



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2011 Assembly Bill 66

Assembly Amendment 1

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Current law contains specific provisions that relate to the physical placement of a child when a party in the action is a service member. In an action affecting the family, the court may not consider whether a service member party has or may be called away to active duty as a factor in determining legal custody of a child or in determining whether to modify an existing order of legal custody. 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, the modification order must require that the allocation of periods of physical placement, or the physical placement schedule that was in effect before the modification, be reinstated when the service member is discharged from active duty.

2011 Assembly Bill 66 prohibits a court from modifying a legal custody order while a service member party is on active duty. Under the bill, “service member” means a member of the National Guard or of a reserve unit of the U.S. armed forces, as defined in s. 767.41 (2) (e) 1., Stats. Further, the bill permits a service member who has been called to active duty and has been awarded periods of physical placement with a child 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 while the service member is on active duty. Under the bill, the court’s decision to grant or deny the petition is based on what is in the best interest of the child. Finally, the court is required to expedite hearings in actions affecting the family at the request of a service member party. If that service member party is on active duty, they must be allowed to testify at hearings in actions affecting the family by telephone or other electronic means.

Assembly Amendment 1 prohibits a court from making a final order relating to the legal custody of a service member’s child while the service member is on active duty. However, unlike the original bill, Assembly Amendment 1 permits the court to make a temporary order affecting the legal custody of a service member’s child while the service member is on active duty.

Legislative History

Assembly Amendment 1 was offered by Representative Radcliffe. On September 15, 2011, the Assembly Committee on Veterans and Military Affairs recommended adoption of the amendment on a vote of Ayes, 11; Noes, 0. The committee then recommended passage of Assembly Bill 66, as amended, on a vote of Ayes, 11; Noes, 0.

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