

2005 Senate Bill 590

Date of enactment: **May 29, 2006**  
Date of publication\*: **June 12, 2006**

## 2005 WISCONSIN ACT 471

AN ACT to amend 767.24 (2) (a), 767.24 (2) (b) (intro.), 767.24 (5) (am) (intro.) and 767.325 (5m) (a); and to create 767.24 (2) (e), 767.24 (5) (c), 767.325 (3m) and 767.325 (5m) (c) of the statutes; relating to: prohibiting a court from considering a parent's active duty in the U.S. armed forces when determining or modifying the legal custody of a child and reinstating periods of physical placement upon a parent's discharge from active duty.

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

**SECTION 1.** 767.24 (2) (a) of the statutes is amended to read:

767.24 (2) (a) Subject to pars. (am), ~~(b), (c), and (d) to (e)~~, based on the best interest of the child and after considering the factors under sub. (5) (am), subject to sub. (5) (bm), the court may give joint legal custody or sole legal custody of a minor child.

**SECTION 2.** 767.24 (2) (b) (intro.) of the statutes is amended to read:

767.24 (2) (b) (intro.) Except as provided in par. (d) and subject to par. (e), the court may give sole legal custody only if it finds that doing so is in the child's best interest and that either of the following applies:

**SECTION 3.** 767.24 (2) (e) of the statutes is created to read:

767.24 (2) (e) 1. In this paragraph, "service member" means a member of the national guard or of a reserve unit of the U.S. armed forces.

2. If a party is a service member, the court may not consider as a factor in determining the legal custody of a child whether the service member has been or may be called to active duty in the U.S. armed forces and conse-

quently is, or in the future will be or may be, absent from the service member's home.

**SECTION 4.** 767.24 (5) (am) (intro.) of the statutes is amended to read:

767.24 (5) (am) (intro.) Subject to ~~par. pars. (bm) and (c)~~, in determining legal custody and periods of physical placement, the court shall consider all facts relevant to the best interest of the child. The court may not prefer one parent or potential custodian over the other on the basis of the sex or race of the parent or potential custodian. Subject to ~~par. pars. (bm) and (c)~~, the court shall consider the following factors in making its determination:

**SECTION 5.** 767.24 (5) (c) of the statutes is created to read:

767.24 (5) (c) If a parent is a service member, as defined in sub. (2) (e) 1., the court may not consider as a factor in determining the legal custody of a child whether the service member has been or may be called to active duty in the U.S. armed forces and consequently is, or in the future will be or may be, absent from the service member's home.

**SECTION 6.** 767.325 (3m) of the statutes is created to read:

767.325 (3m) REINSTATEMENT OF FORMER PHYSICAL PLACEMENT ALLOCATION AND SCHEDULE. If a party is a ser-

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\* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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vice member, as defined in s. 767.24 (2) (e) 1., and the court modifies an order of physical placement on the basis that the service member has been or will be called to active duty in the U.S. armed forces, notwithstanding sub. (1) the court shall require in the order that the allocation of periods of physical placement and, if applicable, the physical placement schedule that were in effect before the modification are reinstated immediately upon the service member's discharge or release from active duty.

**SECTION 7.** 767.325 (5m) (a) of the statutes, as affected by 2005 Wisconsin Act 101, is amended to read:

767.325 (5m) (a) Subject to ~~par.~~ pars. (b) and (c), in all actions to modify legal custody or physical placement orders, the court shall consider the factors under s. 767.24

(5) (am), subject to s. 767.24 (5) (bm), and shall make its determination in a manner consistent with s. 767.24.

**SECTION 8.** 767.325 (5m) (c) of the statutes is created to read:

767.325 (5m) (c) In an action to modify a legal custody order, if a party is a service member, as defined in s. 767.24 (2) (e) 1., the court may not consider as a factor in making a determination whether the service member has been or may be called to active duty in the U.S. armed forces and consequently is, or in the future will be or may be, absent from the service member's home.

**SECTION 9. Initial applicability.**

(1) This act first applies to orders awarding legal custody, and orders modifying legal custody or physical placement orders previously entered, that are granted on the effective date of this subsection.