

1999 ASSEMBLY BILL 445

September 2, 1999 – Introduced by Representative MUSSER, cosponsored by Senator GEORGE. Referred to Committee on Family Law.

1 **AN ACT** *to repeal* 767.51 (3m), 767.51 (3r), 767.51 (4g), 767.51 (4m), 767.51 (5),
2 767.51 (5d) and 767.51 (5p); *to renumber and amend* 767.24 (4) (a); *to amend*
3 20.921 (2) (a), 66.184, 102.27 (2) (a), 120.13 (2) (g), 565.30 (5m), 632.897 (10) (a)
4 3., 767.045 (1) (a) 2., 767.078 (1) (a) 1., 767.078 (2), 767.11 (12) (b), 767.115
5 (title), 767.23 (1) (a), 767.23 (1) (am), 767.23 (1) (c), 767.23 (1) (k), 767.23 (1n),
6 767.24 (1), 767.24 (2) (a), 767.24 (2) (b), 767.24 (4) (c), 767.24 (5) (intro.), 767.24
7 (5) (a), 767.24 (5) (g), 767.25 (1) (intro.), 767.25 (1m) (b), 767.25 (1m) (c), 767.25
8 (4m) (b), 767.25 (5), 767.25 (6) (intro.), 767.253, 767.254 (2) (intro.), 767.261
9 (intro.), 767.265 (1), 767.265 (3h), 767.265 (4), 767.265 (6) (a), 767.265 (6) (b),
10 767.265 (6) (c), 767.267 (1), 767.29 (1m) (intro.), 767.295 (2) (a) (intro.), 767.295
11 (2) (c), 767.303 (1), 767.303 (1), 767.32 (1) (b) 4., 767.32 (2m), 767.327 (4), 767.45
12 (7), 767.455 (6), 767.477 (1), 767.477 (2), 767.53 (intro.), 767.53 (1) (intro.),
13 802.12 (3) (d) 1., 802.12 (3) (d) 3., 808.075 (4) (d) 11. and 948.22 (7) (bm); *to*
14 *repeal and recreate* 767.51 (3), 767.51 (4) and 767.62 (4); and *to create*

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1 767.045 (1) (am), 767.045 (1) (e), 767.045 (4m), 767.115 (4), 767.24 (1m), 767.24
2 (2) (am), 767.24 (2) (c), 767.24 (4) (a) 3., 767.24 (5) (bm), 767.24 (5) (cm), 767.24
3 (5) (dm), 767.24 (5) (em), 767.24 (5) (fm), 767.24 (5) (jm), 767.242, 767.325 (2m),
4 767.325 (5m), 767.325 (6m), 767.327 (5m), 767.53 (3) and 767.62 (4m) of the
5 statutes; **relating to:** legal custody and physical placement determinations,
6 enforcement of physical placement orders, guardian ad litem appointments and
7 status hearings and providing a penalty.

Analysis by the Legislative Reference Bureau

Legal custody and physical placement

Current law specifies how a court is to determine legal custody of a minor child. In an annulment, divorce or legal separation, the court must base its decision on the best interest of the child after considering a number of specified factors, such as the wishes of the child and the parents, the interaction of the child with the parents, whether one party is likely to interfere with the other party's relationship with the child and whether there is evidence that a party has a significant problem with alcohol or drug abuse. The court may give sole legal custody to one of the parties or joint legal custody to both parties, but the court may give joint legal custody only if both parties agree to it or if one party requests it and the court finds all of the following: 1) that both parties are capable of performing parental duties and responsibilities and wish to have an active role in raising the child; 2) that no conditions exist that would substantially interfere with the exercise of joint legal custody; and 3) that the parties will be able to cooperate in the future decision making required. Evidence of abuse of the child or of interspousal battery or domestic abuse creates a rebuttable presumption that the parties will not be able to cooperate in the future decision making, but clear and convincing evidence that the abuse will not interfere with the parties' ability to cooperate rebuts the presumption.

For paternity actions, and actions for legal custody when the parents of the child have voluntarily acknowledged paternity by signing and filing a statement acknowledging paternity, current law provides that the mother shall have sole legal custody of the child unless the court orders otherwise.

Current law authorizes a judge or family court commissioner to make a temporary order giving legal custody while any action affecting the family is pending. In making a temporary order, the judge or family court commissioner must consider the same factors that must be considered for a final judgment. The judge or family court commissioner, however, may give joint legal custody without an agreement or the findings that are required for awarding joint legal custody in an annulment, divorce or legal separation.

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The bill changes how legal custody is determined in an annulment, divorce or legal separation. In addition, under the bill the requirements for determining legal custody in an annulment, divorce or legal separation also apply when the court is determining legal custody in a paternity action or in a custody action when the parents have voluntarily acknowledged paternity. Under the bill, the court must still base a decision on legal custody on the best interest of the child after considering the factors specified in current law, but the court must presume that joint legal custody is in the child's best interest. The court may give sole legal custody to one party only if both parties agree to it or if at least one party requests it and the court finds at least one of the following: 1) that one party is not capable of performing parental duties and responsibilities or does not wish to have an active role in raising the child; 2) that one or more conditions exist that would substantially interfere with the exercise of joint legal custody; or 3) that the parties will not be able to cooperate in the future decision making required for joint legal custody. Evidence of abuse of the child or of interspousal battery or domestic abuse still creates a rebuttable presumption that the parties will not be able to cooperate in the future decision making, but the bill removes the language specifying that the presumption may be rebutted by clear and convincing evidence that the abuse will not interfere with the parties' ability to cooperate, leaving it to the judge to determine what evidence rebuts the presumption. In addition, the bill provides that the court may not give sole legal custody to a party who unreasonably refuses to cooperate with the other party.

For temporary orders for legal custody, the bill still requires a judge or family court commissioner to consider the same factors that the court must consider in making a final order, but, in addition, the judge or family court commissioner must determine temporary custody in a manner that is consistent with the requirements for making a final determination. The judge or family court commissioner, however, may order sole custody without an agreement or the findings required for ordering sole custody in a final order.

Current law specifies how a court is to determine physical placement of a minor child in an annulment, divorce or legal separation. If the court orders sole or joint legal custody in the annulment, divorce or legal separation, the court must allocate periods of physical placement between the parties. In determining the allocation, the court must consider the same specified factors that the court considers for a legal custody determination. Only if the court finds that physical placement with a parent would endanger the child's physical, mental or emotional health may the court deny a parent periods of physical placement. For paternity actions, and actions for physical placement when the parents of the child have voluntarily acknowledged paternity, current law provides only that the judgment or order may contain a provision concerning periods of physical placement. Current law does not specify how physical placement in these situations is to be determined.

The bill modifies how physical placement is awarded in an annulment, divorce or legal separation. In addition, just as for legal custody determinations, the bill expands the requirements related to determining physical placement in annulments, divorces and legal separations to paternity actions and physical placement actions when the parents have voluntarily acknowledged paternity.

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Under the bill, the court is still required to allocate periods of physical placement between the parties and to consider the specified factors. The basis for denying a parent periods of physical placement remains the same. The bill requires the court to set a placement schedule that allows the child to have regularly occurring, meaningful periods of physical placement with each parent and that maximizes the amount of time that a child may spend with each parent. However, the court must presume that any placement proposal to which the parties have voluntarily agreed is in the child's best interest.

Just as for temporary orders for legal custody in actions affecting the family, the bill provides that temporary orders for physical placement in actions affecting the family must be determined in a manner that is consistent with the requirements for making a final determination on physical placement.

As discussed briefly before, among the specified factors in current law that the court must consider in making legal custody and physical placement determinations are the wishes of the child and the parents, the interaction of the child with the parents, the child's adjustment to the community and school, the mental and physical health of the child and the parents, the availability of child care services, whether one party is likely to interfere with the other party's relationship with the child, whether there is evidence of abuse and whether a party has a significant problem with alcohol or drug abuse. The bill adds the following factors for the court to consider: 1) the age of the child and the child's developmental and educational needs at different ages; 2) the cooperation and communication between the parties and whether a party unreasonably refuses to cooperate or communicate; 3) the amount and quality of time that each parent has spent with the child in the past and any life-style changes that a parent proposes to make to be able to spend time with the child in the future; 4) the right of the child to spend the same amount of time or substantial amounts of time with each parent; and 5) the need for regularly occurring and meaningful periods of physical placement to provide predictability and stability for the child.

The bill adds a requirement that, if legal custody or physical placement is contested in an annulment, divorce, legal separation, paternity action or action for physical placement or legal custody when the parents have voluntarily acknowledged paternity, a party seeking legal custody or physical placement must file a parenting plan with the court before any pretrial conference. A party who is required to file a parenting plan and who does not do so on time waives the right to object to a parenting plan filed by the other party. The bill specifies what information a parenting plan must contain, such as who will provide child care, where the child will go to school, the doctor or health care facility that will provide medical care for the child, what the child's religious affiliation will be, how the holidays will be divided between the parents and how the child will be transferred between the parties for physical placement exchanges if there is evidence of spousal abuse.

Enforcement of physical placement

Under current law, a person who violates a physical placement order may be found in contempt of court for violating a court order. The penalties for contempt of court include imprisonment, a forfeiture of up to \$2,000 for each day that the

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contempt of court continues and an order designed to ensure compliance with the prior court order. The bill establishes an additional mechanism for the enforcement of physical placement orders.

The bill provides that a parent who has been awarded periods of physical placement may file a petition to enforce the award of physical placement if any of the following applies: 1) the parent has had one or more periods of physical placement denied by the other parent; 2) the parent has had one or more periods of physical placement substantially interfered with by the other parent; or 3) the parent has incurred a financial loss or expenses as a result of the other parent's intentional failure to exercise one or more periods of physical placement under an order allocating specific times for the exercise of periods of physical placement. The petition must be served on the other parent (the respondent), who may respond to the petition either in writing, before or at the hearing, or orally at the hearing.

The bill requires a judge or family court commissioner to accept any legible petition and to hold a hearing on the petition no later than 30 days after the petition has been served, unless the time is extended by agreement of the parties or for other reasons. A judge or family court commissioner may, on his or her own motion or the motion of any party, order that a guardian ad litem be appointed for the child prior to the hearing.

At the conclusion of the hearing, if the judge or family court commissioner finds that the respondent has intentionally and unreasonably denied or interfered with one or more of the petitioner's periods of physical placement, the judge or family court commissioner is required to issue an order granting additional periods of physical placement to replace those denied or interfered with and to award the petitioner a reasonable amount for the cost of maintaining the action and for attorney fees. In addition, the judge or family court commissioner may do any of the following: 1) issue an order specifying times for the exercise of periods of physical placement if the original order or judgment does not specify times; 2) find the respondent in contempt of court; or 3) grant an injunction ordering the respondent to strictly comply with the judgment or order relating to the award of physical placement. The judge or family court commissioner may not modify the original order of legal custody or physical placement in an action to enforce a physical placement order.

If the judge or family court commissioner finds that the petitioner has incurred a financial loss or expenses because the respondent has intentionally and unreasonably failed to exercise one or more periods of physical placement under an order allocating specific times for the exercise of periods of physical placement without adequate notice to the petitioner, the judge or family court commissioner may issue an order requiring the respondent to pay a sum of money sufficient to compensate the petitioner for the financial loss or expenses.

Under the bill, any injunction issued ordering the respondent to strictly comply with the judgment or order relating to the award of physical placement is effective for not more than two years. The court or family court commissioner, upon request by the petitioner, must order the sheriff to assist the petitioner to execute or serve the injunction. Within 24 hours after the petitioner's request, the clerk of court must send a copy of the injunction to the sheriff or to any other local law enforcement agency that is the central repository for orders and that has jurisdiction over the

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respondent's residence. If the respondent resides outside of Wisconsin, the clerk of court must send a copy of the injunction to the sheriff of the county in which the court is located. The sheriff must make available to other law enforcement agencies information on the existence and status of any injunction issued. The bill also provides that a law enforcement officer may arrest a person and take him or her into custody if the petitioner presents a law enforcement officer with a copy of an injunction and the law enforcement officer has probable cause to believe that the person against whom the injunction is issued has violated the injunction. A violation of an injunction is punishable by a fine of not more than \$10,000 or imprisonment for not more than two years or both.

The bill also authorizes a court, in an action to modify an order of custody or physical placement, to modify periods of physical placement if the court finds that a parent has, without giving reasonable advance notice to the other parent, repeatedly and unreasonably failed to exercise periods of physical placement awarded under an order of physical placement that allocates specific times for the exercise of periods of physical placement.

Guardian ad litem

Under current law, the court is required to appoint a guardian ad litem to advocate for the best interests of a minor child in an action affecting the family if the court has reason for special concern as to the welfare of a minor child or if the legal custody or physical placement of a child is contested. The bill provides that the court is not required to appoint a guardian ad litem if the legal custody or physical placement of a child is contested in an action affecting the family to modify legal custody or physical placement if the modification sought would not substantially alter the amount of time that a parent could spend with his or her child and if the court determines either that the facts or circumstances make the likely determination so clear that the appointment of a guardian ad litem would not assist the court or that a party seeks the appointment of a guardian ad litem solely for a tactical purpose or for delay.

The bill establishes the right of a party to request a status hearing on the actions taken and work performed thus far in a matter by a guardian ad litem. A party may request a status hearing at any time after 120 days after a guardian ad litem has been appointed, and again at any time after 120 days after a status hearing has been held in the matter.

Under the bill, the joint legislative council is requested to establish a committee to study reforming the guardian ad litem system in actions affecting the family and to petition the supreme court to consider rules for the reform of the system on the basis of the committee's recommendations.

Miscellaneous changes to paternity provisions

Current law provides generally that an order determining paternity, or an order in an action concerning custody, child support or physical placement rights when the parents of a child have voluntarily acknowledged paternity, may contain any provision directed against the appropriate party concerning such issues as custody or guardianship of the child, child support, physical placement rights and any other matter in the best interest of the child. The bill specifically itemizes what

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provisions these orders must contain by expanding and elaborating upon the provisions contained in current law.

Because many of the provisions concerning child support ordered in divorce actions, paternity actions and support actions when the parents have voluntarily acknowledged paternity are identical and duplicative, the bill deletes the redundant provisions and expands the applicability of the child support provisions for divorce actions to paternity actions and support actions when the parents have voluntarily acknowledged paternity.

Under current law, when child support is ordered in a paternity action or in a support action when the parents of a child have voluntarily acknowledged paternity, the father's liability for support is limited to the period after the birth of the child. Under the bill, a party's liability for support in a paternity action or support action when the parents have voluntarily acknowledged paternity is limited to the period after the day on which the paternity or support action is commenced unless the party seeking child support shows that he or she was induced to delay the commencement of the action and that he or she did not unreasonably delay commencement after the inducement ceased to operate. In no event, however, may support be ordered for any period before the birth of the child.

Under current law, if in a pending paternity action genetic test results show that the alleged father is not excluded and that his probability of parentage is 99% or higher, the court must make a temporary order for child support. The bill requires the court to also make temporary orders for custody and physical placement if the probability of the alleged father's paternity is 99% or higher.

Under current law, records of any pending or past paternity proceedings are closed except to a list of specified persons involved with the proceedings. The bill changes this provision so that records of any pending paternity proceedings are closed except to the list of specified persons, while the records of any past paternity proceedings are open for inspection.

Miscellaneous changes

Under current law, a judge or family court commissioner may order the parties in an action affecting the family in which a minor child is involved to attend an educational program on the effects on a child of a dissolution of the marriage and may condition the granting of the final order on attendance. Also under current law, in an action to determine the paternity of a child, a judge or family court commissioner may order either or both of the parties to attend a program that provides training in parenting or coparenting skills. The bill authorizes a judge or family court commissioner to order the parties in a divorce or paternity action to attend a class that is approved by the judge or family court commissioner and that addresses such issues as child development, family dynamics, how parental separation affects a child's development and what parents can do to make raising a child in a separated situation less stressful for the child. Although the judge or family court commissioner may not condition the granting of the final order in the action on attendance at such a class, the judge or family court commissioner may refuse to hear a custody or physical placement motion of a party who refuses to attend a class that is ordered.

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Current law specifies the situations under which a legal custody or physical placement order may be modified. Generally, such an order may not be modified before two years after the initial order is granted unless the modification is necessary because the current custodial conditions are physically or emotionally harmful to the child. After two years after the initial order is granted, such an order may be modified if there has been a substantial change in circumstances and the modification is in the best interest of the child. The bill does not change the circumstances under which a legal custody or physical placement order may be modified. The bill provides, however, that in any action to modify a legal custody or physical placement order the court must consider those specified factors that the court considers when making an initial legal custody or physical placement order and that the court must make its modification determination in a manner consistent with the requirements for making an initial legal custody or physical placement determination. In addition, the court may require the party seeking the modification to file a parenting plan before any hearing is held.

Under current law, interest on child support arrearages or family support arrearages accrues at the rate of 1.5% per month. The bill changes the rate at which interest accrues on child or family support arrearages to 1% per month.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 20.921 (2) (a) of the statutes is amended to read:

2 20.921 **(2)** (a) Whenever it becomes necessary in pursuance of any federal or
3 state law or court-ordered assignment of income under s. 46.10 (14) (e), 301.12 (14)
4 (e), 767.23 (1) (L), 767.25 (4m) (c), or 767.265, ~~767.51 (3m) (c) or 767.62 (4) (b) 3.~~ to
5 make deductions from the salaries of state officers or employes or employes of the
6 University of Wisconsin Hospitals and Clinics Authority, the state agency or
7 authority by which the officers or employes are employed is responsible for making
8 such deductions and paying over the total thereof for the purposes provided by the
9 laws or orders under which they were made.

10 **SECTION 2.** 66.184 of the statutes is amended to read:

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1 **66.184 Self-insured health plans.** If a city, including a 1st class city, or a
2 village provides health care benefits under its home rule power, or if a town provides
3 health care benefits, to its officers and employes on a self-insured basis, the
4 self-insured plan shall comply with ss. 49.493 (3) (d), 631.89, 631.90, 631.93 (2),
5 632.746 (10) (a) 2. and (b) 2., 632.747 (3), 632.85, 632.853, 632.855, 632.87 (4) and (5),
6 632.895 (9) to (13), 632.896, and 767.25 (4m) (d), ~~767.51 (3m) (d) and 767.62 (4) (b)~~
7 4.

8 **SECTION 3.** 102.27 (2) (a) of the statutes is amended to read:

9 102.27 **(2)** (a) A benefit under this chapter is assignable under s. 46.10 (14) (e),
10 301.12 (14) (e), 767.23 (1) (L), 767.25 (4m) (c), or 767.265 (1), ~~767.51 (3m) (c) or 767.62~~
11 ~~(4) (b)~~ 3.

12 **SECTION 4.** 120.13 (2) (g) of the statutes is amended to read:

13 120.13 **(2)** (g) Every self-insured plan under par. (b) shall comply with ss.
14 49.493 (3) (d), 631.89, 631.90, 631.93 (2), 632.746 (10) (a) 2. and (b) 2., 632.747 (3),
15 632.85, 632.853, 632.855, 632.87 (4) and (5), 632.895 (9) to (13), 632.896, and 767.25
16 (4m) (d), ~~767.51 (3m) (d) and 767.62 (4) (b)~~ 4.

17 **SECTION 5.** 565.30 (5m) of the statutes is amended to read:

18 565.30 **(5m)** WITHHOLDING OF CHILD SUPPORT, SPOUSAL SUPPORT, MAINTENANCE OR
19 FAMILY SUPPORT. The administrator shall report to the department of workforce
20 development the name, address and social security number of each winner of a
21 lottery prize that is payable in instalments. Upon receipt of the report, the
22 department of workforce development shall certify to the administrator whether any
23 payee named in the report is obligated to provide child support, spousal support,
24 maintenance or family support under s. 767.02 (1) (f) or (g), 767.10, 767.23, 767.25,
25 767.26, 767.261, 767.458 (3), 767.465 (2m), 767.477, 767.51 (3), 767.62 (4) ~~(a)~~ or

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1 948.22 (7) or ch. 769 and the amount required to be withheld from the lottery prize
2 under s. 767.265. The administrator shall withhold the certified amount from each
3 payment made to the winner and remit the certified amount to the department of
4 workforce development.

5 **SECTION 6.** 632.897 (10) (a) 3. of the statutes is amended to read:

6 632.897 **(10)** (a) 3. The fact that the group member or insured does not claim
7 the child as an exemption for federal income tax purposes under 26 USC 151 (c) (1)
8 (B), or as an exemption for state income tax purposes under s. 71.07 (8) (b) or under
9 the laws of another state, if a court order under s. 767.25 (4m), ~~767.51 (3m) or 767.62~~
10 ~~(4) (b)~~ or the laws of another state assigns responsibility for the child's health care
11 expenses to the group member or insured.

12 **SECTION 7.** 767.045 (1) (a) 2. of the statutes is amended to read:

13 767.045 **(1)** (a) 2. The Except as provided in par. (am), the legal custody or
14 physical placement of the child is contested.

15 **SECTION 8.** 767.045 (1) (am) of the statutes is created to read:

16 767.045 **(1)** (am) The court is not required to appoint a guardian ad litem under
17 par. (a) 2. if all of the following apply:

18 1. Legal custody or physical placement is contested in an action to modify legal
19 custody or physical placement under s. 767.325 or 767.327.

20 2. The modification sought would not substantially alter the amount of time
21 that a parent may spend with his or her child.

22 3. The court determines any of the following:

23 a. That the appointment of a guardian ad litem will not assist the court in the
24 determination regarding legal custody or physical placement because the facts or
25 circumstances of the case make the likely determination clear.

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1 b. That a party seeks the appointment of a guardian ad litem solely for a tactical
2 purpose, or for the sole purpose of delay, and not for a purpose that is in the best
3 interest of the child.

4 **SECTION 9.** 767.045 (1) (e) of the statutes is created to read:

5 767.045 (1) (e) Nothing in this subsection prohibits the court from making a
6 temporary order under s. 767.23 that concerns the child before a guardian ad litem
7 is appointed or before the guardian ad litem has made a recommendation to the
8 court, if the court determines that the temporary order is in the best interest of the
9 child.

10 **SECTION 10.** 767.045 (4m) of the statutes is created to read:

11 767.045 (4m) STATUS HEARING. (a) Subject to par. (b), at any time after 120 days
12 after a guardian ad litem is appointed under this section, a party may request that
13 the court schedule a status hearing related to the actions taken and work performed
14 by the guardian ad litem in the matter.

15 (b) A party may, not sooner than 120 days after a status hearing under this
16 subsection is held, request that the court schedule another status hearing on the
17 actions taken and work performed by the guardian ad litem in the matter.

18 **SECTION 11.** 767.078 (1) (a) 1. of the statutes is amended to read:

19 767.078 (1) (a) 1. Is an action for modification of a child support order under
20 s. 767.32 or an action in which an order for child support is required under s. 767.25
21 (1), 767.51 (3) or 767.62 (4) (a).

22 **SECTION 12.** 767.078 (2) of the statutes is amended to read:

23 767.078 (2) Subsection (1) does not limit the authority of a court to issue an
24 order, other than an order under sub. (1), regarding employment of a parent in an

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1 action for modification of a child support order under s. 767.32 or an action in which
2 an order for child support is required under s. 767.25 (1), 767.51 (3) or 767.62 (4) (a).

3 **SECTION 13.** 767.11 (12) (b) of the statutes is amended to read:

4 767.11 (12) (b) If after mediation under this section the parties do not reach
5 agreement on legal custody or periods of physical placement, the parties or the
6 mediator shall so notify the court. ~~The Except as provided in s. 767.045 (1) (am), the~~
7 ~~court shall promptly appoint a guardian ad litem under s. 767.045. After the~~
8 ~~appointment Regardless of whether the court appoints a guardian ad litem,~~ the court
9 shall, if appropriate, refer the matter for a legal custody or physical placement study
10 under sub. (14). If the parties come to agreement on legal custody or physical
11 placement after the matter has been referred for a study, the study shall be
12 terminated. The parties may return to mediation at any time before any trial of or
13 final hearing on legal custody or periods of physical placement. If the parties return
14 to mediation, the county shall collect any applicable fee under s. 814.615.

15 **SECTION 14.** 767.115 (title) of the statutes is amended to read:

16 **767.115 (title) Educational program in action programs and classes in**
17 **actions affecting the family.**

18 **SECTION 15.** 767.115 (4) of the statutes is created to read:

19 767.115 (4) (a) At any time during the pendency of a divorce or paternity action,
20 the court or family court commissioner may order the parties to attend a class that
21 is approved by the court or family court commissioner and that addresses such issues
22 as child development, family dynamics, how parental separation affects a child's
23 development and what parents can do to make raising a child in a separated
24 situation less stressful for the child.

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1 (b) The court or family court commissioner may not require the parties to
2 attend a class under this subsection as a condition to the granting of the final
3 judgment or order in the divorce or paternity action, however, the court or family
4 court commissioner may refuse to hear a custody or physical placement motion of a
5 party who refuses to attend a class ordered under this subsection.

6 (c) 1. Except as provided in subd. 2., the parties shall be responsible for any cost
7 of attending the class.

8 2. If the court or family court commissioner finds that a party is indigent, any
9 costs that would be the responsibility of that party shall be paid by the county.

10 **SECTION 16.** 767.23 (1) (a) of the statutes is amended to read:

11 767.23 (1) (a) ~~Upon~~ Subject to s. 767.477, upon request of one party, granting
12 legal custody of the minor children to the parties jointly, to one party solely or to a
13 relative or agency specified under s. 767.24 (3). ~~The, in a manner consistent with s.~~
14 767.24, except that the court or family court commissioner may order ~~joint~~ sole legal
15 custody without the agreement of the other party and without the findings required
16 under s. 767.24 (2) (b) 2. This order may not have a binding effect on a final custody
17 determination.

18 **SECTION 17.** 767.23 (1) (am) of the statutes is amended to read:

19 767.23 (1) (am) ~~Upon~~ Subject to s. 767.477, upon the request of a party,
20 granting periods of physical placement to a party in a manner consistent with s.
21 767.24. The court or family court commissioner shall make a determination under
22 this paragraph within 30 days after the request for a temporary order regarding
23 periods of physical placement is filed.

24 **SECTION 18.** 767.23 (1) (c) of the statutes is amended to read:

ASSEMBLY BILL 445**SECTION 18**

1 767.23 (1) (c) ~~Requiring~~ Subject to s. 767.477, requiring either party or both
2 parties to make payments for the support of minor children, which payment amounts
3 may be expressed as a percentage of parental income or as a fixed sum, or as a
4 combination of both in the alternative by requiring payment of the greater or lesser
5 of either a percentage of parental income or a fixed sum.

6 **SECTION 19.** 767.23 (1) (k) of the statutes is amended to read:

7 767.23 (1) (k) ~~Requiring~~ Subject to s. 767.477, requiring either party or both
8 parties to maintain minor children as beneficiaries on a health insurance policy or
9 plan.

10 **SECTION 20.** 767.23 (1n) of the statutes is amended to read:

11 767.23 (1n) Before making any temporary order under sub. (1), the court or
12 family court commissioner shall consider those factors ~~which~~ that the court is
13 required by this chapter to consider before entering a final judgment on the same
14 subject matter. In making a determination under sub. (1) (a) or (am), the court or
15 family court commissioner shall consider the factors under s. 767.24 (5). If the court
16 or family court commissioner makes a temporary child support order that deviates
17 from the amount of support that would be required by using the percentage standard
18 established by the department under s. 49.22 (9), the court or family court
19 commissioner shall comply with the requirements of s. 767.25 (1n). A temporary
20 order under sub. (1) may be based upon the written stipulation of the parties, subject
21 to the approval of the court or the family court commissioner. Temporary orders
22 made by the family court commissioner may be reviewed by the court as provided in
23 s. 767.13 (6).

24 **SECTION 21.** 767.24 (1) of the statutes is amended to read:

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1 767.24 **(1)** GENERAL PROVISIONS. In rendering a judgment of annulment, divorce
2 or, legal separation or paternity, or in rendering a judgment in an action under s.
3 767.02 (1) (e) or 767.62 (3), the court shall make such provisions as it deems just and
4 reasonable concerning the legal custody and physical placement of any minor child
5 of the parties, as provided in this section.

6 **SECTION 22.** 767.24 (1m) of the statutes is created to read:

7 767.24 **(1m)** PARENTING PLAN. In an action for annulment, divorce or legal
8 separation, an action to determine paternity or an action under s. 767.02 (1) (e) or
9 767.62 (3) in which legal custody or physical placement is contested, a party seeking
10 sole or joint legal custody or periods of physical placement shall file a parenting plan
11 with the court before any pretrial conference. A party required to file a parenting
12 plan under this subsection who does not timely file a parenting plan waives the right
13 to object to the other party's parenting plan. A parenting plan shall provide
14 information about the following questions:

15 (a) What legal custody or physical placement the parent is seeking.

16 (b) Where the parent lives currently and where the parent intends to live
17 during the next 2 years. If there is evidence that the other parent engaged in
18 interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse,
19 as defined in s. 813.12 (1) (a), with respect to the parent providing the parenting plan,
20 the parent providing the parenting plan is not required to disclose the specific
21 address but only a general description of where he or she currently lives and intends
22 to live during the next 2 years.

23 (c) Where the parent works and the hours of employment. If there is evidence
24 that the other parent engaged in interspousal battery, as described under s. 940.19
25 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (a), with respect to the

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1 parent providing the parenting plan, the parent providing the parenting plan is not
2 required to disclose the specific address but only a general description of where he
3 or she works.

4 (d) Who will provide any necessary child care when the parent cannot and who
5 will pay for the child care.

6 (e) Where the child will go to school.

7 (f) What doctor or health care facility will provide medical care for the child.

8 (g) How the child's medical expenses will be paid.

9 (h) What the child's religious commitment will be, if any.

10 (i) Who will make decisions about the child's education, medical care, choice of
11 child care providers and extracurricular activities.

12 (j) How the holidays will be divided.

13 (k) What the child's summer schedule will be.

14 (L) Whether and how the child will be able to contact the other parent when
15 the child has physical placement with the parent providing the parenting plan.

16 (m) How the parent proposes to resolve disagreements related to matters over
17 which the court orders joint decision making.

18 (n) What child support, family support, maintenance or other income transfer
19 there will be.

20 (o) If there is evidence that either party engaged in interspousal battery, as
21 described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12

22 (1) (a), with respect to the other party, how the child will be transferred between the
23 parties for the exercise of physical placement to ensure the safety of the child and the
24 parties.

25 **SECTION 23.** 767.24 (2) (a) of the statutes is amended to read:

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1 767.24 **(2)** (a) Subject to ~~par. (b)~~ pars. (am), (b) and (c), based on the best interest
2 of the child and after considering the factors under sub. (5), the court may give joint
3 legal custody or sole legal custody of a minor child.

4 **SECTION 24.** 767.24 (2) (am) of the statutes is created to read:

5 767.24 **(2)** (am) The court shall presume that joint legal custody is in the best
6 interest of the child.

7 **SECTION 25.** 767.24 (2) (b) of the statutes is amended to read:

8 767.24 **(2)** (b) The court may give ~~joint~~ sole legal custody only if it finds that
9 doing so is in the child's best interest and that either of the following applies:

10 1. Both parties agree to ~~joint~~ sole legal custody with the same party.

11 2. The parties do not agree to ~~joint~~ sole legal custody with the same party, but
12 at least one party requests ~~joint~~ sole legal custody and the court specifically finds all
13 any of the following:

14 a. ~~Both parties are~~ One party is not capable of performing parental duties and
15 responsibilities and or does not wish to have an active role in raising the child.

16 b. ~~No~~ One or more conditions exist at that time ~~which~~ that would substantially
17 interfere with the exercise of joint legal custody.

18 c. The parties will not be able to cooperate in the future decision making
19 required under an award of joint legal custody. In making this finding the court shall
20 consider, along with any other pertinent items, any reasons offered by a party
21 objecting to joint legal custody. Evidence that either party engaged in abuse, as
22 defined in s. 813.122 (1) (a), of the child, as defined in s. 48.02 (2), or evidence of
23 interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse,
24 as defined in s. 813.12 (1) (a), creates a rebuttable presumption that the parties will
25 not be able to cooperate in the future decision making required. ~~This presumption~~

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1 ~~may be rebutted by clear and convincing evidence that the abuse will not interfere~~
2 ~~with the parties' ability to cooperate in the future decision making required.~~

3 **SECTION 26.** 767.24 (2) (c) of the statutes is created to read:

4 767.24 (2) (c) The court may not give sole legal custody to a parent who refuses
5 to cooperate with the other parent if the court finds that the refusal to cooperate is
6 unreasonable.

7 **SECTION 27.** 767.24 (4) (a) of the statutes is renumbered 767.24 (4) (a) 1. and
8 amended to read:

9 767.24 (4) (a) 1. Except as provided under par. (b), if the court orders sole or
10 joint legal custody under sub. (2), the court shall allocate periods of physical
11 placement between the parties in accordance with this subsection.

12 2. In determining the allocation of periods of physical placement, the court
13 shall consider each case on the basis of the factors in sub. (5). The court shall set a
14 placement schedule that allows the child to have regularly occurring, meaningful
15 periods of physical placement with each parent and that maximizes the amount of
16 time the child may spend with each parent, taking into account geographic
17 separation and accommodations for different households.

18 **SECTION 28.** 767.24 (4) (a) 3. of the statutes is created to read:

19 767.24 (4) (a) 3. Notwithstanding subd. 2. and sub. (5), the court shall presume
20 that any proposal submitted to the court with respect to periods of physical
21 placement that has been voluntarily agreed to by the parties is in the child's best
22 interest.

23 **SECTION 29.** 767.24 (4) (c) of the statutes is amended to read:

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1 767.24 (4) (c) No court may deny periods of physical placement for failure to
2 meet, or grant periods of physical placement for meeting, any financial obligation to
3 the child or, if the parties were married, to the former spouse.

4 **SECTION 30.** 767.24 (5) (intro.) of the statutes is amended to read:

5 767.24 (5) FACTORS IN CUSTODY AND PHYSICAL PLACEMENT DETERMINATIONS.
6 (intro.) In determining legal custody and periods of physical placement, the court
7 shall consider all facts relevant to the best interest of the child. The court may not
8 prefer one parent or potential custodian over the other on the basis of the sex or race
9 of the parent or potential custodian. ~~The court shall consider reports of appropriate~~
10 ~~professionals if admitted into evidence when legal custody or physical placement is~~
11 ~~contested.~~ The court shall consider the following factors in making its
12 determination:

13 **SECTION 31.** 767.24 (5) (a) of the statutes is amended to read:

14 767.24 (5) (a) The wishes of the child's parent or parents, as shown by any
15 stipulation between the parties, any proposed parenting plan or any legal custody
16 or physical placement proposal submitted to the court at trial.

17 **SECTION 32.** 767.24 (5) (bm) of the statutes is created to read:

18 767.24 (5) (bm) The right of the child to spend the same amount of time or
19 substantial periods of time with each parent.

20 **SECTION 33.** 767.24 (5) (cm) of the statutes is created to read:

21 767.24 (5) (cm) The amount and quality of time that each parent roles has spent
22 with the child in the past, any necessary changes to the parents' custodial roles and
23 any reasonable life-style changes that a parent proposes to make to be able to spend
24 time with the child in the future.

25 **SECTION 34.** 767.24 (5) (dm) of the statutes is created to read:

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1 767.24 (5) (dm) The age of the child and the child’s developmental and
2 educational needs at different ages.

3 **SECTION 35.** 767.24 (5) (em) of the statutes is created to read:

4 767.24 (5) (em) The need for regularly occurring and meaningful periods of
5 physical placement to provide predictability and stability for the child.

6 **SECTION 36.** 767.24 (5) (fm) of the statutes is created to read:

7 767.24 (5) (fm) The cooperation and communication between the parties and
8 whether either party unreasonably refuses to cooperate or communicate with the
9 other party.

10 **SECTION 37.** 767.24 (5) (g) of the statutes is amended to read:

11 767.24 (5) (g) Whether each party can support the other party’s relationship
12 with the child, including encouraging and facilitating frequent and continuing
13 contact with the child, or whether one party is likely to unreasonably interfere with
14 the child’s continuing relationship with the other party.

15 **SECTION 38.** 767.24 (5) (jm) of the statutes is created to read:

16 767.24 (5) (jm) The reports of appropriate professionals if admitted into
17 evidence.

18 **SECTION 39.** 767.242 of the statutes is created to read:

19 **767.242 Enforcement of physical placement orders. (1) DEFINITIONS.** In
20 this section:

21 (a) “Petitioner” means the parent filing a petition under this section, regardless
22 of whether that parent was the petitioner in the action in which periods of physical
23 placement were awarded under s. 767.24.

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1 (b) “Respondent” means the parent upon whom a petition under this section is
2 served, regardless of whether that parent was the respondent in the action in which
3 periods of physical placement were awarded under s. 767.24.

4 **(2) WHO MAY FILE.** A parent who has been awarded periods of physical
5 placement under s. 767.24 may file a petition under sub. (3) if any of the following
6 applies:

7 (a) The parent has had one or more periods of physical placement denied by the
8 other parent.

9 (b) The parent has had one or more periods of physical placement substantially
10 interfered with by the other parent.

11 (c) The parent has incurred a financial loss or expenses as a result of the other
12 parent’s intentional failure to exercise one or more periods of physical placement
13 under an order allocating specific times for the exercise of periods of physical
14 placement.

15 **(3) PETITION.** (a) The petition shall allege facts sufficient to show the following:

16 1. The name of the petitioner and that the petitioner has been awarded periods
17 of physical placement.

18 2. The name of the respondent.

19 3. That the criteria in sub. (2) apply.

20 (b) The petition shall request the imposition of a remedy or any combination
21 of remedies under sub. (5) (b) and (c). This paragraph does not prohibit a judge or
22 family court commissioner from imposing a remedy under sub. (5) (b) or (c) if the
23 remedy was not requested in the petition.

24 (c) A judge or family court commissioner shall accept any legible petition for
25 an order under this section.

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1 (d) The petition shall be filed under the principal action under which the
2 periods of physical placement were awarded.

3 (e) A petition under this section is a motion for remedial sanction for purposes
4 of s. 785.03 (1) (a).

5 **(4) SERVICE ON RESPONDENT; RESPONSE.** Upon the filing of a petition under sub.
6 (3), the petitioner shall serve a copy of the petition upon the respondent by personal
7 service in the same manner as a summons is served under s. 801.11. The respondent
8 may respond to the petition either in writing before or at the hearing under sub. (5)
9 (a) or orally at that hearing.

10 **(5) HEARING; REMEDIES.** (a) A judge or family court commissioner shall hold a
11 hearing on the petition no later than 30 days after the petition has been served,
12 unless the time is extended by mutual agreement of the parties or upon the motion
13 of a guardian ad litem and the approval of the judge or family court commissioner.
14 The judge or family court commissioner may, on his or her own motion or the motion
15 of any party, order that a guardian ad litem be appointed for the child prior to the
16 hearing.

17 (b) If, at the conclusion of the hearing, the judge or family court commissioner
18 finds that the respondent has intentionally and unreasonably denied the petitioner
19 one or more periods of physical placement or that the respondent has intentionally
20 and unreasonably interfered with one or more of the petitioner's periods of physical
21 placement, the court or family court commissioner:

22 1. Shall do all of the following:

23 a. Issue an order granting additional periods of physical placement to replace
24 those denied or interfered with.

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1 b. Award the petitioner a reasonable amount for the cost of maintaining an
2 action under this section and for attorney fees.

3 2. May do one or more of the following:

4 a. If the underlying order or judgment relating to periods of physical placement
5 does not provide for specific times for the exercise of periods of physical placement,
6 issue an order specifying the times for the exercise of periods of physical placement.

7 b. Find the respondent in contempt of court under ch. 785.

8 c. Grant an injunction ordering the respondent to strictly comply with the
9 judgment or order relating to the award of physical placement. In determining
10 whether to issue an injunction, the judge or family court commissioner shall consider
11 whether alternative remedies requested by the petitioner would be as effective in
12 obtaining compliance with the order or judgment relating to physical placement.

13 (c) If, at the conclusion of the hearing, the judge or family court commissioner
14 finds that the petitioner has incurred a financial loss or expenses as a result of the
15 respondent's failure, intentionally and unreasonably and without adequate notice to
16 the petitioner, to exercise one or more periods of physical placement under an order
17 allocating specific times for the exercise of periods of physical placement, the judge
18 or family court commissioner may issue an order requiring the respondent to pay to
19 the petitioner a sum of money sufficient to compensate the petitioner for the financial
20 loss or expenses.

21 (d) Except as provided in par. (b) 1. a. and 2. a., the judge or family court
22 commissioner may not modify an order of legal custody or physical placement in an
23 action under this section.

24 (e) An injunction issued under par. (b) 2. c. is effective according to its terms,
25 for the period of time that the petitioner requests, but not more than 2 years.

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1 **(6) ENFORCEMENT ASSISTANCE.** (a) If an injunction is issued under sub. (5) (b)
2 2. c., upon request by the petitioner the judge or family court commissioner shall
3 order the sheriff to assist the petitioner in executing or serving the injunction.

4 (b) Within 24 hours after a request by the petitioner, the clerk of the circuit
5 court shall send a copy of an injunction issued under sub. (5) (b) 2. c. to the sheriff
6 or to any other local law enforcement agency that is the central repository for orders
7 and that has jurisdiction over the respondent's residence. If the respondent does not
8 reside in this state, the clerk shall send a copy of the injunction to the sheriff of the
9 county in which the circuit court is located.

10 (c) The sheriff or other appropriate local law enforcement agency under par. (b)
11 shall make available to other law enforcement agencies, through a verification
12 system, information on the existence and status of any injunction issued under sub.
13 (5) (b) 2. c. The information need not be maintained after the injunction is no longer
14 in effect.

15 **(7) ARREST.** A law enforcement officer may arrest and take a person into custody
16 if all of the following apply:

17 (a) A petitioner under this section presents the law enforcement officer with a
18 copy of an injunction issued under sub. (5) (b) 2. c. or the law enforcement officer
19 determines that such an injunction exists through communication with appropriate
20 authorities.

21 (b) The law enforcement officer has probable cause to believe that the person
22 has violated the injunction issued under sub. (5) (b) 2. c.

23 **(8) PENALTY.** Whoever intentionally violates an injunction issued under sub.
24 (5) (b) 2. c. may be fined not more than \$10,000 or imprisoned for not more than 2
25 years or both.

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1 **SECTION 40.** 767.25 (1) (intro.) of the statutes is amended to read:

2 767.25 **(1)** (intro.) Whenever the court approves a stipulation for child support
3 under s. 767.10, enters a judgment of annulment, divorce or legal separation, or
4 enters an order or a judgment in a paternity action or in an action under s. 767.02
5 (1) (f) or (j) ~~or~~ 767.08 or 767.62 (3), the court shall do all of the following:

6 **SECTION 41.** 767.25 (1m) (b) of the statutes is amended to read:

7 767.25 **(1m)** (b) The financial resources of both parents ~~as determined under~~
8 ~~s. 767.255.~~

9 **SECTION 42.** 767.25 (1m) (c) of the statutes is amended to read:

10 767.25 **(1m)** (c) ~~The~~ If the parties were married, the standard of living the child
11 would have enjoyed had the marriage not ended in annulment, divorce or legal
12 separation.

13 **SECTION 43.** 767.25 (4m) (b) of the statutes is amended to read:

14 767.25 **(4m)** (b) In addition to ordering child support for a child under sub. (1),
15 the court shall specifically assign responsibility for and direct the manner of
16 payment of the child's health care expenses. In assigning responsibility for a child's
17 health care expenses, the court shall consider whether a child is covered under a
18 parent's health insurance policy or plan at the time the court approves a stipulation
19 for child support under s. 767.10, enters a judgment of annulment, divorce or legal
20 separation, or enters an order or a judgment in a paternity action or in an action
21 under s. 767.02 (1) (f) or (j) ~~or~~ 767.08 or 767.62 (3), the availability of health
22 insurance to each parent through an employer or other organization, the extent of
23 coverage available to a child and the costs to the parent for the coverage of the child.
24 A parent may be required to initiate or continue health care insurance coverage for
25 a child under this subsection. If a parent is required to do so, he or she shall provide

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1 copies of necessary program or policy identification to the custodial parent and is
2 liable for any health care costs for which he or she receives direct payment from an
3 insurer. This subsection shall not be construed to limit the authority of the court to
4 enter or modify support orders containing provisions for payment of medical
5 expenses, medical costs, or insurance premiums which are in addition to and not
6 inconsistent with this subsection.

7 **SECTION 44.** 767.25 (5) of the statutes is amended to read:

8 767.25 (5) Liability Subject to ss. 767.51 (4) and 767.62 (4m), liability for past
9 support shall be limited to the period after the birth of the child.

10 **SECTION 45.** 767.25 (6) (intro.) of the statutes, as affected by 1997 Wisconsin
11 Act 191, section 398, is amended to read:

12 767.25 (6) (intro.) A party ordered to pay child support under this section shall
13 pay simple interest at the rate of ~~1.5%~~ 1% per month on any amount in arrears that
14 is equal to or greater than the amount of child support due in one month. If the party
15 no longer has a current obligation to pay child support, interest at the rate of ~~1.5%~~
16 1% per month shall accrue on the total amount of child support in arrears, if any.
17 Interest under this subsection is in lieu of interest computed under s. 807.01 (4),
18 814.04 (4) or 815.05 (8) and is paid to the department or its designee under s. 767.29.
19 Except as provided in s. 767.29 (1m), the department or its designee, whichever is
20 appropriate, shall apply all payments received for child support as follows:

21 **SECTION 46.** 767.253 of the statutes is amended to read:

22 **767.253 Seek-work orders.** In an action for modification of a child support
23 order under s. 767.32 or an action in which an order for child support is required
24 under s. 767.25 (1), 767.51 (3) or 767.62 (4) ~~(a)~~, the court may order either or both

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1 parents of the child to seek employment or participate in an employment or training
2 program.

3 **SECTION 47.** 767.254 (2) (intro.) of the statutes is amended to read:

4 767.254 (2) (intro.) In an action for revision of a judgment or order providing
5 for child support under s. 767.32 or an action in which an order for child support is
6 required under s. 767.25 (1), 767.51 (3) or 767.62 (4) (a), the court shall order an
7 unemployed teenage parent to do one or more of the following:

8 **SECTION 48.** 767.261 (intro.) of the statutes, as affected by 1997 Wisconsin Act
9 191, section 403, is amended to read:

10 **767.261 Family support.** (intro.) The court may make a financial order
11 designated “family support” as a substitute for child support orders under s. 767.25
12 and maintenance payment orders under s. 767.26. A party ordered to pay family
13 support under this section shall pay simple interest at the rate of ~~1.5%~~ 1% per month
14 on any amount in arrears that is equal to or greater than the amount of child support
15 due in one month. If the party no longer has a current obligation to pay child support,
16 interest at the rate of ~~1.5%~~ 1% per month shall accrue on the total amount of child
17 support in arrears, if any. Interest under this section is in lieu of interest computed
18 under s. 807.01 (4), 814.04 (4) or 815.05 (8) and is paid to the department or its
19 designee under s. 767.29. Except as provided in s. 767.29 (1m), the department or
20 its designee, whichever is appropriate, shall apply all payments received for family
21 support as follows:

22 **SECTION 49.** 767.265 (1) of the statutes, as affected by 1997 Wisconsin Act 191,
23 section 411, is amended to read:

24 767.265 (1) Each order for child support under this chapter, for maintenance
25 payments under s. 767.23 or 767.26, for family support under this chapter, for costs

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1 ordered under s. 767.51 (3) or 767.62 (4) ~~(a)~~, for support by a spouse under s. 767.02
2 (1) (f), for maintenance payments under s. 767.02 (1) (g) or for the annual receiving
3 and disbursing fee under s. 767.29 (1) (d), each order for a revision in a judgment or
4 order with respect to child support, maintenance or family support payments under
5 s. 767.32, each stipulation approved by the court or the family court commissioner
6 for child support under this chapter and each order for child or spousal support
7 entered under s. 948.22 (7) constitutes an assignment of all commissions, earnings,
8 salaries, wages, pension benefits, benefits under ch. 102 or 108, lottery prizes that
9 are payable in instalments and other money due or to be due in the future to the
10 department or its designee. The assignment shall be for an amount sufficient to
11 ensure payment under the order or stipulation and to pay any arrearages due at a
12 periodic rate not to exceed 50% of the amount of support due under the order or
13 stipulation so long as the addition of the amount toward arrearages does not leave
14 the party at an income below the poverty line established under 42 USC 9902 (2).

15 **SECTION 50.** 767.265 (3h) of the statutes, as affected by 1997 Wisconsin Act 191,
16 section 415, is amended to read:

17 767.265 **(3h)** A person who receives notice of assignment under this section or
18 s. 767.23 (1) (L), or 767.25 (4m) (c), ~~767.51 (3m) (c) or 767.62 (4) (b) 3.~~ or similar laws
19 of another state shall withhold the amount specified in the notice from any money
20 that person pays to the payer later than one week after receipt of notice of
21 assignment. Within 5 days after the day the person pays money to the payer, the
22 person shall send the amount withheld to the department or its designee, whichever
23 is appropriate, or, in the case of an amount ordered withheld for health care
24 expenses, to the appropriate health care insurer, provider or plan. With each
25 payment sent to the department or its designee, the person from whom the payer

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1 receives money shall report to the department or its designee the payer's gross
2 income or other gross amount from which the payment was withheld. Except as
3 provided in sub. (3m), for each payment sent to the department or its designee, the
4 person from whom the payer receives money shall receive an amount equal to the
5 person's necessary disbursements, not to exceed \$3, which shall be deducted from the
6 money to be paid to the payer. Section 241.09 does not apply to assignments under
7 this section.

8 **SECTION 51.** 767.265 (4) of the statutes is amended to read:

9 767.265 (4) A withholding assignment or order under this section or s. 767.23
10 (1) (L), or 767.25 (4m) (c), ~~767.51 (3m) (c) or 767.62 (4) (b) 3.~~ has priority over any other
11 assignment, garnishment or similar legal process under state law.

12 **SECTION 52.** 767.265 (6) (a) of the statutes, as affected by 1997 Wisconsin Act
13 191, section 420, is amended to read:

14 767.265 (6) (a) Except as provided in sub. (3m), if after receipt of notice of
15 assignment the person from whom the payer receives money fails to withhold the
16 money or send the money to the department or its designee or the appropriate health
17 care insurer, provider or plan as provided in this section or s. 767.23 (1) (L), or 767.25
18 (4m) (c), ~~767.51 (3m) (c) or 767.62 (4) (b) 3.~~, the person may be proceeded against
19 under the principal action under ch. 785 for contempt of court or may be proceeded
20 against under ch. 778 and be required to forfeit not less than \$50 nor more than an
21 amount, if the amount exceeds \$50, that is equal to 1% of the amount not withheld
22 or sent.

23 **SECTION 53.** 767.265 (6) (b) of the statutes, as affected by 1997 Wisconsin Act
24 191, section 422, is amended to read:

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1 767.265 **(6)** (b) If an employer who receives an assignment under this section
2 or s. 767.23 (1) (L), or 767.25 (4m) (c), ~~767.51 (3m) (c) or 767.62 (4) (b) 3.~~ fails to notify
3 the department or its designee, whichever is appropriate, within 10 days after an
4 employe is terminated or otherwise temporarily or permanently leaves employment,
5 the employer may be proceeded against under the principal action under ch. 785 for
6 contempt of court.

7 **SECTION 54.** 767.265 (6) (c) of the statutes is amended to read:

8 767.265 **(6)** (c) No employer may use an assignment under this section or s.
9 767.23 (1) (L), or 767.25 (4m) (c), ~~767.51 (3m) (c) or 767.62 (4) (b) 3.~~ as a basis for the
10 denial of employment to a person, the discharge of an employe or any disciplinary
11 action against an employe. An employer who denies employment or discharges or
12 disciplines an employe in violation of this paragraph may be fined not more than
13 \$500 and may be required to make full restitution to the aggrieved person, including
14 reinstatement and back pay. Except as provided in this paragraph, restitution shall
15 be in accordance with s. 973.20. An aggrieved person may apply to the district
16 attorney or to the department for enforcement of this paragraph.

17 **SECTION 55.** 767.267 (1) of the statutes, as affected by 1997 Wisconsin Act 27,
18 is amended to read:

19 767.267 **(1)** If the court or the family court commissioner determines that
20 income withholding under s. 767.265 is inapplicable, ineffective or insufficient to
21 ensure payment under an order or stipulation specified in s. 767.265 (1), or that
22 income withholding under s. 767.25 (4m) (c) ~~or 767.51 (3m) (c)~~ is inapplicable,
23 ineffective or insufficient to ensure payment of a child's health care expenses,
24 including payment of health insurance premiums, ordered under s. 767.25 (4m) or
25 767.51 (3m), the court or family court commissioner may require the payer to identify

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1 or establish a deposit account, owned in whole or in part by the payer, that allows for
2 periodic transfers of funds and to file with the financial institution at which the
3 account is located an authorization for transfer from the account to the department
4 or its designee, whichever is appropriate. The authorization shall be provided on a
5 standard form approved by the court and shall specify the frequency and the amount
6 of transfer, sufficient to meet the payer's obligation under the order or stipulation,
7 as required by the court or family court commissioner. The authorization shall
8 include the payer's consent for the financial institution or an officer, employe or agent
9 of the financial institution to disclose information to the court, family court
10 commissioner, county child support agency under s. 59.53 (5), department or
11 department's designee regarding the account for which the payer has executed the
12 authorization for transfer.

13 **SECTION 56.** 767.29 (1m) (intro.) of the statutes, as affected by 1997 Wisconsin
14 Act 191, section 427, is amended to read:

15 767.29 **(1m)** (intro.) Notwithstanding ss. 767.25 (6), and 767.261, ~~767.51 (5p)~~
16 ~~and 767.62 (4) (g)~~, if the department or its designee receives support or maintenance
17 money that exceeds the amount due in the month in which it is received and that the
18 department or its designee determines is for support or maintenance due in a
19 succeeding month, the department or its designee may hold the amount of
20 overpayment that does not exceed the amount due in the next month for
21 disbursement in the next month if any of the following applies:

22 **SECTION 57.** 767.295 (2) (a) (intro.) of the statutes is amended to read:

23 767.295 **(2)** (a) (intro.) In an action for modification of a child support order
24 under s. 767.32, an action in which an order for child support is required under s.
25 767.25 (1), 767.51 (3) or 767.62 (4) ~~(a)~~ or a contempt of court proceeding to enforce a

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1 child support or family support order in a county that contracts under s. 49.36 (2),
2 the court may order a parent who is not a custodial parent to register for a work
3 experience and job training program under s. 49.36 if all of the following conditions
4 are met:

5 **SECTION 58.** 767.295 (2) (c) of the statutes is amended to read:

6 767.295 (2) (c) If the court enters an order under par. (a), it shall order the
7 parent to pay child support equal to the amount determined by applying the
8 percentage standard established under s. 49.22 (9) to the income a person would earn
9 by working 40 hours per week for the federal minimum hourly wage under 29 USC
10 206 (a) (1) or equal to the amount of child support that the parent was ordered to pay
11 in the most recent determination of support under this chapter. The child support
12 obligation ordered under this paragraph continues until the parent makes timely
13 payment in full for 3 consecutive months or until the person participates in the
14 program under s. 49.36 for 16 weeks, whichever comes first. The court shall provide
15 in its order that the parent must make child support payments calculated under s.
16 767.25 (1j) or (1m), ~~767.51 (4m) or (5) or 767.62 (4) (d) 1. or (e)~~ after the obligation to
17 make payments ordered under this paragraph ceases.

18 **SECTION 59.** 767.303 (1) of the statutes is amended to read:

19 767.303 (1) If a person fails to pay a payment ordered for support under s.
20 767.077, support under s. 767.08, child support or family support under s. 767.23,
21 child support under s. 767.25, family support under s. 767.261, revised child or
22 family support under s. 767.32, child support under s. 767.458 (3), child support
23 under s. 767.458 (3), child support under s. 767.51, child support under s. 767.62 (4)
24 (a), child support under ch. 769 or child support under s. 948.22 (7), the payment is
25 90 or more days past due and the court finds that the person has the ability to pay

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1 the amount ordered, the court may suspend the person's operating privilege, as
2 defined in s. 340.01 (40), until the person pays all arrearages in full or makes
3 payment arrangements that are satisfactory to the court, except that the suspension
4 period may not exceed 5 years. If otherwise eligible, the person is eligible for an
5 occupational license under s. 343.10 at any time.

6 **SECTION 60.** 767.303 (1) of the statutes, as affected by 1997 Wisconsin Act 84,
7 is amended to read:

8 767.303 (1) If a person fails to pay a payment ordered for support under s.
9 767.077, support under s. 767.08, child support or family support under s. 767.23,
10 child support under s. 767.25, family support under s. 767.261, revised child or
11 family support under s. 767.32, child support under s. 767.458 (3), child support
12 under s. 767.477, child support under s. 767.51, child support under s. 767.62 (4) (a),
13 child support under ch. 769 or child support under s. 948.22 (7), the payment is 90
14 or more days past due and the court finds that the person has the ability to pay the
15 amount ordered, the court may suspend the person's operating privilege, as defined
16 in s. 340.01 (40), until the person pays all arrearages in full or makes payment
17 arrangements that are satisfactory to the court, except that the suspension period
18 may not exceed 2 years. If otherwise eligible, the person is eligible for an
19 occupational license under s. 343.10 at any time.

20 **SECTION 61.** 767.32 (1) (b) 4. of the statutes is amended to read:

21 767.32 (1) (b) 4. A difference between the amount of child support ordered by
22 the court to be paid by the payer and the amount that the payer would have been
23 required to pay based on the percentage standard established by the department
24 under s. 49.22 (9) if the court did not use the percentage standard in determining the
25 child support payments and did not provide the information required under s. 46.10

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1 (14) (d), 301.12 (14) (d), or 767.25 (1n), ~~767.51 (5d) or 767.62 (4) (f)~~, whichever is
2 appropriate.

3 **SECTION 62.** 767.32 (2m) of the statutes is amended to read:

4 767.32 **(2m)** Upon request by a party, the court may modify the amount of
5 revised child support payments determined under sub. (2) if, after considering the
6 factors listed in s. 767.25 (1m), ~~767.51 (5) or 767.62 (4) (e)~~, as appropriate, the court
7 finds, by the greater weight of the credible evidence, that the use of the percentage
8 standard is unfair to the child or to any of the parties.

9 **SECTION 63.** 767.325 (2m) of the statutes is created to read:

10 767.325 **(2m)** MODIFICATION OF PERIODS OF PHYSICAL PLACEMENT FOR FAILURE TO
11 EXERCISE PHYSICAL PLACEMENT. Notwithstanding subs. (1) and (2), upon petition,
12 motion or order to show cause by a party, a court may modify an order of physical
13 placement at any time with respect to periods of physical placement if it finds that
14 a parent has repeatedly and unreasonably failed to exercise periods of physical
15 placement awarded under an order of physical placement that allocates specific
16 times for the exercise of periods of physical placement.

17 **SECTION 64.** 767.325 (5m) of the statutes is created to read:

18 767.325 **(5m)** FACTORS TO CONSIDER. In all actions to modify legal custody or
19 physical placement orders, the court shall consider the factors under s. 767.24 (5) and
20 shall make its determination in a manner consistent with s. 767.24.

21 **SECTION 65.** 767.325 (6m) of the statutes is created to read:

22 767.325 **(6m)** PARENTING PLAN. In any action to modify a legal custody or
23 physical placement order under sub. (1), the court may require the party seeking the
24 modification to file with the court a parenting plan under s. 767.24 (1m) before any
25 hearing is held.

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1 **SECTION 66.** 767.327 (4) of the statutes is amended to read:

2 767.327 **(4)** GUARDIAN AD LITEM; PROMPT HEARING. After a petition, motion or
3 order to show cause is filed under sub. (3), the court shall appoint a guardian ad litem,
4 unless s. 767.045 (1) (am) applies, and shall hold a hearing as soon as possible.

5 **SECTION 67.** 767.327 (5m) of the statutes is created to read:

6 767.327 **(5m)** DISCRETIONARY FACTORS TO CONSIDER. In making a determination
7 under sub. (3), the court may consider the child's adjustment to the home, school,
8 religion and community.

9 **SECTION 68.** 767.45 (7) of the statutes is amended to read:

10 767.45 **(7)** The clerk of court shall provide without charge, to each person
11 bringing an action under this section, except to the state under sub. (1) (g) or (6m),
12 a document setting forth the percentage standard established by the department
13 under s. 49.22 (9) and listing the factors which a court may consider under s. ~~767.51~~
14 ~~(5)~~ 767.25 (1m).

15 **SECTION 69.** 767.455 (6) of the statutes is amended to read:

16 767.455 **(6)** DOCUMENT. The summons served on the respondent shall be
17 accompanied by a document, provided without charge by the clerk of court, setting
18 forth the percentage standard established by the department under s. 49.22 (9) and
19 listing the factors which a court may consider under s. ~~767.51 (5)~~ 767.25 (1m).

20 **SECTION 70.** 767.477 (1) of the statutes is amended to read:

21 767.477 **(1)** At any time during the pendency of an action to establish the
22 paternity of a child, if genetic tests show that the alleged father is not excluded and
23 that the statistical probability of the alleged father's parentage is 99.0% or higher,
24 on the motion of a party, the court shall make an appropriate temporary order orders
25 for the payment of child support ~~and may make a temporary order,~~ assigning

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1 responsibility for and directing the manner of payment of the child's health care
2 expenses and for the custody and physical placement of the child.

3 **SECTION 71.** 767.477 (2) of the statutes is amended to read:

4 767.477 (2) Before making any temporary order under sub. (1), the court shall
5 consider those factors that the court is required ~~under s. 767.51~~ to consider when
6 granting a final judgment on the same subject matter. If the court makes a
7 temporary child support order that deviates from the amount of support that would
8 be required by using the percentage standard established by the department under
9 s. 49.22 (9), the court shall comply with the requirements of s. ~~767.51 (5d)~~ 767.25 (1n).

10 **SECTION 72.** 767.51 (3) of the statutes is repealed and recreated to read:

11 767.51 (3) A judgment or order determining paternity shall contain all of the
12 following provisions:

13 (a) An adjudication of the paternity of the child.

14 (b) Orders for the legal custody of and periods of physical placement with the
15 child, determined in accordance with s. 767.24.

16 (c) An order requiring either or both of the parents to contribute to the support
17 of any child of the parties who is less than 18 years old, or any child of the parties who
18 is less than 19 years old if the child is pursuing an accredited course of instruction
19 leading to the acquisition of a high school diploma or its equivalent, determined in
20 accordance with s. 767.25.

21 (d) A determination as to which parent, if eligible, shall have the right to claim
22 the child as an exemption for federal tax purposes under 26 USC 151 (c) (1) (B), or
23 as an exemption for state tax purposes under s. 71.07 (8) (b).

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1 (e) An order requiring the father to pay or contribute to the reasonable expenses
2 of the mother's pregnancy and the child's birth, based on the father's ability to pay
3 or contribute to those expenses.

4 (f) An order requiring either or both parties to pay or contribute to the costs of
5 the guardian ad litem fees, genetic tests as provided in s. 767.48 (5) and other costs.

6 (g) An order requiring either party to pay or contribute to the attorney fees of
7 the other party.

8 **SECTION 73.** 767.51 (3m) of the statutes, as affected by 1997 Wisconsin Act 27,
9 is repealed.

10 **SECTION 74.** 767.51 (3r) of the statutes is repealed.

11 **SECTION 75.** 767.51 (4) of the statutes is repealed and recreated to read:

12 767.51 (4) (a) Subject to par. (b), liability for past support of the child shall be
13 limited to support for the period after the day on which the action is commenced
14 under s. 767.45, unless a party shows, to the satisfaction of the court, all of the
15 following:

16 1. That he or she was induced to delay commencing the action by any of the
17 following:

18 a. Duress or threats.

19 b. Actions, promises or representations by the other party upon which the party
20 relied.

21 c. Actions taken by the other party to evade paternity proceedings.

22 2. That, after the inducement ceased to operate, he or she did not unreasonably
23 delay in commencing the action.

24 (b) In no event may liability for past support of the child be imposed for any
25 period before the birth of the child.

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1 **SECTION 76.** 767.51 (4g) of the statutes is repealed.

2 **SECTION 77.** 767.51 (4m) of the statutes is repealed.

3 **SECTION 78.** 767.51 (5) of the statutes is repealed.

4 **SECTION 79.** 767.51 (5d) of the statutes is repealed.

5 **SECTION 80.** 767.51 (5p) of the statutes, as affected by 1997 Wisconsin Act 191,
6 is repealed.

7 **SECTION 81.** 767.53 (intro.) of the statutes is amended to read:

8 **767.53 Paternity hearings and records; confidentiality.** (intro.) Any
9 hearing, discovery proceeding or trial relating to paternity determination shall be
10 closed to any person other than those necessary to the action or proceeding. Any
11 record of the pending proceedings shall be placed in a closed file, except that:

12 **SECTION 82.** 767.53 (1) (intro.) of the statutes is amended to read:

13 **767.53 (1)** (intro.) Access to the record of any pending ~~or past~~ proceeding
14 involving the paternity of the same child shall be allowed to all of the following:

15 **SECTION 83.** 767.53 (3) of the statutes is created to read:

16 **767.53 (3)** Subject to s. 767.19, the records of any past proceeding in which
17 paternity was established are open to public inspection.

18 **SECTION 84.** 767.62 (4) of the statutes, as affected by 1997 Wisconsin Act 191,
19 is repealed and recreated to read:

20 **767.62 (4) ORDERS WHEN PATERNITY ACKNOWLEDGED.** In an action under sub. (3)
21 (a), if the persons who signed and filed the statement acknowledging paternity as
22 parents of the child had notice of the hearing, the court or family court commissioner
23 shall make an order that contains all of the following provisions:

24 (a) Orders for the legal custody of and periods of physical placement with the
25 child, determined in accordance with s. 767.24.

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1 (b) An order requiring either or both of the parents to contribute to the support
2 of any child of the parties who is less than 18 years old, or any child of the parties who
3 is less than 19 years old if the child is pursuing an accredited course of instruction
4 leading to the acquisition of a high school diploma or its equivalent, determined in
5 accordance with s. 767.25.

6 (c) A determination as to which parent, if eligible, shall have the right to claim
7 the child as an exemption for federal tax purposes under 26 USC 151 (c) (1) (B), or
8 as an exemption for state tax purposes under s. 71.07 (8) (b).

9 (d) An order requiring the father to pay or contribute to the reasonable
10 expenses of the mother's pregnancy and the child's birth, based on the father's ability
11 to pay or contribute to those expenses.

12 (e) An order requiring either or both parties to pay or contribute to the costs
13 of the guardian ad litem fees and other costs.

14 (f) An order requiring either party to pay or contribute to the attorney fees of
15 the other party.

16 **SECTION 85.** 767.62 (4m) of the statutes is created to read:

17 767.62 (4m) LIABILITY FOR PAST SUPPORT. (a) Subject to par. (b), liability for past
18 support of the child shall be limited to support for the period after the day on which
19 the action is commenced under sub. (3) (a), unless a party shows, to the satisfaction
20 of the court, all of the following:

21 1. That he or she was induced to delay commencing the action by any of the
22 following:

23 a. Duress or threats.

24 b. Actions, promises or representations by the other party upon which the party
25 relied.

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1 c. Actions taken by the other party to evade proceedings under sub. (3) (a).

2 2. That, after the inducement ceased to operate, he or she did not unreasonably
3 delay in commencing the action.

4 (b) In no event may liability for past support of the child be imposed for any
5 period before the birth of the child.

6 **SECTION 86.** 802.12 (3) (d) 1. of the statutes is amended to read:

7 802.12 (3) (d) 1. Custody and physical placement under s. 767.24, 767.458 (3),
8 767.51 (3) or 767.62 (4) (a).

9 **SECTION 87.** 802.12 (3) (d) 3. of the statutes is amended to read:

10 802.12 (3) (d) 3. Child support under s. 767.25, 767.458 (3), 767.51 or 767.62
11 (4) (a).

12 **SECTION 88.** 808.075 (4) (d) 11. of the statutes is amended to read:

13 808.075 (4) (d) 11. Enforcement or modification of assignments under s. 767.25
14 (4m), or 767.265, ~~767.51 (3m) or 767.62 (4) (b) 3.~~

15 **SECTION 89.** 948.22 (7) (bm) of the statutes is amended to read:

16 948.22 (7) (bm) Upon request, the court may modify the amount of child or
17 spousal support payments determined under par. (b) 2. if, after considering the
18 factors listed in s. 767.25 (1m) ~~or 767.51 (5)~~, regardless of the fact that the action is
19 not one for a determination of paternity or an action specified in s. 767.25 (1), the
20 court finds, by the greater weight of the credible evidence, that the use of the
21 percentage standard is unfair to the child or to either of the child's parents.

22 **SECTION 90. Nonstatutory provisions.**

23 (1) STUDY ON THE GUARDIAN AD LITEM SYSTEM.

24 (a) The joint legislative council is requested to establish a committee to study
25 reforming the guardian ad litem system as it applies to actions affecting the family.

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1 The committee shall include legislators, attorneys, judges, court commissioners,
2 mental health professionals and other individuals representing the public interest.

3 The study shall include an examination of at least all of the following:

4 1. The appointment of guardians ad litem, including whether the appointment
5 of a guardian ad litem should be required in every case in which legal custody or
6 physical placement of a child is contested and whether professionals with specialized
7 training and expertise in the emotional and developmental phases and needs of
8 children, such as child psychologists, child psychiatrists and child therapists, should
9 be appointed to act as guardians ad litem.

10 2. The role of the guardian ad litem.

11 3. Supervision of guardians ad litem.

12 4. Training of guardians ad litem.

13 5. Compensation of guardians ad litem.

14 (b) If a committee is established, the committee shall prepare a report with its
15 recommendations and shall petition the supreme court to consider rules for the
16 reform of the guardian ad litem system on the basis of the recommendations.

17 **SECTION 91. Initial applicability.**

18 (1) The treatment of sections 20.921 (2) (a), 66.184, 102.27 (2) (a), 120.13 (2) (g),
19 565.30 (5m), 632.897 (10) (a) 3., 767.045 (1) (a) 2., (am) and (e) and (4m), 767.078 (1)
20 (a) 1. and (2), 767.11 (12) (b), 767.115 (title) and (4), 767.23 (1) (a), (am), (c) and (k)
21 and (1n), 767.24 (1), (1m), (2) (a), (am), (b) and (c), (4) (c) and (5) (intro.), (a), (bm),
22 (cm), (dm), (em), (fm), (g) and (jm), 767.242, 767.25 (1) (intro.), (1m) (b) and (c), (4m)
23 (b) and (5), 767.253, 767.254 (2) (intro.), 767.265 (1), (3h), (4) and (6) (a), (b) and (c),
24 767.267 (1), 767.29 (1m) (intro.), 767.295 (2) (a) (intro.) and (c), 767.303 (1) (by
25 SECTION 59), 767.32 (1) (b) 4. and (2m), 767.325 (2m), (5m) and (6m), 767.327 (4) and

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1 (5m), 767.45 (7), 767.455 (6), 767.477 (1) and (2), 767.51 (3), (3m), (3r), (4), (4g), (4m),
2 (5), (5d) and (5p), 767.53 (intro.), (1) (intro.) and (3), 767.62 (4) and (4m), 802.12 (3)
3 (d) 1. and 3., 808.075 (4) (d) 11. and 948.22 (7) (bm) of the statutes, the renumbering
4 and amendment of section 767.24 (4) (a) of the statutes and the creation of section
5 767.24 (4) (a) 3. of the statutes first apply to actions affecting the family, including
6 actions to enforce or modify a judgment or order in an action affecting the family
7 previously granted, that are commenced on the effective date of this subsection.

8 (2) The treatment of sections 767.25 (6) (intro.) and 767.261 (intro.) of the
9 statutes first applies to arrearages existing or accruing on the effective date of this
10 subsection, regardless of when the order on which the arrearages are based was
11 entered.

12 **SECTION 92. Effective dates.** This act takes effect on the first day of the 7th
13 month beginning after publication, except as follows:

14 (1) The treatment of section 767.303 (1) (by SECTION 60) of the statutes takes
15 effect on the date stated in the notice published by the secretary of transportation
16 in the Wisconsin Administrative Register under section 85.515 of the statutes, or on
17 May 1, 2000, whichever is earlier.

18 (END)