



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1985/1
EAW:amn

2019 ASSEMBLY BILL 98

March 22, 2019 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Family Law.

1 **AN ACT to repeal** 767.41 (5) (am) 15. and 16.; **to amend** 767.225 (1) (am), 767.41
2 (5) (am) (intro.), 767.41 (6) (a) and 767.451 (5m) (b); and **to repeal and**
3 **recreate** 767.41 (5) (am) 3. to 14. of the statutes; **relating to:** factors relating
4 to the physical placement of a child.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Study Committee on Child Placement and Support.

Under current law, a court must set a physical placement schedule that allows a child to have regularly occurring, meaningful periods of physical placement and that maximizes the amount of time for a child with each parent. In determining a physical placement schedule, a court must, in each case, consider a statutory list of best-interest factors.

The bill specifies that if a court grants less than 25% of physical placement to one parent in a temporary or final order, specific findings of fact must be entered as to the reason greater physical placement with that parent is not in the best interest of the child.

The bill also reorganizes the statutory best-interest factors, removing two considerations: the stability in placement and availability of child care services. For the

ASSEMBLY BILL 98

introduction to the list of factors, the bill specifies that the factors are not necessarily listed in order of importance.

1 **SECTION 1.** 767.225 (1) (am) of the statutes is amended to read:

2 767.225 (1) (am) Upon the request of a party, granting periods of physical
3 placement to a party in a manner consistent with s. 767.41. The court shall make
4 a determination under this paragraph within 30 days after the request for a
5 temporary order regarding periods of physical placement is filed. If the court grants
6 physical placement to one parent for less than 25 percent of the time, as determined
7 under s. 49.22 (9), the court shall enter specific findings of fact as to the reasons that
8 a greater allocation of physical placement with that parent is not in the best interests
9 of the child.

10 **SECTION 2.** 767.41 (5) (am) (intro.) of the statutes is amended to read:

11 767.41 (5) (am) (intro.) Subject to pars. (bm) and (c), in determining legal
12 custody and periods of physical placement, the court shall consider all facts relevant
13 to the best interest of the child. The court may not prefer one parent or potential
14 custodian over the other on the basis of the sex or race of the parent or potential
15 custodian. Subject to pars. (bm) and (c), the court shall consider all of the following
16 factors, which are not necessarily listed in order of importance, in making its
17 determination:

18 **SECTION 3.** 767.41 (5) (am) 3. to 14. of the statutes are repealed and recreated
19 to read:

20 767.41 (5) (am) 3. The cooperation and communication between the parties and
21 whether either party unreasonably refuses to cooperate or communicate with the
22 other party.

ASSEMBLY BILL 98

1 4. Whether each party can support the other party's relationship with the child,
2 including encouraging and facilitating frequent and continuing contact with the
3 child, or whether one party is likely to unreasonably interfere with the child's
4 continuing relationship with the other party.

5 5. The interaction and interrelationship of the child with his or her siblings,
6 and any other person who may significantly affect the child's best interest.

7 6. The interaction and interrelationship of the child with his or her parent or
8 parents and the amount and quality of time that each parent has spent with the child
9 in the past, any necessary changes to the parents' custodial roles, and any reasonable
10 lifestyle changes that a parent proposes to make to maximize placement with the
11 child.

12 7. Whether any of the following has or had a significant problem with alcohol
13 or drug abuse:

14 a. A party.

15 b. A person with whom a parent of the child has a dating relationship, as
16 defined in s. 813.12 (1) (ag).

17 c. A person who resides, has resided, or will reside regularly or intermittently
18 in a proposed custodial household.

19 8. The child's adjustment to the home, school, religion, and community.

20 9. The age of the child and the child's developmental and educational needs at
21 different ages.

22 10. Whether the mental or physical health of a party, minor child, or other
23 person living in a proposed custodial household negatively affects the child's
24 intellectual, physical, or emotional well-being.

ASSEMBLY BILL 98**SECTION 3**

1 11. Whether any of the following has a criminal record or whether there is
2 evidence that any of the following has engaged in abuse, as defined in s. 813.122 (1)
3 (a), of the child or any other child or neglected the child or any other child:

4 a. A party.

5 b. A person with whom a parent of the child has a dating relationship, as
6 defined in s. 813.12 (1) (ag).

7 c. A person who resides, has resided, or will reside regularly or intermittently
8 in a proposed custodial household.

9 12. Whether there is evidence of interspousal battery, as described under s.
10 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am).

11 13. The reports of appropriate professionals if admitted into evidence.

12 14. Any other factor that the court determines to be relevant.

13 **SECTION 4.** 767.41 (5) (am) 15. and 16. of the statutes are repealed.

14 **SECTION 5.** 767.41 (6) (a) of the statutes is amended to read:

15 767.41 **(6)** (a) If legal custody or physical placement is contested, the court shall
16 state in writing why its findings relating to legal custody or physical placement are
17 in the best interest of the child. If the court grants physical placement to one parent
18 for less than 25 percent of the time, as determined under s. 49.22 (9), the court shall
19 enter specific findings of fact as to the reasons that a greater allocation of physical
20 placement with that parent is not in the best interests of the child.

21 **SECTION 6.** 767.451 (5m) (b) of the statutes is amended to read:

22 767.451 **(5m)** (b) In determining the best interest of the child under this
23 section, in addition to the factor under s. 767.41 (5) (am) ~~12m.~~ 11., the court shall
24 consider whether a stepparent of the child has a criminal record and whether there

ASSEMBLY BILL 98

1 is evidence that a stepparent of the child has engaged in abuse, as defined in s.
2 813.122 (1) (a), of the child or any other child or neglected the child or any other child.

3 **SECTION 7. Initial applicability.**

4 (1) This act first applies to an order regarding physical placement issued on the
5 effective date of this subsection.

6 **SECTION 8. Effective date.**

7 (1) This act takes effect on the first day of the 7th month beginning after
8 publication.

9 (END)