumbered 767.11 (10) (e) and amended to read:

767.11 **(10)** (e) Terminate mediation if a party does not cooperate ~~or if mediation is not appropriate~~ or if any ~~of the following facts exist: 4. Other~~ evidence ~~which~~ indicates ~~one of the parties'~~ that the health or safety of one of the parties will be endangered if mediation is not terminated.

SECTION 41. 767.11 (10) (e) 1. to 3. of the statutes are repealed.

SECTION 42. 767.11 (12) (a) and (b) of the statutes are amended to read:

767.11 **(12)** (a) Any agreement which resolves issues of legal custody or periods of physical placement between the parties reached as a result of mediation under this section shall be prepared in writing, reviewed by the attorney, if any, for each party and by any ~~appointed~~ guardian ad litem appointed under s. 48.235, and submitted to the court to be included in the court order as a stipulation. Any reviewing attorney or guardian ad litem shall certify on the mediation agreement that he or she reviewed

it ~~and the guardian ad litem, if any, shall comment on the agreement based on the best interest of the child. The mediator shall certify,~~ that the written mediation agreement is ~~in the best interest of the child~~ based on the information presented to the mediator and that it accurately reflects the agreement made between the parties. The court ~~may approve or reject the agreement, based on the best interest of the child. The court shall state in writing its reasons for rejecting an agreement~~ shall approve the agreement if the court finds that the agreement is knowingly and voluntarily made. If the court as a matter of law finds that any aspect of the agreement is unconscionable, the court shall reject the unconscionable aspect or so limit the application of the unconscionable aspect as to avoid any unconscionable result.

(b) If after mediation under this section the parties do not reach agreement on legal custody or periods of physical placement, the parties or the mediator shall so notify the court. ~~The court shall promptly appoint a guardian ad litem under s. 767.045. After the appointment the court shall, if appropriate, refer the matter for a legal custody or physical placement study under sub. (14). If the parties come to agreement on legal custody or physical placement after the matter has been referred for a study, the study shall be terminated. The parties may return to mediation at any time before any trial of or final hearing on legal custody or periods of physical placement. If the parties return to mediation, the county shall collect any applicable fee under s. 814.615.~~

SECTION 43. 767.11 (14) (a) 1. of the statutes is amended to read:

767.11 **(14)** (a) 1. The conditions of ~~the child's~~ each parent's home.

SECTION 44. 767.11 (14) (a) 2. of the statutes is amended to read:

767.11 **(14)** (a) 2. Each party's performance of parental duties and responsibilities relating to the basic care of the child.

SECTION 45. 767.11 (14) (a) 3. of the statutes is repealed.

SECTION 46. 767.11 (14) (b) of the statutes is amended to read:

767.11 **(14)** (b) The person or entity investigating the parties under par. (a) shall complete the investigation and submit the results to the court. The court shall make the results available to both parties. The report shall be a part of the record in the action ~~unless the court orders otherwise~~. The report shall not be considered as a recommendation as to legal custody or physical placement but as evidence relating to the condition of each parent's home and the ability of each parent to provide basic care for the child and may be considered by the court for the purpose of determining whether to order the filing of a petition under s. 48.25 (1) to initiate proceedings under s. 48.13.

SECTION 47. 767.115 (title) and (1) of the statutes are amended to read:

767.115 (title) **Educational program on the effects of ~~divorce~~ family breakup on children. (1)** At any time during the pendency of an action affecting the family in which a minor child is involved and in which the court or family court commissioner determines that it is appropriate ~~and in the best interest of the child~~, the court or family court commissioner, on its own motion, may order the parties to attend a program specified by the court or family court commissioner concerning the effects on a child of a ~~dissolution of the marriage~~ break in the family relationship. A program under this subsection shall be educational rather than therapeutic in nature ~~and may not exceed a total of 4 hours in length~~. The parties shall be responsible for the cost, if any, of attendance at the program. ~~The court or family court commissioner may specifically assign responsibility for payment of any cost.~~

~~No facts or information obtained in the course of the program, and no report resulting from the program, is admissible in any action or proceeding.~~

SECTION 48. 767.14 of the statutes is amended to read:

767.14 Service on and appearance by family court commissioner. In any action affecting the family, each party shall, either within 20 days after making service on the opposite party of any petition or pleading or before filing such petition or pleading in court, serve a copy of the same upon the family court commissioner of the county in which the action is begun, whether such action is contested or not. No judgment in any such action shall be granted unless this section is complied with except when otherwise ordered by the court. Such commissioner ~~may~~ shall appear in an action under this chapter ~~when appropriate; and shall appear~~ when requested by the court or by a party.

SECTION 49. 767.23 (1) (intro.) of the statutes is amended to read:

767.23 **(1)** (intro.) Except as provided in ch. 822, in every action affecting the family, including a paternity action after paternity has been adjudicated, the court or family court commissioner ~~may~~ shall, during the pendency thereof, make just and reasonable temporary orders concerning the following matters:

SECTION 50. 767.23 (1) (a) of the statutes is amended to read:

767.23 **(1)** (a) ~~Upon request of one party, granting~~ Granting legal custody of the minor children to the parties jointly~~, to one party solely or to a relative or agency specified under s. 767.24 (3). The court or family court commissioner may order joint legal custody~~ without the agreement of the ~~other party and without the findings required under s. 767.24 (2) (b) 2.~~ parties. This order may not have a binding effect on a final custody determination.

SECTION 51. 767.23 (1) (am) of the statutes is repealed and recreated to read:

767.23 **(1)** (am) Granting equal periods of physical placement to the parties unless the parties agree to a different physical placement allocation or unless a conflicting order under s. 48.345 or subch. VI of ch. 938 is in effect.

SECTION 52. 767.23 (1) (bm) of the statutes is repealed.

SECTION 53. 767.23 (1) (c) of the statutes is renumbered 767.23 (1c) (a).

SECTION 54. 767.23 (1) (d) of the statutes is renumbered 767.23 (1c) (b).

SECTION 55. 767.23 (1) (e) of the statutes is renumbered 767.23 (1c) (c).

SECTION 56. 767.23 (1) (f) of the statutes is renumbered 767.23 (1c) (d).

SECTION 57. 767.23 (1) (g) of the statutes is renumbered 767.23 (1c) (e).

SECTION 58. 767.23 (1) (h) of the statutes is renumbered 767.23 (1c) (f).

SECTION 59. 767.23 (1) (i) of the statutes is renumbered 767.23 (1c) (g).

SECTION 60. 767.23 (1) (k) of the statutes is renumbered 767.23 (1c) (h).

SECTION 61. 767.23 (1) (L) of the statutes is renumbered 767.23 (1c) (i).

SECTION 62. 767.23 (1c) (intro.) of the statutes is created to read:

767.23 **(1c)** (intro.) In every action affecting the family, the court or family court commissioner may, during the pendency thereof, make just and reasonable temporary orders concerning the following matters:

SECTION 63. 767.23 (1n) of the statutes is amended to read:

767.23 **(1n)** ~~Before~~ Except as provided in sub. (1) (a) and (am), before making any temporary order under sub. (1) or (1c), the court or family court commissioner shall consider those factors which the court is required by this chapter to consider before entering a final judgment on the same subject matter. If the court or family court commissioner makes a temporary child support order that deviates from the amount of support that would be required by using the percentage standard established by the department under s. 49.22 (9), the court or family court

commissioner shall comply with the requirements of s. 767.25 (1n). A temporary order under sub. (1) or (1c) may be based upon the written stipulation of the parties~~, subject to the approval of the court or the family court commissioner~~. Temporary orders made by the family court commissioner may be reviewed by the court as provided in s. 767.13 (6).

SECTION 64. 767.23 (2) of the statutes is amended to read:

767.23 **(2)** Notice of motion for an order or order to show cause under sub. (1) or (1c) may be served at the time the action is commenced or at any time thereafter and shall be accompanied by an affidavit stating the basis for the request for relief.

SECTION 65. 767.24 (1) of the statutes is amended to read:

767.24 **(1)** GENERAL PROVISIONS. In rendering a judgment of annulment, divorce or legal separation, or in rendering a judgment in an action under s. 767.02 (1) (e), ~~the~~ there are rebuttable presumptions that both parents are fit and have the ability to rear their children, that both parents are qualified to decide what is best for their children and that joint legal custody and equal periods of physical placement are fundamental rights of each parent and child. The court shall make such provisions ~~as it deems just and reasonable~~ concerning the legal custody and physical placement of any minor child of the parties~~,~~ as are provided in this section.

SECTION 66. 767.24 (2) (a) of the statutes is renumbered 767.24 (2) (a) (intro.) and amended to read:

767.24 **(2)** (a) (intro.) ~~Subject to par. (b), based on the best interest of the child and after considering the factors under sub. (5), the~~ The court may give ~~joint legal custody or~~ sole legal custody of a minor child~~.~~ to one parent if either of the following applies:

SECTION 67. 767.24 (2) (a) 1. and 2. of the statutes are created to read:

767.24 **(2)** (a) 1. Both parties agree to sole legal custody with one parent.

2. The parental rights of one parent have been terminated under subch. VIII of ch. 48.

SECTION 68. 767.24 (2) (b) of the statutes is repealed and recreated to read:

767.24 **(2)** (b) The court shall give joint legal custody if one or both parties request joint legal custody.

SECTION 69. 767.24 (3) of the statutes is repealed.

SECTION 70. 767.24 (4) (a) of the statutes is amended to read:

767.24 **(4)** (a) ~~Except as provided under par. (b), if~~ If the court orders sole legal custody because the parties agree to it under sub. (2) (a) 1. or joint legal custody under sub. (2) (b), the court shall allocate periods of physical placement between the parties in accordance with this subsection. ~~In determining the allocation of periods of physical placement, the court shall consider each case on the basis of the factors in sub. (5).~~

SECTION 71. 767.24 (4) (b) of the statutes is repealed and recreated to read:

767.24 **(4)** (b) The court shall approve any written schedule for physical placement that the parties agree to and submit to the court. If the parties do not agree on a placement schedule, the court shall require each party to submit a placement proposal. The court shall approve the proposal submitted that sets forth the most equal allocation of periods of physical placement between the parties. If neither party proposes substantially equal periods of physical placement and each party proposes that he or she be awarded physical placement for the greater period of time, the court shall allocate equal alternating periods of physical placement between the parties and shall require that the parties annually alternate spending all of the following with the child:

1. New Year's Day.

2. Easter.

3. Memorial Day.

4. Independence Day (July 4).

5. Labor Day.

6. Thanksgiving Day.

7. Christmas Eve.

8. Christmas Day.

9. New Year's Eve.

10. The child's birthday.

SECTION 72. 767.24 (4) (cm) of the statutes is repealed.

SECTION 73. 767.24 (4) (d) of the statutes is amended to read:

767.24 **(4)** (d) ~~If the~~ The court ~~grants periods of physical placement to more than one parent, it~~ shall order a parent with legal custody and physical placement rights to provide the notice required under s. 767.327 ~~(1)~~ (2).

SECTION 74. 767.24 (5) of the statutes is repealed.

SECTION 75. 767.24 (6) (a) and (am) of the statutes are repealed.

SECTION 76. 767.24 (6) (b) of the statutes is amended to read:

767.24 **(6)** (b) ~~Notwithstanding s. 767.001 (1s), in making an order of~~ If the court awards joint legal custody, the ~~court may give one party~~ parties may stipulate that one party has the sole power to make specified decisions, while both parties retain equal rights and responsibilities for other decisions. The court shall incorporate the terms of the stipulation into the final judgment or order.

SECTION 77. 767.24 (6) (bm) of the statutes is created to read:

767.24 **(6)** (bm) If the court awards joint legal custody, the parties may stipulate to the primary care physicians for a minor child, and the court shall incorporate the terms of the stipulation into the final judgment or order. If the parties do not agree on the primary care physicians, the court may specify the primary care physicians for a minor child after considering the child's present health care and health insurance arrangements and any orders made by the court under s. 767.25 (4m).

SECTION 78. 767.24 (6) (c) of the statutes is amended to read:

767.24 **(6)** (c) ~~In making an order of joint legal custody and periods of physical placement, the~~ The court may specify one parent as the primary caretaker of the child and one home as the primary home of the child~~,~~ for the purpose of determining eligibility for aid under s. 49.19 or benefits under ss. 49.141 to 49.161 ~~or for any other purpose the court considers appropriate~~ only if both parents are dependent persons, as defined in s. 49.01 (2).

SECTION 79. 767.245 (1) of the statutes is amended to read:

767.245 **(1)** Except as provided in sub. (2m), upon petition by a grandparent, greatgrandparent, stepparent or person who has maintained a relationship similar to a parent–child relationship with the child, the court may grant reasonable visitation rights to that person if the parents have notice of the hearing and if the court determines ~~that~~ by a preponderance of the evidence that the visitation is ~~in the best interest of the child~~ not harmful to the child or to the child's relationship with either of the child's parents.

SECTION 80. 767.245 (2) of the statutes is repealed.

SECTION 81. 767.245 (3) (intro.) of the statutes is amended to read:

767.245 **(3)** (intro.) The court may grant reasonable visitation rights, with respect to a child, to a grandparent of the child if the child's parents have notice of

the hearing and the court determines, by a preponderance of the evidence, all of the following:

SECTION 82. 767.245 (3) (f) of the statutes is amended to read:

767.245 **(3)** (f) The visitation is ~~in the best interest of the child~~ not harmful to the child or to the child's relationship with either of the child's parents.

SECTION 83. 767.245 (3m) (c) of the statutes is amended to read:

767.245 **(3m)** (c) If a party or ~~the~~ any guardian ad litem appointed under s. 48.235 refuses to accept a recommendation under this subsection, the action shall be set for trial.

SECTION 84. 767.25 (2) of the statutes is amended to read:

767.25 **(2)** The court may ~~protect and promote the best interests of the minor children by setting~~ set aside a portion of the child support which either party is ordered to pay in a separate fund or trust for the support, education and welfare of such children.

SECTION 85. 767.255 (1) of the statutes is amended to read:

767.255 **(1)** Upon every judgment of annulment, divorce or legal separation, or in rendering a judgment in an action under s. 767.02 (1) (h), the court shall divide the property of the parties and divest and transfer the title of any such property accordingly. A certified copy of the portion of the judgment that affects title to real estate shall be recorded in the office of the register of deeds of the county in which the lands so affected are situated. The court may ~~protect and promote the best interests of the children by setting~~ set aside a portion of the property of the parties in a separate fund or trust for the support, maintenance, education and general welfare of any minor children of the parties.

SECTION 86. 767.265 (3h) of the statutes is amended to read:

767.265 **(3h)** A person who receives notice of assignment under this section or s. 767.23 ~~(1) (L)~~ (1c) (i), 767.25 (4m) (c) or 767.51 (3m) (c) or similar laws of another state shall withhold the amount specified in the notice from any money that person pays to the payer later than one week after receipt of notice of assignment. Within 5 days after the day the person pays money to the payer, the person shall send the amount withheld to the clerk of court or support collection designee, whichever is appropriate, of the jurisdiction providing notice or, in the case of an amount ordered withheld for health care expenses, to the appropriate health care insurer, provider or plan. Except as provided in sub. (3m), for each payment sent to the clerk of court or support collection designee, the person from whom the payer receives money shall receive an amount equal to the person's necessary disbursements, not to exceed $3, which shall be deducted from the money to be paid to the payer. Section 241.09 does not apply to assignments under this section.

SECTION 87. 767.265 (4) of the statutes is amended to read:

767.265 **(4)** A withholding assignment or order under this section or s. 767.23 ~~(1) (L)~~ (1c) (i), 767.25 (4m) (c) or 767.51 (3m) (c) has priority over any other assignment, garnishment or similar legal process under state law.

SECTION 88. 767.265 (6) (a) of the statutes is amended to read:

767.265 **(6)** (a) Except as provided in sub. (3m), if after receipt of notice of assignment the person from whom the payer receives money fails to withhold the money or send the money to the clerk of court or support collection designee or the appropriate health care insurer, provider or plan as provided in this section or s. 767.23 ~~(1) (L)~~ (1c) (i), 767.25 (4m) (c) or 767.51 (3m) (c), the person may be proceeded against under the principal action under ch. 785 for contempt of court or may be proceeded against under ch. 778 and be required to forfeit not less than $50 nor more

than an amount, if the amount exceeds $50, that is equal to 1% of the amount not withheld or sent.

SECTION 89. 767.265 (6) (b) of the statutes is amended to read:

767.265 **(6)** (b) If an employer who receives an assignment under this section or s. 767.23 ~~(1) (L)~~ (1c) (i), 767.25 (4m) (c) or 767.51 (3m) (c) fails to notify the clerk of court or support collection designee, whichever is appropriate, within 10 days after an employe is terminated or otherwise temporarily or permanently leaves employment, the employer may be proceeded against under the principal action under ch. 785 for contempt of court.

SECTION 90. 767.265 (6) (c) of the statutes is amended to read:

767.265 **(6)** (c) No employer may use an assignment under this section or s. 767.23 ~~(1) (L)~~ (1c) (i), 767.25 (4m) (c) or 767.51 (3m) (c) as a basis for the denial of employment to a person, the discharge of an employe or any disciplinary action against an employe. An employer who denies employment or discharges or disciplines an employe in violation of this paragraph may be fined not more than $500 and may be required to make full restitution to the aggrieved person, including reinstatement and back pay. Except as provided in this paragraph, restitution shall be in accordance with s. 973.20. An aggrieved person may apply to the district attorney or to the department for enforcement of this paragraph.

SECTION 91. 767.325 (1) of the statutes is repealed and recreated to read:

767.325 **(1)** MODIFICATIONS. (a) The court shall modify an order of physical placement in a way that alters the time a parent may spend with his or her child or an order of legal custody if any of the following applies:

1. A parent requests a modification and the current order is not in conformity with s. 767.24.

2. The parental rights of a parent have been terminated under subch. VIII of ch. 48.

3. The parties agree to a modification.

(b) A modification under this subsection shall be consistent with s. 767.24.

SECTION 92. 767.325 (2) of the statutes is repealed.

SECTION 93. 767.325 (3) of the statutes is repealed.

SECTION 94. 767.325 (4) of the statutes is repealed.

SECTION 95. 767.327 of the statutes is repealed and recreated to read:

767.327 Moving the child's residence outside the school district and other removals. (1) Except as provided in sub. (5), if both parents of a child in an action affecting the family are awarded physical placement rights to the child, neither parent may establish a legal residence for the child outside the school district in which the child resided on the 180th day before the commencement of the action affecting the family, or since birth if the child is less than 6 months old, or other school district agreed upon by the parties.

(2) (a) A parent specified in sub. (1) who wishes to establish his or her legal residence outside the state or at any location within the state that is at a distance of 150 miles or more from the school district in which the child resided on the 180th day before the commencement of the action affecting the family, or since birth if the child is less than 6 months old, or other school district agreed upon by the parties, shall provide not less than 60 days' written notice to the other parent, with a copy to the court, of his or her intent regarding changing his or her legal residence.

(b) The parent shall send the notice under par. (a) by certified mail. The notice shall state the parent's proposed action, including the specific date and location of

the move, and that the other parent may request a modification to the physical placement order as provided in sub. (3).

(3) If the proposed move under sub. (2) would make it difficult or impractical for the parties to comply with the physical placement order and at the same time for the child to remain in the same school district, either party may file a petition, motion or order to show cause for modification of the physical placement order.

(4) (a) If after a notice under sub. (2) has been sent or a petition, motion or order to show cause under sub. (3) has been filed the parties agree to a modification of the physical placement order or to a change in the child's school district and file a stipulation with the court, the court shall approve the agreement and incorporate the terms of the stipulation into a revised order.

(b) If the parties do not agree to a modification after a petition, motion or order to show cause under sub. (3) has been filed, the court may modify the physical placement order, subject to all of the following:

1. The parent not proposing the move shall be awarded periods of physical placement that include weekdays and weeknights when school is in session, at least one weekend per month, at least 4 weeks during the summer months when school is not in session and alternating holidays.

2. The parent proposing the move shall be awarded the maximum amount of physical placement that is reasonable under the circumstances.

3. The parent proposing the move shall be responsible for the transportation costs of exercising his or her physical placement rights.

(5) The court may allow a parent specified in sub. (1) to establish a legal residence for the child outside the school district in which the child resided on the 180th day before the commencement of the action affecting the family, or since birth

if the child is less than 6 months old, or other school district agreed upon by the parties, if all of the following apply:

(a) The parent desiring to establish a different legal residence for the child files a petition, motion or order to show cause for that purpose.

(b) The other parent has notice of the hearing on the petition, motion or order to show cause.

(c) The parent desiring to establish a different legal residence for the child shows by clear and convincing evidence that, for a period of at least one year, the other parent has exercised his or her physical placement rights for less than 10% of the amount of time that he or she was awarded by the court.

(6) Notwithstanding sub. (1), if both parents specified in sub. (1) wish to establish their legal residences or a legal residence for the child outside the current school district of the child and do not agree on a new school district for the child, the court may designate one of the new legal residences of the parents as the child's legal residence for the purpose of establishing a new school district for the child. In making the determination under this subsection, the court shall specify as the child's legal residence the location that the court determines will maximize the amount of time that each parent may spend with the child.

(7) Notwithstanding sub. (1), if a parent specified in sub. (1) has established his or her legal residence outside the state or at a location within the state that is at a distance of 150 miles or more from the child's current school district, the court may allow the parent whose legal residence is in the child's current school district to establish a legal residence for the child outside the child's current school district if the move does not increase the distance between the child and the other parent and the other parent does not wish to move back to the child's current school district.

(8) Unless the parents agree otherwise, a parent with legal custody and physical placement rights shall notify and obtain the written approval of the other parent before removing the child from the state for a period of 14 days or more.

SECTION 96. 767.33 (1m) (a) of the statutes is renumbered 767.33 (1m) and amended to read:

767.33 **(1m)** ~~Except as provided in par. (b), this~~ This section applies only to an order under s. 767.23 or 767.25 in which payment is expressed as a fixed sum. It does not apply to such an order in which payment is expressed as a percentage of parental income.

SECTION 97. 767.33 (1m) (b) of the statutes is repealed.

SECTION 98. 767.45 (1) (d) of the statutes is amended to read:

767.45 **(1)** (d) A man alleged or alleging himself to be the father of the child, including a man against whom an action was dismissed under s. 767.458 (1m), 1995 stats., before the effective date of this paragraph .... [revisor inserts date].

SECTION 99. 767.45 (1) (i) of the statutes is amended to read:

767.45 **(1)** (i) A guardian ad litem appointed for the child under s. 48.235, 767.045 ~~(1) (c)~~ (2) (a) or 938.235.

SECTION 100. 767.45 (2) of the statutes is repealed.

SECTION 101. 767.458 (1) (b) of the statutes is amended to read:

767.458 **(1)** (b) If the respondent is unable to afford counsel due to indigency, and the petitioner is represented by a government attorney under s. 767.45 (1) (g) or (6) or the action is commenced on behalf of the child by an attorney appointed under s. 767.045 ~~(1) (c)~~ (2) (a), counsel shall be appointed for the respondent as provided in s. 767.52 and ch. 977, unless the respondent knowingly and voluntarily waives the appointment of counsel;

SECTION 102. 767.458 (1) (c) of the statutes is amended to read:

767.458 **(1)** (c) ~~Except as provided under sub. (1m), the~~ The respondent may request the administration of genetic tests which either demonstrate that he is not the father of the child or which demonstrate the probability that he is or is not the father of the child;

SECTION 103. 767.458 (1) (d) of the statutes is amended to read:

767.458 **(1)** (d) ~~Except as provided under sub. (1m), the~~ The court will order genetic tests upon the request of any party; and

SECTION 104. 767.458 (1m) of the statutes is repealed.

SECTION 105. 767.46 (2) (c) of the statutes is amended to read:

767.46 **(2)** (c) If the alleged father voluntarily acknowledges paternity of the child, that he agree to the duty of support, the legal custody of the child, periods of physical placement of the child and other matters as determined ~~to be in the best interests of the child~~ by the court.

SECTION 106. 767.46 (4) of the statutes is amended to read:

767.46 **(4)** If a party or ~~the~~ any guardian ad litem appointed under s. 48.235 or 767.475 (1) refuses to accept a recommendation made under this section and genetic tests have not yet been taken, the court shall require the appropriate parties to submit to genetic tests. After the genetic tests have been taken the court shall make an appropriate final recommendation.

SECTION 107. 767.46 (5) of the statutes is amended to read:

767.46 **(5)** If ~~the~~ any guardian ad litem appointed under s. 48.235 or 767.475 (1) or any party refuses to accept any final recommendation, the action shall be set for trial.

SECTION 108. 767.465 (2m) (a) of the statutes is amended to read:

767.465 **(2m)** (a) At any time after service of the summons and petition, a respondent who is the alleged father may, with or without appearance in court ~~and subject to the approval of the court~~, in writing acknowledge that he has read and understands the notice under s. 767.455 (5g) and stipulate that he is the father of the child and for child support payments, legal custody and physical placement. The court may not approve a stipulation for child support unless it provides for payment of child support determined in a manner consistent with s. 767.25 or 767.51.

SECTION 109. 767.475 (1) of the statutes is amended to read:

767.475 **(1)** ~~Except as provided in s. 767.045 (1) (c), the~~ The court ~~may appoint a guardian ad litem for the child and~~ shall appoint a guardian ad litem for a minor parent or minor who is alleged to be a parent in a paternity proceeding unless the minor parent or the minor alleged to be the parent is represented by an attorney.

SECTION 110. 767.51 (3) of the statutes is amended to read:

767.51 **(3)** The judgment or order may contain any other provision directed against the ~~appropriate party~~ parties to the proceeding, concerning the duty of support, the legal custody and guardianship of the child, periods of physical placement, the furnishing of bond or other security for the payment of the judgment, or any other matter ~~in the best interest of the child. Unless the court orders otherwise, if there is no presumption of paternity under s. 891.41 the mother shall have sole legal custody of the child~~. The court shall order either party or both to pay for the support of any child of the parties who is less than 19 years old and is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent. The judgment or order may direct the father to ~~pay or contribute~~ make an equal contribution to the reasonable expenses of the mother's pregnancy and confinement during pregnancy and ~~may~~ shall direct ~~either party~~ both parties to

pay or contribute to the costs of genetic tests, attorney fees and other costs. Contributions to the costs of genetic tests shall be paid to the county which paid for the genetic tests.

SECTION 111. 767.51 (4) of the statutes is amended to read:

767.51 **(4)** Support judgments or orders ordinarily shall be for periodic payments which may vary in amount if appropriate. The payment amount may be expressed as a percentage of the parent's income or as a fixed sum, or as a combination of both in the alternative by requiring payment of the greater or lesser of either a percentage of the parent's income or a fixed sum. The father's liability for past support of the child shall be limited to support for the period after ~~the birth of the child~~ paternity has been adjudicated.

SECTION 112. 767.51 (5) (e) of the statutes is amended to read:

767.51 **(5)** (e) The need and capacity of the child for education~~, including higher education~~.

SECTION 113. 767.51 (5) (i), (im) and (j) of the statutes are repealed.

SECTION 114. 767.51 (6) of the statutes is amended to read:

767.51 **(6)** Sections 767.24, 767.245, 767.263, 767.265, 767.267, 767.29, 767.293, 767.30, 767.305, 767.31, 767.32 ~~and~~, 767.325, 767.327 and 767.329, where applicable, shall apply to a judgment or order under this section.

SECTION 115. 767.52 (1) of the statutes is amended to read:

767.52 **(1)** At the pretrial hearing, at the trial and in any further proceedings in any paternity action, any party may be represented by counsel. If the respondent is indigent and the state is the petitioner under s. 767.45 (1) (g), the petitioner is represented by a government attorney as provided in s. 767.45 (6) or the action is commenced on behalf of the child by an attorney appointed under s. 767.045 ~~(1) (c)~~

(2) (a), counsel shall be appointed for the respondent as provided in ch. 977, and subject to the limitations under sub. (2m), unless the respondent knowingly and voluntarily waives the appointment of counsel.

SECTION 116. 767.53 (3) of the statutes is created to read:

767.53 **(3)** The records of any past proceeding in which paternity was established are open to public inspection under ss. 19.31 to 19.39.

SECTION 117. 769.302 of the statutes is amended to read:

769.302 Action by minor parent. A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child. Notwithstanding s. ~~767.045 (1) or~~ 803.01 (3), ~~the court may appoint a guardian ad litem for the minor's child, but~~ the court need not appoint a guardian ad litem for a minor parent who maintains such a proceeding unless the proceeding is one for the determination of parentage, in which case the court or a family court commissioner shall appoint a guardian ad litem for a minor parent within this state who maintains such a proceeding or for a minor within this state who is alleged to be a parent, as provided in s. 767.475 (1).

SECTION 118. 802.12 (3) (b) of the statutes is amended to read:

802.12 **(3)** (b) If a guardian ad litem has been appointed under s. 48.235, he or she shall be a party to any settlement alternative regarding custody, physical placement, visitation rights, support or other interests of the ward.

SECTION 119. 803.01 (3) (b) 1. of the statutes is amended to read:

803.01 **(3)** (b) 1. The guardian ad litem shall be appointed by a circuit court of the county where the action is to be commenced or is pending, except that ~~the~~ a guardian ad litem appointed under s. 767.475 (1) shall be appointed by a family court

commissioner of the county in those actions to establish paternity that are before the family court commissioner.

SECTION 120. 803.01 (3) (b) 2. of the statutes is amended to read:

803.01 **(3)** (b) 2. When the plaintiff is a minor 14 years of age or over, upon the plaintiff's application or upon the state's application under s. 767.045 ~~(1) (c)~~ (2) (a); or if the plaintiff is under that age or is mentally incompetent, upon application of the plaintiff's guardian or of a relative or friend or upon application of the state under s. 767.045 ~~(1) (c)~~ (2) (a). If the application is made by a relative, friend or the state, notice thereof must first be given to the guardian if the plaintiff has one in this state; if the plaintiff has none, then to the person with whom the minor or mentally incompetent resides or who has the minor or mentally incompetent in custody.

SECTION 121. 814.61 (1) (c) of the statutes is amended to read:

814.61 **(1)** (c) Paragraphs (a) and (b) do not apply to any action to determine paternity brought by the state or its delegate under s. 767.45 (1) (g) or (h) or commenced on behalf of the child by an attorney appointed under s. 767.045 ~~(1) (c)~~ (2) (a) or to an action under ch. 769.

SECTION 122. 814.61 (7) (c) of the statutes is amended to read:

814.61 **(7)** (c) Paragraphs (a) and (b) do not apply to a petition or motion filed by the state or its delegate in connection with an action to determine paternity under s. 767.45 (1) (g), to a petition or motion filed by an attorney appointed under s. 767.045 ~~(1) (c)~~ (2) (a) in connection with an action to determine paternity when the circumstances specified in s. 767.045 ~~(1) (c)~~ (2) (a) 1. or 2. apply or to a petition or motion filed in an action under ch. 769.

SECTION 123. 891.39 (1) (a) of the statutes is renumbered 891.39 (1) and amended to read:

891.39 **(1)** Whenever it is established in an action or proceeding that a child was born to a woman while she was the lawful wife of a specified man, any party asserting in such action or proceeding that the husband was not the father of the child shall have the burden of proving that assertion by a clear and satisfactory preponderance of the evidence. In all such actions or proceedings the husband and the wife are competent to testify as witnesses to the facts. ~~The~~ Except as provided in s. 767.045, the court or judge in such cases shall appoint a guardian ad litem to appear for and represent the child whose paternity is questioned.

SECTION 124. 891.39 (1) (b) of the statutes is repealed.

SECTION 125. 977.05 (4) (i) 7. of the statutes is amended to read:

977.05 **(4)** (i) 7. Cases involving paternity determinations, as specified under s. 767.52, in which the state is the petitioner under s. 767.45 (1) (g) or in which the action is commenced on behalf of the child by an attorney appointed under s. 767.045 ~~(1) (c)~~ (2) (a).

SECTION 126. 977.05 (6) (b) 1. of the statutes is amended to read:

977.05 **(6)** (b) 1. The action is not brought by the state, its delegate under s. 59.458 (1) or an attorney appointed under s. 767.045 ~~(1) (c)~~ (2) (a).

SECTION 127. Initial applicability.

(1) This act first applies to actions affecting the family, including an action to enforce or modify a judgment or order in an action affecting the family previously granted, that are commenced on the effective date of this subsection.

(END)