



## WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

**2005 Wisconsin Act 471**  
[2005 Senate Bill 590]

**Legal Custody and Physical  
Placement of a Child of a Parent in  
the U.S. Armed Forces**

Generally, Wisconsin law provides that in an action affecting the family, for example, divorce, a court may grant joint legal custody of a child to the parents or sole legal custody of a child to one parent. However, the court must begin with the presumption that joint legal custody is in the best interests of the child. In determining the allocation of period of physical placement, the court must consider statutory factors, but must set a placement schedule that allows the child to have regularly occurring, meaningful periods of physical placement with each parent that maximizes the amount of time the child may spend with each parent, taking into account geographic separation and accommodations for different households. Typically, a court may not modify either of these orders before two years after an initial order is entered, unless a party shows that a modification is necessary because custodial conditions are physically or emotionally harmful to the best interests of the child. After this two-year period, a court may modify these orders if a modification is in the best interest of the child and if there has been a substantial change of circumstances since the entry of the last order affecting custody or physical placement.

2005 Wisconsin Act 471 provides that if a parent is a service member, a court may not consider as a factor in determining 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. Further, Act 471 provides that if a court modifies an order of physical placement on the basis that a parent is a service member and has been or will be called to active duty, the court must 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. Finally, in an action to modify a legal custody order, a court may not consider as a factor in making a determination whether the service member has been or may be called to active duty and consequently is, or in the future will be or may be, absent from the service member's home.

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This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

***Effective Date:*** The Act takes effect on June 13, 2006 and first applies to orders awarding legal custody, and orders modifying legal custody or physical placement orders previously entered, that are granted on June 13, 2006.

***Prepared by:*** Ronald Sklansky, Senior Staff Attorney

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RS:rv