

**1999 DRAFTING REQUEST**

**Bill**

Received: **08/12/1999**

Received By: **kahlepj**

Wanted: **Soon**

Identical to LRB:

For: **Terry Musser (608) 266-7461**

By/Representing: **Kathy**

This file may be shown to any legislator: NO

Drafter: **kahlepj**

May Contact:

Alt. Drafters:

Subject: **Dom. Rel. - cust. and plac.**  
**Dom. Rel. - paternity**

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Custody and physical placement of children

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
I?	kahlepj 08/13/1999	gilfokm 08/13/1999		_____			S&L
/P1			hhagen 08/17/1999	_____			S&L
/1	kahlepj 08/23/1999	chanaman 0812311999	hhagen 0812411999	_____	gretskl 08/24/1999	lrb_docadmin	S&L 08/30/1999

FE Sent For:

<END>

09-02-99  
↪

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I?	kahlepj	1/81-8-13-99 Kmg	1/8/16/99	1/1/17 KF			
FE Sent For:		1/8/23 cmH	1/8/23	1/24 KM <END>			

1999

Date (time) needed Mon 8-23

LRB - 3433, PI

RSK : Kg zemh

**BILL**

Use the appropriate components and routines developed for bills.

AN ACT . . . [generate catalog] **to repeal** . . . ; **to renumber** . . . ; **to consolidate and renumber** . . . ; **to renumber and amend** . . . ; **to consolidate, renumber and amend** . . . ; **to amend** . . . ; **to repeal and recreate** . . . ; and **to create** . . . of the

statutes; relating to: legal custody and physical placement determinations, enforcement of physical placement orders, guardian ad litem appointments and status hearings and providing a penalty.

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

WPO: THAW SECS.

Analysis by the **Legislative Reference Bureau**

For the 3 titles used in an analysis, in the component bar:

For the main heading [old =M], execute: . . . . . **create** → **anal:** → **title:** → **head**

For the subheading [old =S], execute: . . . . . **creak** → **anal:** → **title:** → **sub**

For the e&-subheading [old =P], execute: . . . . . **create** → **anal:** → **title:** → **sub-sub**

Insert A

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

SECTION #.







LFB:.....Doty - Legislative Fiscal Child custody and physical placement

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 414, line 21: after that line insert:

3 SECTION 645. 20.921 (2) (a) of the statutes is amended to read:

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

1 such deductions and paying over the total thereof for the purposes provided by the  
2 laws or orders under which they were made.

3 ~~2. Page 785, line 13: after that line insert:~~

4 ~~SECTION 1617r. 66.184 of the statutes is amended to read:~~

5 **66.164 Self-insured health plans.** If a city, including a 1st class city, or a  
6 village provides health care benefits under its home rule power, or if a town provides  
7 health care benefits, to its officers and employes on a self-insured basis, the  
8 self-insured plan shall comply with ss. 49.493 (3) (d), 631.89, 631.90, 631.93 (2),  
9 632.746 (10) (a) 2. and (b) 2., 632.747 (3), 632.85, 632.853, 632.855, 632.87 (4) and (5),  
10 **632.895 (9)** to (13), 632.896, and 767.25 (4m) (d), ~~767.51 (3m) (d) and 767.62 (4) (b)~~  
11 ~~4.~~

12 ~~3. Page 1079, line 11: after that line insert:~~

13 ~~SECTION 2602c. 102.27 (2) (a) of the statutes, as affected by 1999 Wisconsin~~

14 ~~Act (Chapter 400), is amended to read:~~

15 102.27 (2) (a) A benefit under this chapter is assignable under s. 46.10 (14) (e),  
16 301.12 (14) (e), 767.23 (1) (L), 767.25 (4m) (c), or 767.265 (1) ~~767.51 (3m) (e)~~  
17 or 767.62 (4) (b) 3.

18 ~~4. Page 1121, line 18: after that line insert:~~

19 ~~SECTION 2124r. 120.13 (2) (g) of the statutes is amended to read:~~

20 120.13 (2) (g) Every self-insured plan under par. (b) shall comply with ss.  
21 49.493 (3) (d), 631.89, 631.90, 631.93 (2), 632.746 (10) (a) 2. and (b) 2., 632.747 (3),  
22 632.85, 632.853, 632.855, 632.87 (4) and (5), 632.895 (9) to (13), 632.896, and 767.25  
23 (4m) (d), 767.51 (3m) (d) and 767.62 (4) (b) 4.

24 ~~5. Page 1402, line 19: after that line insert:~~

1 ~~SECTION 3025r.~~ 565.30 (5m) of the statutes is amended to read:

2 565.30 (5m) WITHHOLDING OF CHILD SUPPORT, SPOUSAL SUPPORT, MAINTENANCE OR  
3 FAMILY SUPPORT. The administrator shall report to the department of workforce  
4 development the name, address and social security number of each winner of a  
5 lottery prize that is payable in instalments. Upon receipt of the report, the  
6 department of workforce development shall certify to the administrator whether any  
7 payee named in the report is obligated to provide child support, spousal support,  
8 maintenance or family support under s. 767.02 (1) (f) or(g), 767.10, 767.23, 767.25,  
9 767.26, 767.261, 767.458 (3), 767.465 (2m), 767.477, 767.51 (3), 767.62 (4) ~~(a)~~ or  
10 948.22 (7) or ch. 769 and the amount required to be withheld from the lottery prize  
11 under s. 767.265. The administrator shall withhold the certified amount from each  
12 payment made to the winner and remit the certified amount to the department of  
13 workforce development.

14 6. Page 1406, line 3: after that line insert.

15 ~~SECTION 3044L.~~ 632.897 (10) (a) 3. of the statutes is amended to read:

16 632.897 (10) (a) 3. The fact that the group member or insured does not claim  
17 the child as an exemption for federal income tax purposes under 26 USC 151 (c) (1)  
18 (B), or as an exemption for state income tax purposes under s. 71.07 (8) (b) or under  
19 the laws of another state, if a court order under s. 767.25 (4m), ~~767.51 (3m) or WY.62~~  
20 ~~(4) (b)~~ or the laws of another state assigns responsibility for the child's health care  
21 expenses to the group member or insured.

22 7. Page 1409, line 4: after that line insert.

23 ~~SECTION 3051n.~~ 767.045 (1) (a) 2. of the statutes is amended to read:



1           767.045 (1) (a) 2. ~~The Except as provided in nar (am)~~ the legal custody or  
2 physical placement of the child is contested.

3           **SECTION ~~3051~~** no. 767.045 (1) (am) of the statutes is created to read:

4           767.045 (1) (am) The court is not required to appoint a guardian ad **litem** under  
5 par. (a) 2. if all of the following apply:

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

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

10          3. The court determines any of the following:

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

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

17          **SECTION ~~3051p~~**. 767.045 (1) (e) of the statutes is created to read:

18          767.045 (1) (e) Nothing in this subsection prohibits the court from making a  
19 temporary order under s. 767.23 that concerns the child before a guardian ad **litem**  
20 is appointed or before the guardian ad **litem** has made a recommendation to the  
21 court, if the court determines that the temporary order is in the best interest of the  
22 child.

23          **SECTION ~~3051r~~**. 767.078 (1) (a) 1. of the statutes is amended to read:

Insert 4-22 ✓

1           767.078 (1) (a) 1. Is an action for modification of a child support order under  
 2           s. 767.32 or an action in which an order for child support is required under s. 767.25  
 3           (1), 767.51 (3) or 767.62 (4) (a).<sup>2</sup>

4           ~~8. Page 1409, line 12: after that line insert.~~

5           ~~SECTION 3054c.~~ 767.078 (2) of the statutes is amended to read:

6           767.078 (2) Subsection (1) does not limit the authority of a court to issue an  
 7           order, other than an order under sub. (l), regarding employment of a parent in an  
 8           action for modification of a child support order under s. 767.32 or an action in which  
 9           an order for child support is required under s. 767.25 (l), 767.51 (3) or 767.62 (4) (a).

10          ~~SECTION 3054cd.~~ 767.11 (12) (b) of the statutes is amended to read:

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

22          ~~SECTION 3054ce.~~ 767.115 (title) of the statutes is amended to read:

23          **767.115 (title) Educational program in action programs and classes in**  
 24          **actions affecting the family.**

1 SECTION ~~3054~~cf. 767.115 (4) of the statutes is created to read:

2 767.115 (4) (a) At any time during the **pendency** of a divorce or paternity action,  
3 the court or family court commissioner may order the parties to attend a class that  
4 is approved by the court or family court commissioner and that addresses such issues  
5 as child development, family dynamics, how parental separation affects a child's  
6 development and what parents can do to make raising a child in a separated  
7 situation less stressful for the child.

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

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

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

17 SECTION ~~3054~~cg. 767.23 (1) (a) of the statutes is amended to read:

18 767.23 (1) (a) ~~Upon Subject to s. 767.477. upon~~ request of one party, granting  
19 legal custody of the minor children to the parties jointly, to one party solely or to a  
20 relative or agency specified under s. 767.24 (3). ~~The, in a manner consistent with s.~~  
21 767.24. except that the court or family court commissioner may order joint sole legal  
22 custody without the agreement of the other party and without the findings required  
23 under s. 767.24 (2) (b) 2. This order may not have a binding effect on a final custody  
24 determination.

25 SECTION ~~3054~~ch. 767.23 (1) (am) of the statutes is amended to read:

1           767.23 (1) (am) ~~Upon Subject to s. 767.477. upon~~ the request of a party,  
2 granting periods of physical placement to a party ~~in a manner consistent with s.~~  
3 ~~767.24~~ court or family court commissioner shall make a determination under  
4 this paragraph within 30 days after the request for a temporary order regarding  
5 periods of physical placement is filed.

6           SECTION ~~3054~~ci. 767.23 (1) (c) of the statutes is amended to read:

7           767.23 (1) (c) ~~Requiring Subject to s. 767.477. requiring~~ either party or both  
8 parties to make payments for the support of minor children, which payment amounts  
9 may be expressed as a percentage of parental income or as a fixed sum, or as a  
10 combination of both in the alternative by requiring payment of the greater or lesser  
11 of either a percentage of parental income or a fixed sum.

12           SECTION ~~3054~~cj. 767.23 (1) (k) of the statutes is amended to read:

13           767.23 (1) (k) ~~Requiring Subject to s. 767.477. requiring~~ either party or both  
14 parties to maintain minor children as beneficiaries on a health insurance policy or  
15 plan.

16           SECTION ~~3054~~ck. 767.23 (1n) of the statutes is amended to read:

17           767.23 (1n) Before making any temporary order under sub. (1), the court or  
18 family court commissioner shall consider those factors ~~which~~ that the court is  
19 required by this chapter to consider before entering a final judgment on the same  
20 subject matter. In making a determination under sub. (1) (a) or (am), the court or  
21 family court commissioner shall consider the factors under s. 767.24 (5). If the court  
22 or family court commissioner makes a temporary child support order that deviates  
23 from the amount of support that would be required by using the percentage standard  
24 established by the department under s. 49.22 (9), the court or family court  
25 commissioner shall comply with the requirements of s. 767.25 (In). A temporary

1 order under sub. (1) may be based upon the written stipulation of the parties, subject  
2 to the approval of the court or the family court commissioner. Temporary orders  
3 made by the family court commissioner may be reviewed by the court as provided in  
4 s. 767.13 (6).

5

~~SECTION 3054cL.~~ 767.24 (1) of the statutes is amended to read:

6 767.24 (1) **GENERAL PROVISIONS.** In rendering a judgment of annulment, divorce  
7 ~~or~~, legal separation or paternity, or in rendering a judgment in an action under s.  
8 767.02 (1) (e) or 767.62 (3), the court shall make such provisions as it deems just and  
9 reasonable concerning the legal custody and physical placement of any minor child  
10 of the parties, as provided in this section.

11

~~SECTION 3054c.~~ 767.24 (1m) of the statutes is created to read:

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

- 20 (a) What legal custody or physical placement the parent is seeking.
- 21 (b) Where the parent lives currently and where the parent intends to live  
22 during the next 2 years. *Insert 8-22* ✓
- 23 (c) Where the parent works and the hours of employment. *Insert 8-23* ✓
- 24 (d) Who will provide any necessary child care when the parent cannot and who  
25 will pay for the child care.

- 1 (e) Where the child will go to school.
- 2 (f) What doctor or health care facility will provide medical care for the child.
- 3 (g) How the child's medical expenses will be paid.
- 4 (h) What the child's religious commitment will be, if any.
- 5 (i) Who will make decisions about the child's education, medical care, choice of
- 6 child care providers and extracurricular activities.
- 7 (j) How the holidays will be divided.
- 8 (k) What the child's summer schedule will be.
- 9 (L) Whether and how the child will be able to contact the other parent when
- 10 the child has physical placement with the parent providing the parenting plan.

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

13 (n) What child support, family support, maintenance or other income transfer  
 14 there will be. ~~Proposed 9-14~~

Insert 9-14

15 **SECTION 3054cn.** 767.24 (2) (a) of the statutes is amended to read:

16 767.24 (2) (a) Subject to ~~par. (b)~~ par. (am), (b) and (c), based on the best interest  
 17 of the child and after considering the factors under sub. (5), the court may give joint  
 18 legal custody or sole legal custody of a minor child.

19 **SECTION 3054co.** 767.24 (2) (am) of the statutes is created to read:

20 767.24 (2) (am) The court shall presume that joint legal custody is in the best  
 21 interest of the child.

22 **SECTION 3054cp.** 767.24 (2) (b) of the statutes is amended to read:

23 767.24 (2) (b) The court may give ~~joint~~ sole legal custody only if it finds that  
 24 doing so is in the child's best interest and that either of the following applies:

- 25 1. Both parties agree to joint sole legal custody with the same party

any

1           2. The parties do not agree to ~~joint~~ sole legal custody with the same party, but  
2           at least one party requests ~~joint~~ sole legal custody and the court specifically finds al-

3           ~~least one~~ of the following:

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

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

8           c. The parties will not be able to cooperate in the future decision making  
9           required under an award of joint legal custody. In making this finding the court shall  
10          consider, along with any other pertinent items, any reasons offered by a party  
11          objecting to joint legal custody. Evidence that either party engaged in abuse, as  
12          defined in s. 813.122 (1) (a), of the child, as defined in s. 48.02 (2), or evidence of  
13          interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse,  
14          as defined in s. 813.12 (1) (a), creates a rebuttable presumption that the parties will  
15          not be able to cooperate in the future decision making required. ~~This presumption~~  
16          ~~may be rebutted by clear and convincing evidence that the abuse will not interfere~~  
17          ~~with the parties' ability to cooperate in the future decision making required.~~

18          SECTION ~~3054~~cr. 767.24 (2) (c) of the statutes is created to read:

19          767.24 (2) (c) The court may not give sole legal custody to a parent who refuses  
20          to cooperate with the other parent if the court finds that the refusal to cooperate is  
21          unreasonable.

22          SECTION ~~3054~~cr. 767.24 (4) (a) of the statutes is renumbered 767.24 (4) (a) 1.

23          and amended to read:

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

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

10 **SECTION ~~3054~~cs.** 767.24 (4) (a) 3. of the statutes is created to read:

11 767.24 (4) (a) 3. Notwithstanding subd. 2. and sub. (5), the court shall presume  
12 that any proposal submitted to the court with respect to periods of physical  
13 placement that has been voluntarily agreed to by the parties is in the child's best  
14 interest.

15 **SECTION ~~3054~~ct.** 767.24 (4) (c) of the statutes is amended to read:

16 767.24 (4) (c) No court may deny periods of physical placement for failure to  
17 meet, or grant periods of physical placement for meeting, any financial obligation to  
18 the child or if the parties were married, to the former spouse.

19 **SECTION ~~3054~~cu.** 767.24 (5) (intro.) of the statutes is amended to read:

20 **767.24 (5) FACTORS IN CUSTODY AND PHYSICAL PLACEMENT DETERMINATIONS.**  
21 (intro.) In determining legal custody and periods of physical placement, the court  
22 shall consider all facts relevant to the best interest of the child. The court may not  
23 prefer one parent or potential custodian over the other on the basis of the sex or race  
24 of the parent or potential custodian. ~~The court shall consider reports of appropriate~~  
25 ~~professionals if admitted into evidence when legal custody or physical placement is~~



1 ~~contested.~~ The court shall consider the following factors in making its  
2 determination:

3 **SECTION 3054c.** 767.24 (5) (a) of the statutes is amended to read:

4 767.24 (5) (a) The wishes of the child's parent or parents, ~~as shown by any~~  
5 stipulation between the parties. any proposed parenting plan or any legal custody  
6 or physical placement proposal submitted to the court at trial.

7 **SECTION 3054cw.** 767.24 (5) (bm) of the statutes is created to read:

8 767.24 (5) (bm) The right of the child to spend the same amount of time or  
9 substantial periods of time with each parent.

10 **SECTION 3054c.** 767.24 (5) (cm) of the statutes is created to read:

11 767.24 (5) (cm) The amount and quality of time that each parent roles has spent  
12 with the child in the past, any necessary changes to the parents' custodial roles and  
13 any reasonable life-style changes that a parent proposes to make to be able to spend  
14 time with the child in the future.

15 **SECTION 3054cy.** 767.24 (5) (dm) of the statutes is created to read:

16 767.24 (5) (dm) The age of the child and the child's developmental and  
17 educational needs at different ages.

18 **SECTION 3054cz.** 767.24 (5) (em) of the statutes is created to read:

19 767.24 (5) (em) The need for regularly occurring and meaningful periods of  
20 physical placement to provide predictability and stability for the child.

21 **SECTION 3054d.** 767.24 (5) (fm) of the statutes is created to read:

22 767.24 (5) (fm) The cooperation and communication between the parties and  
23 whether either party unreasonably refuses to cooperate or communicate with the  
24 other party.

25 **SECTION 3054dc.** 767.24 (5) (g) of the statutes is amended to read:

1           767.24 (5) (g) Whether each party can support the other party's relationship  
2 with the child, including encouraging and facilitating frequent and continuing  
3 contact with the child, or whether one party is likely to unreasonably interfere with  
4 the child's continuing relationship with the other party.

5           ~~SECTION 3054d.~~ 767.24 (5) (jm) of the statutes is created to read:

6           767.24 (5) (jm) The reports of appropriate professionals if admitted into  
7 evidence.

8           ~~SECTION 3054d.~~ 767.242 of the statutes is created to read:

9           **767.242 Enforcement of physical placement orders. (1) DEFINITIONS.** In  
10 this section:

11           (a) "Petitioner" means the parent filing a petition under this section, regardless  
12 of whether that parent was the petitioner in the action in which periods of physical  
13 placement were awarded under s. 767.24.

14           (b) "Respondent" means the parent upon whom a petition under this section is  
15 served, regardless of whether that parent was the respondent in the action in which  
16 periods of physical placement were awarded under s. 767.24.

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

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

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

24           (c) The parent has incurred a financial loss or expenses as a result of the other  
25 parent's intentional failure to exercise one or more periods of physical placement

1 under an order allocating specific times for the exercise of periods of physical  
2 placement.

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

4 1. The name of the petitioner and that the petitioner has been awarded periods  
5 of physical placement.

6 2. The name of the respondent.

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

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

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

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

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

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

23 (5) **HEARING; REMEDIES.** (a) A judge or family court commissioner shall hold a  
24 hearing on the petition no later than 30 days after the petition has been served,  
25 unless the time is extended by mutual agreement of the parties or upon the motion

1 of a guardian ad litem and the approval of the judge or family court commissioner.  
2 The judge or family court commissioner may, on his or her own motion or the motion  
3 of any party, order that a guardian ad litem be appointed for the child prior to the  
4 hearing.

5 (b) If, at the conclusion of the hearing, the judge or family court commissioner  
6 finds that the respondent has intentionally and unreasonably denied the petitioner  
7 one or more periods of physical placement or that the respondent has intentionally  
8 and unreasonably interfered with one or more of the petitioner's periods of physical  
9 placement, the court or family court commissioner:

10 1. Shall do all of the following:

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

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

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

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

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

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

1           (c) **If**, at the conclusion of the hearing, the judge or family court commissioner  
2 finds that the petitioner has incurred a financial loss or expenses as a result of the  
3 respondent's failure, intentionally and unreasonably and without adequate notice to  
4 the petitioner, to exercise one or more periods of physical placement under an order  
5 allocating specific times for the exercise of periods of physical placement, the judge  
6 or family court commissioner may issue an order requiring the respondent to pay to  
7 the petitioner a sum of money **sufficient** to compensate the petitioner for the financial  
8 loss or expenses.

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

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

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

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

23           (c) The sheriff or other appropriate local law enforcement agency under par. (b)  
24 shall make available to other law enforcement agencies, through a verification  
25 system, information on the existence and status of any injunction issued under sub.

1 (5) (b) 2. c. The information need not be maintained after the injunction is no longer  
2 in effect.

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

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

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

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

14 **SECTION 3054d.** 767.25 (1) (intro.) of the statutes is amended to read:

15 767.25 (1) (intro.) Whenever the court approves a stipulation for child support  
16 under s. 767.10, enters a judgment of annulment, divorce or legal separation, or  
17 enters an order or a judgment in a paternity action or in an action under s. 767.02  
18 (1) (f) or (j) ~~or~~, 767.08 or 767.62 (3), the court shall do all of the following:

19 **SECTION 3054d.** 767.25 (1m) (b) of the statutes is amended to read:

20 767.25 (1m) (b) The financial resources of both parents ~~as determined under~~  
21 s. 767.255.

22 **SECTION 3054d.** 767.25 (1m) (c) of the statutes is amended to read:

23 767.25 (1m) (c) ~~The~~ If the parties were married, the standard of living the child  
24 would have enjoyed had the marriage not ended in annulment, divorce or legal  
25 separation.

1

**SECTION ~~3054d~~.** 767.25 (4m) (b) of the statutes is amended to read:

2

767.25 (4m) (b) In addition to ordering child support for a child under sub. (l),

3

the court shall specifically assign responsibility for and direct the manner of

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payment of the child's health care expenses. In assigning responsibility for a child's

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health care expenses, the court shall consider whether a child is covered under a

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parent's health insurance policy or plan at the time the court approves a stipulation

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for child support under s. 767.10, enters a judgment of annulment, divorce or legal

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separation, or enters an order or a judgment in a paternity action or in an action

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under s. 767.02 (1) (f) or (j) ~~or~~, 767.08 ~~or~~ 767.62 (3), the availability of health

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insurance to each parent through an employer or other organization, the extent of

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coverage available to a child and the costs to the parent for the coverage of the child.

12

A parent may be required to initiate or continue health care insurance coverage for

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a child under this subsection. If a parent is required to do so, he or she shall provide

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copies of necessary program or policy identification to the custodial parent and is

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liable for any health care costs for which he or she receives direct payment from an

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insurer. This subsection shall not be construed to limit the authority of the court to

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enter or modify support orders containing provisions for payment of medical

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expenses, medical costs, or insurance premiums which are in addition to and not

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inconsistent with this subsection.

20

**SECTION ~~3054d~~.** 767.25 (5) of the statutes is amended to read:

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767.25 (5) ~~Liability~~ Subject to ss. 767.51 (4) and 767.62 (4m), liability for past

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support shall be limited to the period after the birth of the child.

23

**SECTION ~~3054d~~.** 767.25 (6) (intro.) of the statutes, as affected by 1997

24

Wisconsin Act 191, section 398, is amended to read:

1           767.25 (6) (intro.) A party ordered to pay child support under this section shall  
2 pay simple interest at the rate of ~~1.5%~~ 1% per month on any amount in arrears that  
3 is equal to or greater than the amount of child support due in one month. If the party  
4 no longer has a current obligation to pay child support, interest at the rate of ~~1.5%~~  
5 1% per month shall accrue on the total amount of child support in arrears, if any.  
6 Interest under this subsection is in lieu of interest computed under s. 807.01 (4),  
7 814.04 (4) or 815.05 (8) and is paid to the department or its designee under s. 767.29.  
8 Except as provided in s. 767.29 (**lm**), the department or its designee, whichever is  
9 appropriate, shall apply all payments received for child support as follows:

10           ~~SECTION 3054dL.~~ 767.253 of the statutes is amended to read:

11           **767.253 Seek-work orders.** In an action for modification of a child support  
12 order under s. 767.32 or an action in which an order for child support is required  
13 under s. 767.25 (1), 767.51 (3) or 767.62 (4) (~~a~~), the court may order either or both  
14 parents of the child to seek employment or participate in an employment or training  
15 program.

16           ~~SECTION 3054dm~~ 767.254 (2) (intro.) of the statutes is amended to read:

17           767.254 (2) (intro.) In an action for revision of a judgment or order providing  
18 for child support under s. 767.32 or an action in which an order for child support is  
19 required under s. 767.25 (1), 767.51 (3) or 767.62 (4) (~~a~~), the court shall order an  
20 unemployed teenage parent to do one or more of the following:

21           ~~SECTION 3054dn.~~ 767.261 (intro.) of the statutes, as affected by 1997 Wisconsin  
22 Act 191, section 403, is amended to read:

23           **767.261 Family support.** (intro.) The court may make a financial order  
24 designated "family support" as a substitute for child support orders under s. 767.25  
25 and maintenance payment orders under s. 767.26. A party ordered to pay family



1 support under this section shall pay simple interest at the rate of ~~1.5%~~ 1% per month  
 2 on any amount in arrears that is equal to or greater than the amount of child support  
 3 due in one month. If the party no longer has a current obligation to pay child support,  
 4 interest at the rate of ~~1.5%~~ 1% per month shall accrue on the total amount of child  
 5 support in arrears, if any Interest under this section is in lieu of interest computed  
 6 under s. 807.01 (4), 814.04 (4) or 815.05 (8) and is paid to the department or its  
 7 designee under s. 767.29. Except as provided in s. 767.29 (lm), the department or  
 8 its designee, whichever is appropriate, shall apply all payments received for family  
 9 support as follows:

10 ~~9. Page 1410, line 5: after that line insert:~~

11 ~~SECTION 3355~~ c. 767.265 (1) of the statutes, as affected by 1997 Wisconsin Act  
 12 191, section 411, is amended to read:

13 767.265 (1) Each order for child support under this chapter, for maintenance  
 14 payments under s. 767.23 or 767.26, for family support under this chapter, for costs  
 15 ordered under s. 767.51 (3) or 767.62 (4) ~~(a)~~, for support by a spouse under s. 767.02  
 16 (1) (f), for maintenance payments under s. 767.02 (1) (g) or for the annual receiving  
 17 and disbursing fee under s. 767.29 (1) (d), each order for a revision in a judgment or  
 18 order with respect to child support, maintenance or family support payments under  
 19 s. 767.32, each stipulation approved by the court or the family court commissioner  
 20 for child support under this chapter and each order for child or spousal support  
 21 entered under s. 948.22 (7) constitutes an assignment of all commissions, earnings,  
 22 salaries, wages, pension benefits, benefits under ch. 102 or 108, lottery prizes that  
 23 are payable in instalments and other money due or to be due in the future to the  
 24 department or its designee. The assignment shall be for an amount sufficient to

1 ensure payment under the order or stipulation and to pay any arrearages due at a  
 2 periodic rate not to exceed 50% of the amount of support due under the order or  
 3 stipulation so long as the addition of the amount toward arrearages does not leave  
 4 the party at an income below the poverty line established under 42 USC 9902 (2).

5 ~~10. Page 1413, line 24: after that line insert:~~

6 ~~SECTION 3061c.~~ 767.265 (3h) of the statutes, as affected by 1997 Wisconsin Act  
 7 191, section 415, is amended to read:

8 767.265 (3h) A person who receives notice of assignment under this section or  
 9 s. 767.23 (1) (L), or 767.25 (4m) (c), ~~767.51(3m)(c) or 767.62(4)(b) 3.~~ or similar laws  
 10 of another state shall withhold the amount specified in the notice from any money  
 11 that person pays to the payer later than one week after receipt of notice of  
 12 assignment. Within 5 days after the day the person pays money to the payer, the  
 13 person shall send the amount withheld to the department or its designee, whichever  
 14 is appropriate, or, in the case of an amount ordered withheld for health care  
 15 expenses, to the appropriate health care insurer, provider or plan. With each  
 16 payment sent to the department or its designee, the person from whom the payer  
 17 receives money shall report to the department or its designee the payer's gross  
 18 income or other gross amount from which the payment was withheld. Except as  
 19 provided in sub. (3m), for each payment sent to the department or its designee, the  
 20 person from whom the payer receives money shall receive an amount equal to the  
 21 person's necessary disbursements, not to exceed \$3, which shall be deducted from the  
 22 money to be paid to the payer. Section 241.09 does not apply to assignments under  
 23 this section.

24 ~~SECTION 3061cd.~~ 767.265 (4) of the statutes is amended to read:

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

4 **SECTION 3061** ~~ce.~~ 767.265 (6) (a) of the statutes, as affected by 1997 Wisconsin  
5 Act 191, section 420, is amended to read:

6 767.265 (6) (a) Except as provided in sub. (3m), if after receipt of notice of  
7 assignment the person from whom the payer receives money fails to withhold the  
8 money or send the money to the department or its designee or the appropriate health  
9 care insurer, provider or plan as provided in this section or s. 767.23 (l)(L), or 767.25  
10 (4m) (c), ~~767.51 (3m) (e) or 767.62 (4) (b) 3.~~, the person may be proceeded against  
11 under the principal action under ch. 785 for contempt of court or may be proceeded  
12 against under ch. 778 and be required to forfeit not less than \$50 nor more than an  
13 amount, if the amount exceeds \$50, that is equal to 1% of the amount not withheld  
14 or sent.

15 **SECTION 3061** ~~cf.~~ 767.265 (6) (b) of the statutes, as affected by 1997 Wisconsin  
16 Act 191, section 422, is amended to read:

17 767.265 (6) (b) If an employer who receives an assignment under this section  
18 or s. 767.23 (1)(L), or 767.25 (4m) (c), ~~767.51 (3m) (e) or 767.62 (4) (b) 3.~~ fails to notify  
19 the department or its designee, whichever is appropriate, within 10 days after an  
20 employe is terminated or otherwise temporarily or permanently leaves employment,  
21 the employer may be proceeded against under the principal action under ch. 785 for  
22 contempt of court.

23 **SECTION 3061** ~~cg.~~ 767.265 (6) (c) of the statutes is amended to read:

24 767.265 (6) (c) No employer may use an assignment under this section or s.  
25 767.23 (1)(L), or 767.25 (4m) (c), ~~767.51 (3m) (e) or 767.62 (4) (b) 3.~~ as a basis for the

1 denial of employment to a person, the discharge of an employe or any disciplinary  
2 action against an employe. An employer who denies employment or discharges or  
3 disciplines an employe in violation of this paragraph may be fined not more than  
4 \$500 and may be required to make full restitution to the aggrieved person, including  
5 reinstatement and back pay. Except as provided in this paragraph, restitution shall  
6 be in accordance with s. 973.20. An aggrieved person may apply to the district  
7 attorney or to the department for enforcement of this paragraph.

8 **SECTION 306.1 ch. 767.267 (1)** of the statutes, as affected by 1997 Wisconsin Act  
9 27, is amended to read:

10 **767.267 (1)** If the court or the family court commissioner determines that  
11 income withholding under s. 767.265 is inapplicable, ineffective or insufficient to  
12 ensure payment under an order or stipulation specified in s. 767.265 (1), or that  
13 income withholding under s. 767.25 (4m) (c) ~~or 767.51 (3m) (e)~~ is inapplicable,  
14 ineffective or insufficient to ensure payment of a child's health care expenses,  
15 including payment of health insurance premiums, ordered under s. 767.25 (4m) or  
16 **767.51 (3m)**, the court or family court commissioner may require the payer to identify  
17 or establish a deposit account, owned in whole or in part by the payer, that allows for  
18 periodic transfers of funds and to file with the financial institution at which the  
19 account is located an authorization for transfer from the account to the department  
20 or its designee, whichever is appropriate. The authorization shall be provided on a  
21 standard form approved by the court and shall specify the frequency and the amount  
22 of transfer, sufficient to meet the payer's obligation under the order or stipulation,  
23 as required by the court or family court commissioner. The authorization shall  
24 include the payer's consent for the financial institution or an officer, employe or agent  
25 of the financial institution to disclose information to the court, family court

1 commissioner, county child support agency under s. 59.53 (5), department or  
 2 department's designee regarding the account for which the payer has executed the  
 3 authorization for transfer."

4 ~~11. Page 1415, intro. 19. after that line insert:~~

5 ~~SECTION 3065c.~~ 767.29 (lm) (intro.) of the statutes, as affected by 1997  
 6 Wisconsin Act 191, section 427, is amended to read:

7 767.29 (lm) (intro.) Notwithstanding ss. 767.25 (6), and 767.261, 767.51 (5p)  
 8 ~~and 767.62 (4) (g)~~, if the department or its designee receives support or maintenance  
 9 money that exceeds the amount due in the month in which it is received and that the  
 10 department or its designee determines is for support or maintenance due in a  
 11 succeeding month, the department or its designee may hold the amount of  
 12 overpayment that does not exceed the amount due in the next month for  
 13 disbursement in the next month if any of the following applies:

14 ~~SECTION 3065cd.~~ 767.295 (2) (a) (intro.) of the statutes is amended to read:

15 767.295 (2) (a) (intro.) In an action for modification of a child support order  
 16 under s. 767.32, an action in which an order for child support is required under s.  
 17 767.25 (1), ~~767.51 (3) or 767.62 (4) (a)~~ or a contempt of court proceeding to enforce a  
 18 child support or family support order in a county that contracts under s. 49.36 (2),  
 19 the court may order a parent who is not a custodial parent to register for a work  
 20 experience and job training program under s. 49.36 if all of the following conditions  
 21 are met:

22 ~~SECTION 3065c.~~ 767.295 (2) (c) of the statutes is amended to read:

23 767.295 (2) (c) If the court enters an order under par. (a), it shall order the  
 24 parent to pay child support equal to the amount determined by applying the

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

auto ref A  
see p 35

11 SECTION 3065 cf. 767.303 (1) of the statutes is amended to read:

12 767.303 (1) If a person fails to pay a payment ordered for support under s.  
 13 767.077, support under s. 767.08, child support or family support under s. 767.23,  
 14 child support under s. 767.25, family support under s. 767.261, revised child or  
 15 family support under s. 767.32, child support under s. 767.458 (3), child support  
 16 under s. 767.458 (3), child support under s. 767.51, child support under s. 767.62 (4)  
 17 (~~a~~), child support under ch. 769 or child support under s. 948.22 (7), the payment is  
 18 90 or more days past due and the court finds that the person has the ability to pay  
 19 the amount ordered, the court may suspend the person's operating privilege, as  
 20 defined in s. 340.01 (40), until the person pays all arrearages in full or makes  
 21 payment arrangements that are satisfactory to the court, except that the suspension  
 22 period may not exceed 5 years. If otherwise eligible, the person is eligible for an  
 23 occupational license under s. 343.10 at any time.

24 SECTION 3065 cf. 767.303 (1) of the statutes, as affected by 1997 Wisconsin Act  
 25 84, is amended to read:

auto ref B see p. 36

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

13           **SECTION 3065** ch. 767.32 (1) (b) 4. of the statutes is amended to read:

14           767.32 (1) (b) 4. A difference between the amount of child support ordered by  
15           the court to be paid by the payer and the amount that the payer would have been  
16           required to pay based on the percentage standard established by the department  
17           under s. 49.22 (9) if the court did not use the percentage standard in determining the  
18           child support payments and did not provide the information required under s. 46.10  
19           (14) (d), 301.12 (14) (d), or 767.25 (1n), ~~767.51 (5d) or 767.62 (4) (f)~~, whichever is  
20           appropriate.

21           **SECTION 3065** ci. 767.32 (2m) of the statutes is amended to read:

22           767.32 (2m) Upon request by a party, the court may modify the amount of  
23           revised child support payments determined under sub. (2) if, after considering the  
24           factors listed in s. 767.25 (1m), ~~767.51 (5) or 767.62 (4) (e)~~, as appropriate, the court

1 finds, by the greater weight of the credible evidence, that the use of the percentage  
2 standard is unfair to the child or to any of the parties.

3 **SECTION ~~3065~~cj.** 767.325 (2m) of the statutes is created to read:

4 **767.325 (2m) MODIFICATION OF PERIODS OF PHYSICAL PLACEMENT FOR FAILURE TO**  
5 **EXERCISE PHYSICAL PLACEMENT.** Notwithstanding subs. (1) and (2), upon petition,  
6 motion or order to show cause by a party, a court may modify an order of physical  
7 placement at any time with respect to periods of physical placement if it finds that  
8 a parent has repeatedly and unreasonably failed to exercise periods of physical  
9 placement awarded under an order of physical placement that allocates specific  
10 times for the exercise of periods of physical placement.

11 **SECTION ~~3065~~ck.** 767.325 (5m) of the statutes is created to read:

12 **767.325 (5m) FACTORS TO CONSIDER.** In all actions to modify legal custody or  
13 physical placement orders, the court shall consider the factors under s. 767.24 (5) and  
14 shall make its determination in a manner consistent with s. 767.24.

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

16 **767.325 (6m) PARENTING PLAN.** In any action to modify a legal custody or  
17 physical placement order under sub. (l), the court may require the party seeking the  
18 modification to file with the court a parenting plan under s. 767.24 (lm) before any  
19 hearing is held.

20 **SECTION ~~3065~~cn.** 767.327 (4) of the statutes is amended to read:

21 **767.327 (4) GUARDIAN AD LITEM; PROMPT HEARING.** After a petition, motion or  
22 order to show cause is filed under sub. (3), the court shall appoint a guardian ad litem,  
23 unless s. 767.045 (1) (am) applies, and shall hold a hearing as soon as possible.

24 **SECTION ~~3065~~cn.** 767.327 (5m) of the statutes is created to read:



1           767.327 **(5m)** DISCRETIONARY FACTORS TO CONSIDER. In making a determination  
2 under sub. (3), the court may consider the child's adjustment to the home, school,  
3 religion and community.

4           **SECTION 3065** co. 767.45 (7) of the statutes is amended to read:

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

10           **SECTION 3065** cp. 767.455 (6) of the statutes is amended to read:

11           767.455 (6) DOCUMENT. The summons served on the respondent shall be  
12 accompanied by a document, provided without charge by the clerk of court, setting  
13 forth the percentage standard established by the department under s. 49.22 (9) and  
14 listing the factors which a court may consider under s. ~~767.51 (5)~~ **767.25 (1m)**.

15           **SECTION 3065** cq. 767.477 (1) of the statutes is amended to read:

16           767.477 **(1)** At any time during the pendency of an action to establish the  
17 paternity of a child, if genetic tests show that the alleged father is not excluded and  
18 that the statistical probability of the alleged father's parentage is 99.0% or higher,  
19 on the motion of a party, the court shall make ~~an~~ appropriate temporary order orders  
20 for the payment of child support ~~and may make a temporary order~~, assigning  
21 responsibility for and directing the manner of payment of the child's health care  
22 expenses and for the custody and physical placement of the child.

23           **SECTION 3065** cr. 767.477 (2) of the statutes is amended to read:

24           767.477 (2) Before making any temporary order under sub. (1), the court shall  
25 consider those factors that the court is required under ~~s. 767.51~~ to consider when

1 granting a final judgment on the same subject matter. If the court makes a  
2 temporary child support order that deviates from the amount of support that would  
3 be required by using the percentage standard established by the department under  
4 s. 49.22 (9), the court shall comply with the requirements of s. ~~767.51(5d)~~ 767.25(1n).

5 **SECTION 3065**cs. 767.51 (3) of the statutes is repealed and recreated to read:

6 767.51 (3) A judgment or order determining paternity shall contain all of the  
7 following provisions:

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

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

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

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

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

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

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

1 SECTION ~~3065~~ct. 767.51 (3m) of the statutes, as affected by 1997 Wisconsin Act  
2 27, is repealed.

3 SECTION ~~3065~~cu. 767.51 (3r) of the statutes is repealed.

4 SECTION ~~3065~~cv. 767.51 (4) of the statutes is repealed and recreated to read:  
5 767.51 (4) (a) Subject to par. (b), liability for past support of the child shall be  
6 limited to support for the period after the day on which the action is commenced  
7 under s. 767.45, unless a party shows, to the satisfaction of the court, all of the  
8 following:

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

11 a. Duress or threats.

12 b. Actions, promises or representations by the other party upon which the party  
13 relied.

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

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

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

19 SECTION ~~3065~~cw. 767.51 (4g) of the statutes is repealed.

20 SECTION ~~3065~~cx. 767.51 (4m) of the statutes is repealed.

21 SECTION ~~3065~~cy. 767.51 (5) of the statutes is repealed.

22 SECTION ~~3065~~d. 767.51 (5d) of the statutes is repealed.

23 SECTION ~~3065~~dd. 767.51 (5p) of the statutes, as affected by 1997 Wisconsin Act  
24 191, is repealed.

25 SECTION ~~3065~~de. 767.53 (intro.) of the statutes is amended to read:

1           **767.53 Paternity hearings and records; confidentiality.** (intro.) Any  
2 hearing, discovery proceeding or trial relating to paternity determination shall be  
3 closed to any person other than those necessary to the action or proceeding. Any  
4 record of ~~the pending~~ proceedings shall be placed in a closed file, except that:

5           ~~SECTION 3065df.~~ 767.53 (1) (intro.) of the statutes is amended to read:

6           767.53 (1) (intro.) > Access to the record of any pending ~~or past~~ proceeding  
7 involving the paternity of the same child shall be allowed to all of the following:

8           ~~SECTION 3065dg.~~ 767.53 (3) of the statutes is created to read:

9           767.53 (3) Subject to s. 767.19, the records of any past proceeding in which  
10 paternity was established are open to public inspection.

11           ~~SECTION 3065dh.~~ 767.62 (4) of the statutes, as affected by 1997 Wisconsin Act  
12 191, is repealed and recreated to read:

13           767.62 (4) **ORDERS WHEN PATERNITY ACKNOWLEDGED.** In an action under sub. (3)  
14 (a), if the persons who signed and filed the statement acknowledging paternity as  
15 parents of the child had notice of the hearing, the court or family court commissioner  
16 shall make an order that contains all of the following provisions:

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

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

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

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

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

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

11 **SECTION ~~3055~~di.** 767.62 (4m) of the statutes is created to read:

12 767.62 (**4m**) LIABILITY FOR PAST SUPPORT. (a) Subject to par. (b), liability for past  
13 support of the child shall be limited to support for the period after the day on which  
14 the action is commenced under sub. (3) (a), unless a party shows, to the satisfaction  
15 of the court, all of the 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 proceedings under sub. (3) (a).

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.

1 ~~12. Page 1425, line 7: after that line insert:~~

2 SECTION ~~3085~~<sup>e</sup>c. 802.12 (3) (d) 1. of the statutes is amended to read:

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

5 SECTION ~~3085~~<sup>e</sup>d. 802.12 (3) (d) 3. of the statutes is amended to read:

6 802.12 (3) (d) 3. Child support under s. 767.25, 767.458 (3), 767.51 or 767.62  
7 (4) (a).<sup>e</sup>

8 ~~13. Page 1426, line 12: after that line insert:~~

9 SECTION ~~3087~~<sup>e</sup>c. 808.075 (4) (d) 11. of the statutes is amended to read:

10 808.075 (4) (d) 11. Enforcement or modification of assignments under s. 767.25  
11 (4m), or 767.265, ~~767.51 (3m) or 767.62 (4) (b) 3.~~<sup>e</sup>

12 ~~14. Page 1439, line 11: after that line insert:~~

13 SECTION ~~3187~~<sup>e</sup>c. 948.22 (7) (bm) of the statutes is amended to read:

14 948.22 (7) (bm) Upon request, the court may modify the amount of child or  
15 spousal support payments determined under par. (b) 2. if, after considering the  
16 factors listed in s. 767.25 (1m) ~~or 767.51 (a)~~, regardless of the fact that the action is  
17 not one for a determination of paternity or an action specified in s. 767.25 (1), the  
18 court finds, by the greater weight of the credible evidence, that the use of the  
19 percentage standard is unfair to the child or to either of the child's parents.<sup>e</sup>

20 ~~15. Page 1566, line 17: after that line insert:~~

21 ~~(a)~~ <sup>e</sup> STUDY ON THE GUARDIAN AD LITEM SYSTEM. ✓

22 (a) The joint legislative council is requested to establish a committee to study  
23 reforming the guardian ad litem system as it applies to actions affecting the family.  
24 The committee shall include legislators, attorneys, judges, court commissioners,

SECTION # . Nonstatutory provisions.

*WPO — See next page*

1 mental health professionals and other individuals representing the public interest.

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

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

9 2. The role of the guardian ad litem.

10 3. Supervision of guardians ad litem.

11 4. Training of guardians ad litem.

12 5. Compensation of guardians ad litem.

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

16 ~~16. Page 1603, line 18: after that line insert:~~

17 "(9yo) CUSTODY AND PHYSICAL PLACEMENT IN ACTIONS AFFECTING THE FAMILY. The  
18 treatment of sections 20.921 (2) (a), 66.184, 102.27 (2)(a) (by SECTION 2002c), 120.13  
19 (2) (g), 565.30 (5m), 632.897 (10) (a) 3., 767.045 (1) (a) 2., (am) and (e), 767.078 (1) (a)  
20 1. and (2), 767.11 (12) (b), 767.115 (title) and (4), 767.23 (1) (a), (am), (c) and (k) and  
21 (1n), 767.24 (1), (1m), (2) (a), (am), (b) and (c), (4) (c) and (5) (intro.), (a), (cm), (dm),  
22 (em), (fm), (g) and (jm), 767.242, 767.25 (1) (intro.), (1m) (b) and (c), (4m) (b), (5) and  
23 (6) (intro.), 767.253, 767.254 (2) (intro.), 767.261 (intro.), 767.265 (1) (by SECTION  
24 3055c), (3h), (4) and (6) (a), (b) and (c), 767.267 (1), 767.29 (1m) (intro.), 767.295 (2)

1 mental health professionals and other individuals representing the public interest.

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

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

9 2. The role of the guardian ad litem.

10 3. Supervision of guardians ad litem.

11 4. Training of guardians ad litem.

12 5. Compensation of guardians ad litem.

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

16 **16.** Page 1608, line 18: after that line insert:

17 ~~§ (256)~~ ~~CUSTODY AND PHYSICAL PLACEMENT IN ACTIONS AFFECTING THE FAMILY.~~ The  
18 treatment of sections 20.921 (2) (a), 66.184, 102.27 (2) (a) ~~by SECTION 1608~~, 120.13  
19 (2) (g), 565.30 (5m), 632.897 (10) (a) 3., 767.045 (1) (a) 2., (am) and (e), 767.078 (1) (a)  
20 1. and (2), 767.11 (12) (b), 767.115 (title) and (767.23 (1) (a), (am), (c) and (k) and (bm),  
21 (1n), 767.24 (1), (1m), (2) (a), (am), (b) and (c), (4) (c) and (5) (intro.), (a), (cm), (dm),  
22 (em), (fm), (g) and (jm), 767.242, 767.25 (1) (intro.), (1m) (b) and (c), (4m) (b) ~~(5) end~~  
23 ~~(5)~~ 767.253, 767.254 (2) (intro.), ~~767.254~~ 767.265 (1) ~~767.265~~  
24 ~~(3h)~~ (3h), (4) and (6) (a), (b) and (c), 767.267 (1), 767.29 (1m) (intro.), 767.295 (2)

SECTION#, Initial applicability.



(35)  
auto ref A  
see p 25

1 (a) (intro.) and (c), 767.303 (1) (by SECTION ~~3005c~~), 767.32 (1) (b) 4. and (2m), 767.325  
 2 (2m), (5m) and (6m), 767.327 (4) and (5m), 767.45 (7), 767.455 (6), 767.477 (1) and  
 3 (2), 767.51 (3), (3m), (3r), (4), (4g), (4m), (5), (5d) and (5p), 767.53 (intro.), (1) (intro.)  
 4 and (3), 767.62 (4) and (4m), 802.12 (3) (d) 1. and 3., 808.075 (4) (d) 11. and 948.22  
 5 (7) (bm) of the statutes, the renumbering and amendment of section 767.24 (4) (a) of  
 6 the statutes and the creation of section 767.24 (4) (a) 3. of the statutes first apply to  
 7 actions affecting the family, including actions to enforce or modify a judgment or  
 8 order in an action affecting the family previously granted, that are commenced on  
 9 the effective date of this subsection."

10 **17.** Page 1617, line 6. after that line insert:

11 "(7yo) CUSTODY AND PHYSICAL PLACEMENT IN ACTIONS AFFECTING THE FAMILY.  
 12 (a) The treatment of sections 20.921 (2) (a), 66.184, 102.27 (2) (a) (by SECTION  
 13 2002c), 120.13 (2) (g), 565.30 (5m), 632.897 (10) (a) 3., 767.045 (1) (a) 2., (am) and (e),  
 14 767.078 (1) (a) 1. and (2), 767.11 (12) (b), 767.115 (title) and (4), 767.23 (1) (a), (am),  
 15 (c) and (k) and (1n), 767.24 (1), (1m), (2) (a), (am), (b) and (c), (4) (c) and (5) (intro.),  
 16 (a), (cm), (dm), (em), (fm), (g) and (jm), 767.242, 767.25 (1) (intro.), (1m) (b) and (c),  
 17 (4m) (b), (5) and (6) (intro.), 767.253, 767.254 (2) (intro.), 767.261 (intro.), 767.265 (1),  
 18 (by SECTION 3055c), (3h), (4) and (6) (a), (b) and (c), 767.267 (1), 767.29 (1m) (intro.),  
 19 767.295 (2) (a) (intro.) and (c), 767.303 (1) (by SECTION 3065cf), 767.32 (1) (b) 4. and  
 20 (2m), 767.325 (2m), (5m) and (6m), 767.327 (4) and (5m), 767.45 (7), 767.455 (6),  
 21 767.477 (1) and (2), 767.51 (3), (3m), (3r), (4), (4g), (4m), (5), (5d) and (5p), 767.53  
 22 (intro.), (1) (intro.) and (3), 767.62 (4) and (4m), 802.12 (3) (d) 1. and 3., 808.075 (4)  
 23 (d) 11. and 948.22 (7) (bm) of the statutes, the renumbering and amendment of  
 24 section 767.24 (4) (a) of the statutes and the creation of section 767.24 (4) (a) 3. of the

CH (#) The treatment of sections 767.25(6)

(intro.)<sup>v</sup> and 767.261 (intro.)<sup>v</sup> of the statutes

first applies to arrearages existing or  
a accruing ~~under the order~~ on the effective

date of this subsection, regardless of

when the order ~~was entered~~ <sup>on</sup> which

the arrearages are based was entered.

(2nd initial  
op. subsection)

Nonstat File Sequence:

EFFECTIVE DATE

- 1. In the component bar: For the action phrase, execute: . . . create → action: → \*NS: → effdate  
For the text, execute: . . . . . create → text: → \*NS: → effdateA
- 2. Nonstatutory subunits are numbered automatically if "( #1 )", "(#2)", etc., is filled in. Below, fill in "\_\_\_\_" or "( )" only if a "frozen" number is needed.

SECTION # \_\_\_\_ . Effective date.

( #1 ) ( ) . . . . . This act takes effect on . . . . .

- 1. In the component bar: For the action phrase, execute: . . create → action: → \*NS: → effdateE  
For the text, execute: . . . . . create → text: → \*NS: → effdate
- 2. Nonstatutory subunits are numbered automatically if "( #1 )", "(#2)", etc., is filled in. Below, fill in "\_\_\_\_" or "( )" only if a "frozen" number is needed.

SECTION # d \_\_\_\_ a Effective s: . . . . .

. . . . . This act takes effect on the after publication, except as follows:

( #1 ) ( ) . . . . . The treatment of sections . . . . . of the statutes takes effect on . . . . .

- 1. In the component bar: For the budget action phrase, execute: . . create → action: → \*NS: → 94X  
For the text, execute: . . . . . create → text: → \*NS: → effdate
- 2. Nonstatutory subunits are numbered automatically if "( #1 )", "(#2)", etc., is filled in. Below, for the budget, fill in the 9400 department code; and fill in "( )" only if a "frozen" number is needed.

SECTION 94- --. Effective dates; . . . . .

( #1 ) ( ) . . . . . The treatment of sections . . . . . of the statutes takes effect on . . . . .

first day of the 7th month beginning



1 statutes and SECTION 9357 (9yo) of this act take effect on the first day of the 7th month  
2 beginning after publication.

auto ref B see p 25

sub.

3 (3) ~~(#)~~ ~~(B)~~ The treatment of section 767.303 (1) (by SECTION ~~3050g~~) of the statutes  
4 takes effect on the date stated in the notice published by the secretary of  
5 transportation in the Wisconsin Administrative Register under section 85.515 of the  
6 statutes, or on May 1, 2000, whichever is earlier<sup>De</sup> ”.

(END)

change component ↑

note

INSERT A

***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.

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 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, 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 ~~for~~ determining physical placement in annulments, divorces and legal separations to paternity actions and physical placement actions when the parents have voluntarily acknowledged paternity. 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.

As discussed briefly before, among the specified factors 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

*in the annulment, divorce or legal separation*

*Ordering sole custody in*

*related to*

*in current law*

*\**

*\*  
\**

*on physical placement*

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 ~~who does not do so on time waives the right to object to a parenting plan filed by the other party.~~ *and* 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 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's 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 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 ~~and take~~ a person 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.

and take him or her

X

**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 ~~the provisions~~ 101 s ~~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 ~~the~~ have parents of a child ~~voluntarily~~ when 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 ~~the~~ when parents 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 adds to this provision that the court must also make temporary orders for custody and physical placement if the probability of the alleged father's paternity is 99% or higher. As under current law, in making these temporary orders the court must consider all the same factors that it considers in making the final orders in a paternity matter.

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 generally 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. ~~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.~~

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 ~~has been~~ 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 ~~determination~~ and that the court must make its modification determination in a manner consistent with the requirements for making an initial legal custody or

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is

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order

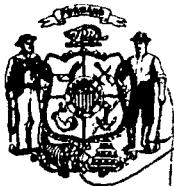
As under current law, in

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, regardless of the type of action in which the child support was ordered, 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.

(end of ins A)



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRBb1703/2  
PJK:kmg:mrc

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**SENATE AMENDMENT ,  
TO ASSEMBLY AMENDMENT (LRBb1636/3),  
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 1999 ASSEMBLY BILL 133**

*Insert 4-22v*

1 At the locations indicated, amend the amendment as follows:

2 1. Page 4, line 22: after that line insert:

3 ~~SECTION 305.19.~~ SECTION 767.045 (4m) of the statutes is created to read:

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

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

*(end of ins 4-22)*

1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3433/?ins  
PJK.....

INSERTS-22 ✓

no H If there is evidence that the other parent engaged in interspousal battery, as described under s. 940.19% 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (a), with respect to the parent providing the parenting plan, the parent providing the parenting plan is not required to disclose the specific address but only a general description of where he or she currently lives and intends to live during the next 2 years .

(END OF INSERT 8-22)

INSERT 8-23 ✓

no H If there is evidence that the other parent engaged in interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (a), with respect to the parent providing the parenting plan, the parent providing the parenting plan is not required to disclose the specific address but only a general description of where he or she works.

(END OF INSERT 8-23)

INSERT 9-14 ✓

H (o) If there is evidence that either party engaged in interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (a), with respect to the other party, how the child will be transferred between the parties for the exercise of physical placement to ensure the safety of the child and the parties.

(END OF INSERT 9-14)

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

LRB-3433/rdn P1

PJK.....  
Kmg

X I removed the change in the interest rate on arrearages from the initial applicability provisions, because I assumed that the lower interest rate should apply to all arrearages, regardless of when the **action under** which they accrued was commenced. All of the other provisions in this bill draft, however, are subject to the initial applicability provision and the delayed effective date provision. Are there any other provisions in the **draft** that you want removed from the effects of either of those provisions? For example, rather than applying the guardian ad litem status hearing provisions to new actions only, you could apply the provisions to actions currently pending.

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

## Kahler, Pam

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**From:** Rossmiller, Dan  
**Sent:** Monday, August 23, 1999 10:11 AM  
**To:** Kahler, Pam  
**Subject:** RE: Redraft of b1703

I can't say with certainty but I suspect so. This amendment is intended to address some concerns raised by domestic violence groups. The two provisions to be removed raised some issues with court commissioners and others. Apparently, they think that resolving those issues will require further drafting. For the present, they believe current law provides adequate protections.

I think our plan would be to review the situation post-budget (and post-veto) to see if any change is needed and then try to develop separate legislation to address any outstanding issues, including the issue addressed by the language to be deleted.

Two points:

- 1) We are holding two public hearings on the custody/placement budget provisions next week and would like to get the new draft back fairly quickly.
- 2) The revised b1703 should be incorporated into the draft requested by Rep. Musser, which is intended to parallel the budget language.

Thanks for all your fine work.

-----Original Message-----

**From:** Kahler, Pam  
**Sent:** Monday, August 23, 1999 9:44 AM  
**To:** Rossmiller, Dan  
**Subject:** RE: Redraft of b1703

Thanks, Dan, I did. Do you think that this change is the last one to this amendment?

-----Original Message-----

**From:** Rossmiller, Dan  
**Sent:** Monday, August 23, 1999 9:43 AM  
**To:** Kahler, Pam  
**Subject:** Redraft of b1703

I hope you had an enjoyable and restful vacation.

I am sending the "stripes" for b1703/1 back to you. The redraft should eliminate the language in items 7 and 8 of the amendment (i.e., the new sections 3054cqm and 3054 ctm).

It has been suggested that these sections may raise more questions than they would resolve, so we will leave them out at this point. Please call me if you have any questions (6-2500).