



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## **RESEARCH APPENDIX -** **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 02/14/2006 (Per: PJK)



### Appendix A

 The 2005 drafting file for LRB 05-4356  
has been copied/added to the 2005 drafting file for  
**LRB 05-4597 (SB 590)**

 The attached 2005 draft was incorporated into the new 2005 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as a appendix, to the new 2005 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

 This cover sheet was added to rear of the original 2005 drafting file. The drafting file was then returned, intact, to its folder and filed.

**2005 DRAFTING REQUEST**

**Bill**

Received: **01/09/2006**

Received By: **pkahler**

Wanted: **Soon**

Identical to LRB:

For: **Mark Gundrum (608) 267-5158**

By/Representing: **himself**

This file may be shown to any legislator: **NO**

Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Dom. Rel. - cust./plac./vis.**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Gundrum@legis.state.wi.us**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Prohibit court from considering call to active duty when determining custody

---

**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 01/10/2006	jdyer 01/12/2006		_____			
/1	pkahler 01/17/2006	jdyer 01/17/2006	rschluet 01/12/2006	_____	sbasford 01/12/2006		
/2			pgreensl 01/17/2006	_____	lemery 01/17/2006	sbasford 02/10/2006	

**LRB-4356**

02/10/2006 10:27:38 AM

Page 2

FE Sent For:

<END>

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/?	pkahler 01/10/2006	jdyer 01/12/2006		_____			
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**LRB-4356**

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Page 2

FE Sent For:

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/?	pkahler 01/10/2006	jdyer 01/12/2006		_____			
/1		1/2 1/7 jld	rschlue 01/12/2006	✓ 1/7	sbasford 01/12/2006		

FE Sent For:

Handwritten initials and signatures: XH, 128, PKahler, and <END>

2005 DRAFTING REQUEST

Bill

Received: 01/09/2006

Received By: pkahler

Wanted: Soon

Identical to LRB:

For: Mark Gundrum (608) 267-5158

By/Representing: himself

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May Contact:

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Subject: Dom. Rel. - cust./plac./vis.

Extra Copies:

Submit via email: YES

Requester's email: Rep.Gundrum@legis.state.wi.us

Carbon copy (CC:) to:

---

Pre Topic:

No specific pre topic given

---

Topic:

Prohibit court from considering call to active duty when determining custody

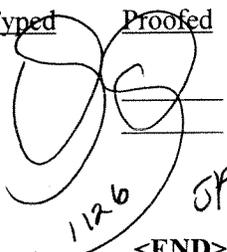
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Instructions:

See Attached

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Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1/?	pkahler	1/12 jld					

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1126 JF  
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Rep Gundrum - modification of  
LRB-3784

instead of prohibiting it from  
ordering sole custody on basis of  
coll to active duty, prohibit  
it from considering it when  
determining custody





State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-4356/1

PJK:.....

JLD

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SOON  
(1-1-10)

D-vote

Gen

- 1 AN ACT ...; relating to: prohibiting a court from considering a parent's active duty
- 2 in the U.S. armed forces when determining or modifying the legal custody of a
- 3 child.

*Analysis by the Legislative Reference Bureau*

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

4

(END)





State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-3784/1  
PJK:jld:rs

2005 BILL

1 AN ACT *to amend* 767.24 (2) (a) and 767.24 (2) (b) (intro.); and *to create* 767.24  
2 (2) (e) and 767.325 (5r) of the statutes; **relating to:** prohibiting a court from  
3 awarding ~~sole~~ legal custody of a child to a parent solely because of the other  
4 parent's active duty in the U.S. armed forces. *Insert RC*

***Analysis by the Legislative Reference Bureau***

Under current law, in an action affecting the family, such as a divorce or a paternity action, a court must determine the legal custody of a child based on the best interest of the child. Although the court may grant sole legal custody to one parent or joint legal custody to both parents, the court must presume that joint legal custody is in the child's best interest. *The court may grant sole legal custody only if both parents agree to sole legal custody with the same parent or if at least one parent requests sole legal custody and the court finds that: 1) one parent is not capable of performing parental duties or does not wish to have an active role in raising the child; 2) one or more conditions exist that would substantially interfere with the exercise of joint legal custody; or 3) the parties will not be able to cooperate in future decision making.* *Insert A-1 ✓*

Also under current law, the court may not modify a legal custody order within two years after the initial order unless the court finds that the modification is necessary because current custodial conditions are physically or emotionally harmful to the best interest of the child. After two years after the initial order, the court may modify a legal custody order if the court finds that there has been a

**BILL**

Insert A-3 ✓

Insert A-2 ✓

substantial change of circumstances since the last custody order was entered and that the modification is in the best interest of the child.

This bill provides that a court may not award sole legal custody of a child to a parent, or modify a legal custody order to give a parent sole legal custody of a child, solely because the other parent is a member of the national guard or of a reserve unit of the U.S. armed forces, has been or may be called to active duty in the U.S. armed forces, and consequently is or will be or may be absent from home.

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

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

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

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

7 767.24 (2) (b) (intro.) Except as provided in ~~par.~~ ~~pars.~~ (d) and (e), the court may  
8 give sole legal custody only if it finds that doing so is in the child's best interest and  
9 that either of the following applies:

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

11 767.24 (2) (e) 1. In this paragraph, "service member" means a member of the  
12 national guard or of a reserve unit of the U.S. armed forces.

13 2. Notwithstanding the factors under sub. (5) (am), if a party is a service  
14 member, the court may not give sole legal custody to the other party solely because  
15 the service member has been or may be called to active duty in the U.S. armed forces  
16 and consequently is, or in the future will be or may be, absent from the service  
17 member's home.

18 SECTION 4. 767.325 (5r) of the statutes is created to read:

subject to par.

plain

(Large handwritten circle around the text of Section 2, paragraph 2)



2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4356/ins  
PJK.....

INSERT A-1

*not* In making the legal custody decision, the court must consider a number of factors that are set out in the statutes, including: the wishes of the parents and of the child; the interaction of the child with the parents; the amount of time that each parent has spent with the child in the past and any lifestyle changes that a parent proposes to make to be able to spend more time with the child in the future; the child's adjustment to home, school, religion, and community; the child's age and developmental and educational needs at different ages; and any other factors that the court considers relevant. ✓

(END OF INSERT A-1)

INSERT A-2

*not* Generally, in determining whether to *→ court ✓* modify a legal custody order, the court must consider the same factors that the *✓* considers when initially deciding legal custody.

(END OF INSERT A-2)

INSERT A-3

*not*, if a parent is a service member (defined as a member of the national guard or of a reserve unit of the U.S. armed forces), when *initially* determining a child's legal custody or ~~when modifying~~ a legal custody order the court may not consider whether the parent who is a service member *NO* *of*

(END OF INSERT A-3)

*in an action to modify*

INSERT 3-8

1           2. If a party is a *✓* service member, the court may not consider as a factor in  
2 determining the legal custody of a child whether the service member has been or may  
3 be called to active duty in the U.S. armed forces *✓* and consequently is, or in the future  
4 will be or may be, absent from the service member's home.

5           SECTION 1. 767.24 (5) (am) (intro.) *✓* of the statutes is amended to read:

6           767.24 (5) (am) (intro.) Subject to ~~par.~~ *✓* par. (bm) and (c), in determining legal  
7 custody and periods of physical placement, the court shall consider all facts relevant

1 to the best interest of the child. The court may not prefer one parent or potential  
2 custodian over the other on the basis of the sex or race of the parent or potential  
3 custodian. Subject to ~~par.~~ pars. (bm) and (c), the court shall consider the following  
4 factors in making its determination:

History: 1971 c. 149, 157, 211; 1975 c. 39, 122, 200, 283; 1977 c. 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.24; 1981 c. 391; 1985 a. 70, 176; 1987 a. 332 s. 64; 1987 a. 355, 364, 383, 403; 1989 a. 56 s. 259; 1989 a. 359; 1991 a. 32; 1993 a. 213, 446, 481; 1995 a. 77, 100, 275, 289, 343, 375; 1997 a. 35, 191; 1999 a. 9; 2001 a. 109; 2003 a. 130.

5 **SECTION 2.** 767.24 (5) (c) of the statutes is created to read:

6 767.24 (5) (c) If a parent is a service member, as defined in sub. (2) (e) 1., the  
7 court may not consider as a factor in determining the legal custody of a child whether  
8 the service member has been or may be called to active duty in the U.S. armed forces  
9 and consequently is, or in the future will be or may be, absent from the service  
10 member's home.

11 **SECTION 3.** 767.325 (5m) (a) <sup>X</sup> of the statutes, as affected by 2005 Wisconsin Act  
12 101, is amended to read:

13 767.325 (5m) (a) Subject to ~~par.~~ <sup>✓</sup> pars. (b) and (c), in all actions to modify legal  
14 custody or physical placement orders, the court shall consider the factors under s.  
15 767.24 (5) (am), subject to s. 767.24 (5) (bm), and shall make its determination in a  
16 manner consistent with s. 767.24.

History: 2005 a. 101.

17 **SECTION 4.** 767.325 (5m) (c) <sup>X</sup> of the statutes is created to read:

18 767.325 (5m) (c) In an action to modify a legal custody order, if a party is a  
19 service member, as defined in s. 767.24 (2) (e) 1., <sup>✓</sup> the court may not consider as a factor  
20 in making a determination whether the service member has been or may be called  
21 to active duty in the U.S. armed forces and consequently is, or in the future will be  
22 or may be, absent from the service member's home. <sup>✓</sup>

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4356/dn

PJK:....

Jld

✓  
for purposes of a legal custody  
determination

One problem I see with prohibiting a court from even considering whether a service member has been called to active duty is that the court may then be foreclosed from determining that legal custody of a child should be given to a relative, county department, or child welfare agency under s. 767.24 (3). Under that section, the court may give legal custody to one of those entities if the court determines that neither parent is able to adequately care for the child. Thus, if the service member will be on active duty out of the country and the other parent is not fit, the court could give legal custody to a relative until the service member returns if the court could consider that circumstance. On the other hand, if the other parent is not fit and the court gives sole legal custody to the service member, the service member could make arrangements for the child's care and custody while he or she is gone.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: pam.kahler@legis.state.wi.us

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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4356/1dn  
PJK:jld:rs

January 12, 2006

One problem I see with prohibiting a court from even considering whether a service member has been called to active duty for purposes of a legal custody determination is that the court may then be foreclosed from determining that legal custody of a child should be given to a relative, county department, or child welfare agency under s. 767.24 (3). Under that section, the court may give legal custody to one of those entities if the court determines that neither parent is able to adequately care for the child. Thus, if the service member will be on active duty out of the country and the other parent is not fit, the court could give legal custody to a relative until the service member returns if the court could consider that circumstance. On the other hand, if the other parent is not fit and the court gives sole legal custody to the service member, the service member could make arrangements for the child's care and custody while he or she is gone.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.state.wi.us](mailto:pam.kahler@legis.state.wi.us)

1-17

Rep Gundrum

include physical placement provision  
from 3784/c in 4356

i.e., require phys placement to be  
returned to what it was  
previously if modified due to  
a service member's  
being called to active duty





State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-4356/8  
PJK:jld:rs

Wednesday

2005 BILL

"Kay" →  
r m not run

d-note

request ↓

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

→ insert A ✓

**Analysis by the Legislative Reference Bureau**

Under current law, in an action affecting the family, such as a divorce or a paternity action, a court must determine the legal custody of a child based on the best interest of the child. Although the court may grant sole legal custody to one parent or joint legal custody to both parents, the court must presume that joint legal custody is in the child's best interest. In making the legal custody ~~decision~~ the court must consider a number of factors that are set out in the statutes, including: the wishes of the parents and of the child; the interaction of the child with the parents; the amount of time that each parent has spent with the child in the past and any lifestyle changes that a parent proposes to make to be able to spend more time with the child in the future; the child's adjustment to home, school, religion, and community; the child's age and developmental and educational needs at different ages; and any other factors that the court considers relevant.

Also under current law, the court may not modify a legal custody order within two years after the initial order unless the court finds that the modification is necessary because current custodial conditions are physically or emotionally

and physical placement decisions

**BILL**

Insert B ✓

✓ (or physical placement.

harmful to the best interest of the child. After two years after the initial order, the court may modify a legal custody order if the court finds that there has been a substantial change of circumstances since the last custody order was entered and that the modification is in the best interest of the child. Generally, in determining whether to modify a legal custody order, the court must consider the same factors that the court considers when initially deciding legal custody.

Placement

This bill provides that, if a parent is a service member (defined as a member of the national guard or of a reserve unit of the U.S. armed forces), when initially determining a child's legal custody or in an action to modify a legal custody order the court may not consider whether the parent who is a service member has been or may be called to active duty in the U.S. armed forces, and consequently is or will be or may be absent from home. Insert C ✓

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

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

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

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

7 767.24 (2) (b) (intro.) Except as provided in par. (d) and subject to par. (e), the  
8 court may give sole legal custody only if it finds that doing so is in the child's best  
9 interest and that either of the following applies:

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

11 767.24 (2) (e) 1. In this paragraph, "service member" means a member of the  
12 national guard or of a reserve unit of the U.S. armed forces.

13 2. If a party is a service member, the court may not consider as a factor in  
14 determining the legal custody of a child whether the service member has been or may

**BILL**

1 be called to active duty in the U.S. armed forces and consequently is, or in the future  
2 will be or may be, absent from the service member's home.

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

4 767.24 (5) (am) (intro.) Subject to ~~par. pars.~~ (bm) and (c), in determining legal  
5 custody and periods of physical placement, the court shall consider all facts relevant  
6 to the best interest of the child. The court may not prefer one parent or potential  
7 custodian over the other on the basis of the sex or race of the parent or potential  
8 custodian. Subject to ~~par. pars.~~ (bm) and (c), the court shall consider the following  
9 factors in making its determination:

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

11 767.24 (5) (c) If a parent is a service member, as defined in sub. (2) (e) 1., the  
12 court may not consider as a factor in determining the legal custody of a child whether  
13 the service member has been or may be called to active duty in the U.S. armed forces  
14 and consequently is, or in the future will be or may be, absent from the service  
15 member's home.

✓  
Insert 3-15

16 **SECTION 6.** 767.325 (5m) (a) of the statutes, as affected by 2005 Wisconsin Act  
17 101, is amended to read:

18 767.325 (5m) (a) Subject to ~~par. pars.~~ (b) and (c), in all actions to modify legal  
19 custody or physical placement orders, the court shall consider the factors under s.  
20 767.24 (5) (am), subject to s. 767.24 (5) (bm), and shall make its determination in a  
21 manner consistent with s. 767.24.

22 **SECTION 7.** 767.325 (5m) (c) of the statutes is created to read:

23 767.325 (5m) (c) In an action to modify a legal custody order, if a party is a  
24 service member, as defined in s. 767.24 (2) (e) 1., the court may not consider as a factor  
25 in making a determination whether the service member has been or may be called

**BILL**

1 to active duty in the U.S. armed forces and consequently is, or in the future will be  
2 or may be, absent from the service member's home.

3 **SECTION 8. Initial applicability.**

4 (1) This act first applies to orders awarding legal custody and orders modifying  
5 legal custody orders that are granted on the effective date of this subsection.

6 (END)

✓  
Insert 4-5

d-note  
↓



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-3784/4  
PJK:jld:rs

2005 BILL

*insert RC*

1 AN ACT *to amend* 767.24 (2) (a), 767.24 (2) (b) (intro.) and 767.325 (5m) (a); and  
2 *to create* 767.24 (2) (e) and 767.325 (5r) of the statutes; **relating to:**  
3 prohibiting a court from awarding sole legal custody of a child to a parent on  
4 the basis of the other parent's active duty in the U.S. armed forces and  
5 reinstating periods of physical placement upon a parent's discharge from active  
6 duty ✓

***Analysis by the Legislative Reference Bureau***

*insert A*

~~Under current law, in an action affecting the family, such as a divorce or a paternity action, a court must determine the legal custody of a child based on the best interest of the child and must allocate periods of physical placement between the parents that maximizes the amount of time the child may spend with each parent, taking into account geographic separation and accommodations for different households. Although the court may grant sole legal custody to one parent or joint legal custody to both parents, the court must presume that joint legal custody is in the child's best interest. The court may grant sole legal custody only if both parents agree to sole legal custody with the same parent or if at least one parent requests sole legal custody and the court finds that: 1) one parent is not capable of performing parental duties or does not wish to have an active role in raising the child; 2) one or more conditions exist that would substantially interfere with the exercise of joint legal custody; or 3) the parties will not be able to cooperate in future decision making.~~

BILL

*Insert B ↓*

Also under current law, the court may not modify a legal custody or physical placement order within two years after the initial order unless the court finds that the modification is necessary because current custodial conditions are physically or emotionally harmful to the best interest of the child. After two years after the initial order, the court, generally, may modify a legal custody or physical placement order if the court finds that there has been a substantial change of circumstances since the last custody or physical placement order was entered and that the modification is in the best interest of the child.

This bill prohibits a court from awarding sole legal custody of a child to a parent, or from modifying a legal custody order to give a parent sole legal custody of a child, on the basis that the other parent is a member of the national guard or of a reserve unit of the U.S. armed forces (service member), has been or may be called to active duty in the U.S. armed forces, and consequently is or will be or may be absent from home.

*no 41  
Insert  
C →*

The bill also provides that, if a parent is a service member and the court modifies a physical placement order on the basis that the service member has been or will be called to active duty, the court must require that the allocation and schedule of periods of physical placement that were in effect before the modification be reinstated upon the service member's discharge from active duty.

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

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

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

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

7 767.24 (2) (b) (intro.) Except as provided in ~~par. pars. (d) and (e)~~, the court may  
8 give sole legal custody only if it finds that doing so is in the child's best interest and  
9 that either of the following applies:

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

11 767.24 (2) (e) 1. In this paragraph, "service member" means a member of the  
12 national guard or of a reserve unit of the U.S. armed forces.

2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4356/ins<sup>2</sup>  
PJK:jd:rs

INSERT 3-15

1           **SECTION 1.** 767.325 (3m)<sup>X</sup> of the statutes is created to read:  
2           767.325 (3m)<sup>✓</sup> REINSTATEMENT OF FORMER PHYSICAL PLACEMENT ALLOCATION AND  
3           SCHEDULE.<sup>✓</sup> If a party is a service member, as defined in s. 767.24 (2) (e) 1., and the  
4           court modifies an order of physical placement on the basis that the service member  
5           has been or will be called to active duty in the U.S. armed forces,<sup>✓</sup> notwithstanding  
6           sub. (1)<sup>✓</sup> the court shall require in the order that the allocation of periods of physical  
7           placement and, if applicable, the physical placement schedule that were in effect  
8           before the modification are reinstated immediately upon the service member's  
9           discharge or release from active duty.

(END OF INSERT 3-15)

**BILL**

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

4 **SECTION 6. Initial applicability.**

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

8 (END)

*Insert 4-5*

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-4356/dn<sup>2</sup>  
PJK/plrs

This draft prohibits a court from considering whether a service member has been or will be called to active duty for purposes of determining or modifying legal custody. The draft also requires the court to reinstate the previous physical placement allocation and schedule upon a service member's return from active duty if the physical placement allocation and schedule were modified on the basis of the service member's being called to active duty (as in LRB-3784).✓

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
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**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-4356/1dn  
PJK:jld:pg

January 17, 2006

This draft prohibits a court from considering whether a service member has been or will be called to active duty for purposes of determining or modifying legal custody. The draft also requires the court to reinstate the previous physical placement allocation and schedule upon a service member's return from active duty if the physical placement allocation and schedule were modified on the basis of the service member's being called to active duty (as in LRB-3784).

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Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.state.wi.us](mailto:pam.kahler@legis.state.wi.us)

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**Emery, Lynn**

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**From:** Usealman, Kevin  
**Sent:** Friday, January 27, 2006 4:35 PM  
**To:** Emery, Lynn  
**Subject:** 4356/2

Lynn,

Could you please send me an electronic copy of our 4356/2

thanks,  
Kevin

01/30/2006

**Emery, Lynn**

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**From:** Emery, Lynn  
**Sent:** Monday, January 30, 2006 8:40 AM  
**To:** Usealman, Kevin  
**Subject:** LRB 05-4356/2 (attached as requested)

**Attachments:** 05-4356/2



05-43562.pdf (22  
KB)

Lynn Emery  
Program Assistant  
Legislative Reference Bureau  
(608) 266-3561

**Basford, Sarah**

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**From:** Usealman, Kevin  
**Sent:** Friday, February 10, 2006 10:11 AM  
**To:** LRB.Legal  
**Subject:** Jacket request for 4356  
**Attachments:** 05-43562.pdf

Please send over a jacket for this bill as soon as possible. Thank you! Kevin, Rep Gundrum office 119W

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**From:** Usealman, Kevin  
**Sent:** Thursday, February 09, 2006 1:13 PM  
**To:** \*Legislative Assembly Democrats; \*Legislative Assembly Republicans; \*Legislative Senate Democrats; \*Legislative Senate Republicans  
**Subject:** REMINDER: DEADLINE THIS FRIDAY AT NOON: Gundrum-Musser-Zien/Co-Sponsorship of LRB-4356/2 and LRB 4597: Prohibiting a court from considering a parent's active duty in the armed forces when considering custody/placement of a child

**REMINDER: DEADLINE IS TOMORROW AT NOON.**

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**From:** Usealman, Kevin  
**Sent:** Tuesday, February 07, 2006 3:49 PM  
**To:** \*Legislative Assembly Democrats; \*Legislative Assembly Republicans; \*Legislative Senate Democrats; \*Legislative Senate Republicans  
**Subject:** SHORT DEADLINE: THIS FRIDAY AT NOON: Gundrum-Musser-Zien/Co-Sponsorship of LRB-4356/2 and LRB 4597: Prohibiting a court from considering a parent's active duty in the armed forces when considering custody/placement of a child



**TO:** All Legislators  
**FROM:** State Representatives Mark Gundrum and Terry Musser,  
State Senator Dave Zien  
**DATE:** February 7th, 2006  
**RE:** Co-Sponsorship of LRB-4356/2 \* and LRB 4597/1 : *Prohibiting a court from considering a parent's active duty in the armed forces when considering custody/placement of a child*

***\*See Assembly Version Attached***

In response to a 2005 case in Michigan that gained national attention, we are introducing **LRB4356/2** and **LRB**

02/10/2006



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-4356/2  
PJK:jld:pg

2005 BILL

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

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***Analysis by the Legislative Reference Bureau***

Under current law, in an action affecting the family, such as a divorce or a paternity action, a court must determine the legal custody of a child based on the best interest of the child and must allocate periods of physical placement between the parents that maximizes the amount of time the child may spend with each parent, taking into account geographic separation and accommodations for different households. Although the court may grant sole legal custody to one parent or joint legal custody to both parents, the court must presume that joint legal custody is in the child's best interest. In making the legal custody and physical placement decisions, the court must consider a number of factors that are set out in the statutes, including: the wishes of the parents and of the child; the interaction of the child with the parents; the amount of time that each parent has spent with the child in the past and any lifestyle changes that a parent proposes to make to be able to spend more time with the child in the future; the child's adjustment to home, school, religion, and

**BILL**

community; the child's age and developmental and educational needs at different ages; and any other factors that the court considers relevant.

Also under current law, the court may not modify a legal custody or physical placement order within two years after the initial order unless the court finds that the modification is necessary because current custodial conditions are physically or emotionally harmful to the best interest of the child. After two years after the initial order, the court, generally, may modify a legal custody or physical placement order if the court finds that there has been a substantial change of circumstances since the last custody or physical placement order was entered and that the modification is in the best interest of the child. Generally, in determining whether to modify a legal custody or physical placement order, the court must consider the same factors that the court considers when initially deciding legal custody and physical placement.

This bill provides that, if a parent is a service member (defined as a member of the national guard or of a reserve unit of the U.S. armed forces), when initially determining a child's legal custody or in an action to modify a legal custody order the court may not consider whether the parent who is a service member has been or may be called to active duty in the U.S. armed forces, and consequently is or will be or may be absent from home. The bill also provides that, if a parent is a service member and the court modifies a physical placement order on the basis that the service member has been or will be called to active duty, the court must require that the allocation and schedule of periods of physical placement that were in effect before the modification be reinstated upon the service member's discharge from active duty.

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

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

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

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

7           767.24 (2) (b) (intro.) Except as provided in par. (d) and subject to par. (e), the  
8 court may give sole legal custody only if it finds that doing so is in the child's best  
9 interest and that either of the following applies:

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

**BILL**

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

3           2. If a party is a service member, the court may not consider as a factor in  
4 determining the legal custody of a child whether the service member has been or may  
5 be called to active duty in the U.S. armed forces and consequently is, or in the future  
6 will be or may be, absent from the service member’s home.

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

8           767.24 (5) (am) (intro.) Subject to ~~par.~~ pars. (bm) and (c), in determining legal  
9 custody and periods of physical placement, the court shall consider all facts relevant  
10 to the best interest of the child. The court may not prefer one parent or potential  
11 custodian over the other on the basis of the sex or race of the parent or potential  
12 custodian. Subject to ~~par.~~ pars. (bm) and (c), the court shall consider the following  
13 factors in making its determination:

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

15           767.24 (5) (c) If a parent is a service member, as defined in sub. (2) (e) 1., the  
16 court may not consider as a factor in determining the legal custody of a child whether  
17 the service member has been or may be called to active duty in the U.S. armed forces  
18 and consequently is, or in the future will be or may be, absent from the service  
19 member’s home.

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

21           767.325 (3m) REINSTATEMENT OF FORMER PHYSICAL PLACEMENT ALLOCATION AND  
22 SCHEDULE. If a party is a service member, as defined in s. 767.24 (2) (e) 1., and the  
23 court modifies an order of physical placement on the basis that the service member  
24 has been or will be called to active duty in the U.S. armed forces, notwithstanding  
25 sub. (1) the court shall require in the order that the allocation of periods of physical

**BILL**

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

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

6 767.325 (5m) (a) Subject to ~~par.~~ pars. (b) and (c), in all actions to modify legal  
7 custody or physical placement orders, the court shall consider the factors under s.  
8 767.24 (5) (am), subject to s. 767.24 (5) (bm), and shall make its determination in a  
9 manner consistent with s. 767.24.

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

11 767.325 (5m) (c) In an action to modify a legal custody order, if a party is a  
12 service member, as defined in s. 767.24 (2) (e) 1., the court may not consider as a factor  
13 in making a determination whether the service member has been or may be called  
14 to active duty in the U.S. armed forces and consequently is, or in the future will be  
15 or may be, absent from the service member's home.

16 **SECTION 9. Initial applicability.**

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

20

(END)