



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-1011/1
PJK:jld:jf

2011 ASSEMBLY BILL 66

March 30, 2011 – Introduced by Representatives SPANBAUER, CLARK, POPE-ROBERTS and RADCLIFFE. Referred to Committee on Veterans and Military Affairs.

1 **AN ACT to renumber and amend** 767.451 (3m) and 767.451 (5m) (c); **to amend**
2 767.451 (5m) (a); **to repeal and recreate** 767.451 (3m) (title); and **to create**
3 767.231, 767.451 (3m) (a), 767.451 (3m) (b) and 767.451 (3m) (e) of the statutes;
4 **relating to:** custody and physical placement matters when a party is a service
5 member.

Analysis by the Legislative Reference Bureau

Current law contains some specific provisions that apply to actions relating to custody or physical placement of a child when a party in the action is a service member. For these purposes, “service member” is defined as a member of the national guard or of a reserve unit of the U.S. armed forces. Under current law, in an action affecting the family, such as a divorce, the court may not consider as a factor in determining legal custody of a child, or in determining whether to modify an existing order of legal custody, whether a service member party has been or may be called away to active duty in the U.S. armed forces. Also under current law, if a court modifies an order of physical placement on the basis that a service member party has been or will be called to active duty in the U.S. armed forces, the modification order must require that the allocation of periods of physical placement or physical placement schedule that was in effect before the modification be reinstated when the service member is discharged from active duty.

This bill prohibits a court from modifying a legal custody order if a party is a service member while the service member is on active duty in the U.S. armed forces.

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The bill permits a service member who has been awarded periods of physical placement with a child and who has been called to active duty in the U.S. armed forces to petition the court to modify the physical placement order to allow a third party designated by the service member to exercise the service member's periods of physical placement with the child, on behalf of the service member, while the service member is on active duty. The court may modify the order in the proposed manner if it is appropriate and in the best interest of the child. Finally, the bill requires a court to expedite hearings in actions affecting the family at the request of a service member party, and to permit a service member party who is on active duty in the U.S. armed forces to testify at hearings in an action affecting the family by telephone or other electronic means.

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

1 **SECTION 1.** 767.231 of the statutes is created to read:

2 **767.231 Hearings when a party is a service member.** If a party to an action
3 affecting the family is a service member, as defined in s. 767.41 (2) (e) 1., the court
4 shall do all of the following:

5 (1) At the request of the service member, hold any hearing on an expedited
6 basis.

7 (2) If the service member is on active duty in the U.S. armed forces, permit the
8 service member to testify by telephone or by audiovisual or other electronic means.

9 **SECTION 2.** 767.451 (3m) (title) of the statutes is repealed and recreated to read:

10 767.451 **(3m)** (title) MODIFICATIONS WHEN PARTY IS SERVICE MEMBER.

11 **SECTION 3.** 767.451 (3m) of the statutes is renumbered 767.451 (3m) (d) and
12 amended to read:

13 767.451 **(3m)** (d) If a party is a service member, ~~as defined in s. 767.41 (2) (e)~~
14 ~~1.,~~ and the court modifies an order of physical placement on the basis that the service
15 member has been or will be called to active duty in the U.S. armed forces,
16 notwithstanding sub. (1) the court shall require in the order that the allocation of

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1 periods of physical placement and, if applicable, the physical placement schedule
2 that were in effect before the modification are reinstated immediately upon the
3 service member's discharge or release from active duty.

4 **SECTION 4.** 767.451 (3m) (a) of the statutes is created to read:

5 767.451 (3m) (a) In this subsection, "service member" has the meaning given
6 in s. 767.41 (2) (e) 1.

7 **SECTION 5.** 767.451 (3m) (b) of the statutes is created to read:

8 767.451 (3m) (b) Notwithstanding sub. (1), if a party who is a service member
9 has been granted sole or joint legal custody of a child, a court may not modify the
10 order of legal custody while the service member is on active duty in the U.S. armed
11 forces.

12 **SECTION 6.** 767.451 (3m) (e) of the statutes is created to read:

13 767.451 (3m) (e) If a service member who has been granted periods of physical
14 placement with a child is called to active duty in the U.S. armed forces, the service
15 member may petition the court to modify the order of physical placement by allowing
16 a 3rd party designated by the service member to exercise the service member's
17 periods of physical placement with the child, on his or her behalf, while the service
18 member is on active duty in the U.S. armed forces. Notwithstanding sub. (1), the
19 court may modify the order of physical placement in the manner proposed by the
20 service member if the court determines that it is appropriate and in the best interest
21 of the child.

22 **SECTION 7.** 767.451 (5m) (a) of the statutes is amended to read:

23 767.451 (5m) (a) Subject to ~~pars.~~ par. (b) and sub. (3m) (c), in all actions to
24 modify legal custody or physical placement orders, the court shall consider the

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1 factors under s. 767.41 (5) (am), subject to s. 767.41 (5) (bm), and shall make its
2 determination in a manner consistent with s. 767.41.

3 **SECTION 8.** 767.451 (5m) (c) of the statutes is renumbered 767.451 (3m) (c) and
4 amended to read:

5 767.451 (3m) (c) In Subject to par. (b), in an action to modify a legal custody
6 order, if a party is a service member, ~~as defined in s. 767.41 (2) (e) 1.,~~ the court may
7 not consider as a factor in making a determination whether the service member has
8 been or may be called to active duty in the U.S. armed forces and consequently ~~is, or~~
9 in the future will be or may be, absent from the service member's home.

10 **SECTION 9. Initial applicability.**

11 (1) The creation of section 767.451 (3m) (b) and (e) of the statutes first applies
12 to actions or proceedings, including actions or proceedings to modify a judgment or
13 order previously granted, that are commenced on the effective date of this
14 subsection.

15 (END)