2003 ASSEMBLY BILL 867

February 19, 2004 – Introduced by Representatives OWENS, ALBERS, BIES, HAHN, HINES, JESKEWITZ, KRAWCZYK, McCORMICK, MUSSER and J. WOOD. Referred to Committee on Family Law.

1   AN ACT *to amend* 767.325 (intro.); and *to create* 767.24 (5m) of the statutes;

2   **relating to:** ordering modifications to legal custody or periods of physical

3   placement contingent upon the occurrence of a specified future event or a

4   specified change in conditions.

Analysis by the Legislative Reference Bureau

When ordering joint or sole legal custody of and periods of physical placement with a minor child in an annulment, divorce, legal separation, or paternity action, the court is required, under current law, to consider a number of factors, such as the amount and quality of time that each party has spent with the child in the past, the mental and physical health of the parties and the child, the child's adjustment to the home, school, and community, and the child's age and developmental and educational needs. Within the two–year period after an initial custody or physical placement order is entered, the order may not be modified unless the court finds that the modification is necessary because the current custodial conditions are physically or emotionally harmful to the child. After two years after the initial order is entered, the court may modify legal custody or physical placement if the court finds that there has been a substantial change in circumstances since the last order was entered and that the modification is in the child's best interest.

According to the case law, a court's authority in actions affecting the family is based entirely on the statutes, which with respect to determining legal custody and physical placement "embody a sense of contemporaneity...." *In re Marriage of Koeller v. Koeller*, 195 Wis. 2d 660, 666 (1995). Therefore, the court lacks the authority to

include in a custody or physical placement order a prospective modification of custody or physical placement that is contingent upon the occurrence of a future event or a change in current conditions.

This bill explicitly authorizes a court, when determining legal custody or physical placement, to take into account events that are likely to occur in the future or temporary current conditions that affect a party's ability to perform parental duties or to care for the child. In a legal custody or physical placement order, the court may provide for future modifications to, or retain the option to modify at a future time, legal custody or physical placement upon the occurrence of a specified future event or a specified change in current conditions. The statutes that apply to modifications of custody and physical placement orders before and after two years after an original order is entered do not apply to these contingent modifications that are included in an order.

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

1   SECTION 1. 767.24 (5m) of the statutes is created to read:

2   767.24 **(5m)** MODIFICATION CONTINGENT UPON FUTURE EVENT OR CHANGE IN

3 CONDITIONS. (a) In making an order of legal custody under sub. (2) or (3) or periods

4 of physical placement under sub. (4), the court may take into account events that are

5 likely to occur in the future or temporary current conditions that affect the ability

6 of one or both parties to make decisions in the best interest of the child or to perform

7 parental duties and responsibilities or care for the child and may provide for future

8 modifications to, or retain the option to modify at a future time, legal custody, the

9 authority to make major or other specified decisions, or periods of physical

10 placement, contingent upon the occurrence of a specified future event or a specified

11 change in temporary current conditions.

12   (b) Modifications to legal custody or periods of physical placement under this

13 subsection are not subject to s. 767.325.

14   SECTION 2. 767.325 (intro.) of the statutes is amended to read:

1   **767.325   Revision of legal custody and physical placement orders.**

2   (intro.) Except for matters under s. 767.327 or 767.329, <u>and except as provided in</u>

3   <u>s. 767.24 (5m) (b),</u> the following provisions are applicable to modifications of legal

4   custody and physical placement orders:

5   Sᴇᴄᴛɪᴏɴ **3. Initial applicability.**

6   (1)   This act first applies to actions or proceedings, including actions or

7   proceedings to modify a judgment or order previously granted, that are commenced

8   on the effective date of this subsection.

9   **(END)**