

**1999 DRAFTING REQUEST**

**Bill**

Received: **09/17/98**

Received By: **kahlepj**

Wanted: **As time permits**

Identical to LRB: **97 SB 202**

For: **Gary George (608) 266-2500**

By/Representing: **Karena Bierman**

This file may be shown to any legislator: **NO**

Drafter: **kahlepj**

May Contact:

Alt. Drafters:

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

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Standards for determining custody and physical placement in actions affecting the family

**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>
/?	kahlepj 09/28/98	gilfokm 10/1/98		_____			S&L
/P1			lpaasch 12/3/98	_____	gretskl 12/3/98		S&L
/1	kahlepj 02/12/99	jgeller 02/12/99	ismith 02/16/99	_____	lrb_docadmin 02/16/99	lrb_docadmin 03/16/99	

FE Sent For:

03-31-99

<END>

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1?	kahlepj	1/1 12/2 Jlg	102 LP	10-2 <del>LP</del>			

FE Sent For:

JF

<END>

DO  
Submit  
P's



# State of Wisconsin



GARY R. GEORGE  
SENATOR

DATE: September 16, 1998

TO: Legislative Reference Bureau  
-Pamela J. Kahler, Esq. ✓  
-Jefren E. Olsen, Esq.  
-Marc E. Shovers, Esq.  
-Madelon J. Lief, Esq.  
-Pamela J. Kahler, Esq.  
-Paul E. Nilsen, Esq.

FROM: Karena Bierman

RE: Drafting Requests

Attached please find a Senate Bill which Senator George would like to have re-drafted for the upcoming Session. At this time there are no content changes required to the previous drafts. Please let me know if further information is necessary.

Thank you for your attention to this request.



State of Wisconsin  
1997 - 1998 LEGISLATURE

0211/PI  
LRB-~~252011~~  
PJK:kmg:kat  
AM  
jlg

Due FRI, DEC 4

**1997 SENATE BILL 202**

D-note

May 13, 1997 - Introduced by Senators GEORGE, RUDE, BRESKE, WELCH and COWLES, cosponsored by Representatives MUSSER, GRONEMUS and RYBA. Referred to Committee on Judiciary, Campaign Finance Reform and Consumer Affairs.

regenerate ↓

1 **AN ACT to repeal** 767.001 (2) (b), 767.11 (8) (b) 3., 767.11 (9) (a), 767.11 (10) (e)  
2 1. to 3., 767.11 (14) (a) 3., 767.23 (1) (bm), 767.24 (3), 767.24 (4) (cm), 767.24 (5),  
3 767.24 (6) (a) and (am), 767.245 (2), 767.325 (2), 767.325 (3), 767.325 (4), 767.33  
4 (1m) (b), 767.45 (2), 767.458 (1m), 767.51 (5) (i), (im) and (j) and 891.39 (1) (b);  
5 **to renumber** 767.23 (1) (c), 767.23 (1) (d), 767.23 (1) (e), 767.23 (1) (f), 767.23  
6 (1) (g), 767.23 (1) (h), 767.23 (1) (i), 767.23 (1) (k) and 767.23 (1) (L); **to**  
7 **renumber and amend** 767.24 (2) (a), 767.33 (1m) (a) and 891.39 (1) (a); **to**  
8 **consolidate, renumber and amend** 767.001 (2) (intro.) and (a), 767.11 (9)  
9 (intro.) and (b) and ; **to amend** 20.921 (2) (a), 49.141 (1) (b), 51.30 (5) (bm), 55.07  
10 (2), 102.27 (2) (a), 115.81 (9) (c), 146.835, 757.48 (1) (a), 758.19 (5) (a) 2., 767.001  
11 (1s), 767.001 (2m), 767.001 (3), 767.02 (1) (k), 767.05 (1m), 767.081 (2) (a)  
12 (intro.), 767.083 (2), 767.085 (1) (a), 767.085 (1) (j) (intro.), 767.085 (1) (j) 1.,  
13 767.085 (1) (j) 2., 767.085 (2) (a), 767.087 (1) (c), 767.087 (2), 767.087 (3) (b),  
14 767.10 (1), 767.11 (8) (b) (intro.), 767.11 (8) (b) 1., 767.11 (8) (b) 2., 767.11 (8) (b)

**SENATE BILL 202**

1 4., 767.11 (10) (intro.), 767.11 (10) (a), 767.11 (10) (b), 767.11 (12) (a) and (b),  
 2 767.11 (14) (a) 1., 767.11 (14) (a) 2., 767.11 (14) (b), 767.115 (title) and (1), 767.14,  
 3 767.23 (1) (intro.), 767.23 (1) (a), 767.23 (1n), 767.23 (2), 767.24 (1), 767.24 (4)  
 4 (a), 767.24 (4) (d), 767.24 (6) (b), 767.24 (6) (c), 767.245 (1), 767.245 (3) (intro.),  
 5 767.245 (3) (f), 767.245 (3m) (c), 767.25 (2), 767.255 (1), 767.265 (3h), 767.265  
 6 (4), 767.265 (6) (a), 767.265 (6) (b), 767.265 (6) (c), 767.45 (1) (d), 767.45 (1) (i),  
 7 767.458 (1) (b), 767.458 (1) (c), 767.458 (1) (d), 767.46 (2) (c), 767.46 (4), 767.46  
 8 (5), 767.465 (2m) (a), 767.475 (1), 767.51 (3), 767.51 (4), 767.51 (5) (e), 767.51  
 9 (6), 767.52 (1), 769.302, 802.12 (3) (b), 803.01 (3) (b) 1., 803.01 (3) (b) 2., 814.61  
 10 (1) (c), 814.61 (7) (c), 977.05 (4) (i) 7. and 977.05 (6) (b) 1.; **to repeal and**  
 11 **recreate** 767.045, 767.23 (1) (am), 767.24 (2) (b), 767.24 (4) (b), 767.325 (1) and  
 12 767.327; and **to create** 767.001 (4m), 767.23 (1c) (intro.), 767.24 (2) (a) 1. and  
 13 2., 767.24 (6) (bm) and 767.53 (3) of the statutes; **relating to:** standards for  
 14 determining legal custody and physical placement of children in actions  
 15 affecting the family, jurisdictional requirements in actions affecting the family,  
 16 prohibitions against moving a child outside of a school district after divorce,  
 17 standards for modifying custody and physical placement orders, temporary  
 18 orders in actions affecting the family, visitation rights of 3rd parties,  
 19 prohibiting the appointment of a guardian ad litem in all but certain actions  
 20 affecting the family and making records of paternity proceedings open records.

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*two*  
**Analysis by the Legislative Reference Bureau**

→ This bill makes a number of changes to the provisions of the statutes that apply to actions affecting the family, the ~~2~~ most common of which are divorce and paternity actions. The changes relate especially to procedure and custody and physical placement determinations, including revisions to custody and physical placement orders, and apply to all actions affecting the family, including paternity actions after paternity has been determined, unless otherwise indicated.

**SENATE BILL 202****CUSTODY AND PHYSICAL PLACEMENT**

Under current law, a court must make a custody determination based on the best interest of the child. The court may grant sole custody to one parent or joint custody to both parents, but the court may grant joint custody only if the parents agree to it or if the court finds that both parents are capable of caring for the child, that no conditions exist that would interfere with the exercise of joint custody and that the parents will be able to cooperate in the future decision making required under an award of joint custody. The court may also find that neither parent is fit and proper to have custody, declare the child to be in need of protection or services and transfer legal custody to a county social services or human services department or licensed child welfare agency. Joint legal custody means that both parents have the right and responsibility to make major decisions concerning the child, and major decisions include decisions regarding consent to marry, consent to obtain a driver's license, authorization for nonemergency health care and the choice of school and religion. Current law provides that in a paternity matter the mother is to have sole legal custody unless the court orders otherwise.

This bill removes the best interest of the child as the basis for a court's determination regarding custody and provides that there are rebuttable presumptions that both parents are fit and have the ability to rear their children and that joint legal custody and equal periods of physical placement are fundamental rights of each parent and child. A court may order sole legal custody only if the parents agree that one parent should have sole legal custody or if the parental rights of one parent have been terminated. The court must order joint legal custody if one or both parents request it. The provision that authorizes the court to transfer legal custody to a county department or licensed child welfare agency is eliminated, as well as the provision related to awarding sole custody to the mother in a paternity matter.

Under current law, a court must allocate periods of physical placement (the time that a child is actually placed with a parent) after considering a number of factors, such as the wishes of the child and of each parent, the child's interaction and interrelationship with each parent, the child's adjustment to the home and community, the mental and physical health of the parties, the availability of child care services and whether either of the parties has a problem with alcohol or drug abuse. A child is entitled to periods of physical placement with each parent unless the court finds that physical placement with a parent would endanger the child's physical, mental or emotional health. The bill removes these provisions and provides that, if the court orders sole legal custody because the parties have agreed to it ~~the court must~~ ~~approve~~ the court must approve any schedule for the allocation of physical placement that the parties agree to and submit to the court in writing. If the parties do not agree, the court must order each party to submit a schedule and the court must order the schedule that sets forth the most equal allocation of physical placement. If neither schedule submitted by the parties is substantially equal and each proposes a greater amount of time for himself or herself, the court must order equal periods and require the parties to alternate spending with the child specified holidays and the child's birthday.

joint legal custody or

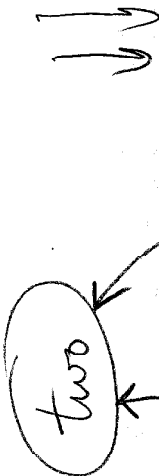
**SENATE BILL 202**

The bill changes the definition of major decisions (those decisions that any parent with legal custody may make) by excluding choice of school and religion and removes from the court the authority to specify any major decisions in addition to the ones specified in the definition. Although the parties may stipulate that one party has the sole power to make specified decisions, the bill removes from the court the authority to give one party that power and limits the court to specifying one parent as the primary caretaker of the child for the purpose of determining eligibility for ~~the~~ ~~benefits~~ ~~under~~ ~~the~~ ~~Wisconsin~~ ~~works~~ ~~program~~ (W-2) only if both parents are eligible for public assistance funded by a relief block grant. The court may determine and specify a child's primary provider for health care if the parties do not agree.

**MODIFICATIONS TO CUSTODY AND PHYSICAL PLACEMENT ORDERS**

Under current law, a court may not, within the first ~~1~~ years after the initial order is entered, modify a physical placement order if the modification would substantially alter the amount of time that a parent spends with a child, or modify a custody order, unless the modification is necessary because the current custodial conditions are physically or emotionally harmful to the best interest of the child. After ~~1~~ years after the initial order is entered, a court may modify a custody order, or modify a physical placement order even if the modification would substantially alter the amount of time that a parent spends with a child, if there has been a substantial change in circumstances since the entry of the last order and if the modification is in the child's best interest. The court may modify a physical placement order if the modification does not substantially alter the amount of time that a parent spends with a child or if the parents have substantially equal periods of physical placement and that arrangement becomes impractical on the basis of the best interest of the child. This bill removes those provisions and provides that a court must modify a physical placement order in a way that alters the time a parent spends with a child, and must modify a custody order, if a parent requests a modification and the current order is not in compliance with the statutory provision that specifies the manner in which the court must award custody and physical placement, if a parent's parental rights have been terminated or if the parents agree to a modification.

Under current law, a parent who has legal custody of and physical placement with a child must provide notice to the other parent if he or she intends to establish his or her legal residence with the child at any location outside the state or at any location within the state at a distance of 150 miles or more from the other parent or if he or she intends to remove the child from the state for more than 90 consecutive days. If the other parent sends a notice of objection, the court or family court commissioner must refer the parties to mediation and appoint a guardian ad litem for the child. The parent proposing the move or removal is prohibited from taking the proposed action until the dispute is resolved, unless the parent obtains a temporary order from the court or family court commissioner allowing the move or removal. If mediation is not successful, the parent objecting to the proposed action may file a petition, motion or order to show cause for modification of legal custody or physical placement, and the matter proceeds to a hearing before the court. The court may modify legal custody or physical placement if the move will result in a



**SENATE BILL 202**

substantial change of circumstances since the last order affecting legal custody or physical placement and if modification is in the child's best interest. As an alternative to modification of legal custody or physical placement, the objecting parent may request an order prohibiting the move or the removal of the child. The court must consider whether the proposed action is reasonable; the nature and extent of the child's relationship with the other parent and the disruption to the relationship that the proposed action may cause; and the availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent in making its determination of whether to prohibit the move or the removal of the child. The court may prohibit the move or the removal if it finds that doing so is in the child's best interest. The burden of proof is on the parent objecting to the move or removal. There is a rebuttable presumption that it is in the child's best interest to remain with the parent with whom the child currently resides for the greater period of time, which may be overcome by a showing that the move or the removal is unreasonable and not in the child's best interest.

This bill provides that, if both parents are awarded physical placement with the child in any action affecting the family, neither parent may establish a legal residence for the child that is outside the school district in which the child resided on the 180th day before the commencement of the action affecting the family, or since birth if the child is less than 8 months old, or other school district agreed upon by the parties. The court may, however, allow a parent to establish a legal residence for the child outside of that school district if the parent shows that for at least one year the other parent has exercised his or her physical placement rights for less than 10% of the amount of time awarded by the court. If one of the parents wishes to establish his or her legal residence outside of the child's school district, that parent must provide at least 60 days' written notice to the other parent. If the proposed move would make it difficult or impractical for the physical placement arrangement to continue and at the same time for the child to remain in the same school district, either parent may request a modification to the physical placement order. The court must approve any modified physical placement schedule that the parents agree to. If the parents do not agree, the court may modify the physical placement schedule in such a way that the parent not proposing the move is awarded physical placement with the child during weekdays and weeknights while school is in session, at least one weekend per month, at least 4 weeks during the summer and alternating holidays. The parent proposing the move must be responsible for transportation costs incurred in exercising his or her physical placement rights and must be awarded the maximum amount of physical placement that is reasonable under the circumstances. If both parents wish to establish their legal residences or a legal residence for the child outside of the child's current school district and do not agree on a new school district, the court may designate one of the parents' new legal residences as the child's legal residence for the purpose of establishing a new school district for the child. The court must choose the legal residence that the court determines will maximize the amount of time that each parent may spend with the child. If one of the parents has already established a legal residence outside of the child's current school district, the court may allow the other parent to establish a

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**SENATE BILL 202**

legal residence for the child in a different school district if the parent who moved first does not wish to move back to the child's current school district and if the move does not increase the distance from the parent who moved first.

**PATERNITY ACTIONS**

In addition to the changes that the bill makes with respect to actions affecting the family in general, the bill makes some changes that relate to paternity actions alone. Under current law, in a paternity action that is commenced by a man who claims to be the father of a child who was born to a woman while she was married to another man, a party may allege that a judicial determination that a man other than the mother's husband is the child's father is not in the child's best interest. If the judge or family court commissioner agrees that such a determination is not in the child's best interest, no genetic tests may be taken and the action is dismissed. ~~The bill eliminates this provision and provides that a man against whom a paternity action was dismissed, on the basis of this provision, before the date on which the bill is enacted may commence another paternity action.~~

these provisions

Insert A-6

one of the eliminated provisions

Current law provides that the liability of an adjudicated father of a child for past support is limited to support for the period after the birth of the child. The bill changes this to support for the period after the man is adjudicated to be the father.

Current law provides that, with certain exceptions, records of paternity proceedings are closed. The bill provides that the records are open to public inspection if the alleged father was adjudicated to be the father.

**MISCELLANEOUS CHANGES**

The bill makes an important change related to the appointment of a guardian ad litem. Under current law, a court in an action affecting the family must appoint a guardian ad litem for a minor child to represent the interests of the minor child if the court has reason for special concern as to the welfare of the child or if legal custody or physical placement is contested. The court must also appoint a guardian ad litem to bring a paternity action on behalf of a minor nonmarital child ~~under the same circumstances as under current law, but prohibits the court from appointing a guardian ad litem under any other circumstances in an action affecting the family.~~ if the child's custodian is receiving benefits under W-2 or ~~an application for legal services has been filed on behalf of the child with the state child support program.~~ ~~The bill retains the requirement that the court appoint a guardian ad litem to bring a paternity action on behalf of a minor nonmarital child under the same circumstances as under current law, but prohibits the court from appointing a guardian ad litem under any other circumstances in an action affecting the family.~~ Under the bill, if the court has reason for special concern as to the welfare of a minor child, the court must order one or both parents to file a petition alleging that the child is in need of protection or services. If the court takes jurisdiction of the child on the basis of that petition, the court may appoint a guardian ad litem for the proceedings related to that petition.

the state is barred from commencing a paternity action by a statute of limitations and

←

Another important change relates to temporary orders. Under current law, the court or family court commissioner may, upon request, make temporary orders pending the final judgment in an action affecting the family concerning such matters as custody and physical placement of minor children, child support and payment of debts. Under the bill, the court or family court commissioner is required in every

**SENATE BILL 202**

action affecting the family to make a temporary order that grants joint legal custody of any minor children to the parties and that grants the parties equal periods of physical placement with any minor children of the parties.

The bill makes a number of other miscellaneous changes. Under current law, a divorce action may not be commenced unless at least one of the parties has been a resident of the county in which the action is brought for not less than 30 days. This residency requirement is lengthened to 6 months. Stipulations under current law are subject to the approval of the court. The bill generally removes this approval requirement and requires the court to incorporate into the appropriate judgment or order any stipulation of the parties. Under current law, the parties to an action affecting the family are prohibited from certain actions during the pendency of the action, including establishing a residence with a minor child of the parties outside the state or more than 150 miles from the residence of the other party within the state, removing a minor child of the parties from the state for more than 90 consecutive days or concealing a minor child of the parties from the other party. The bill instead prohibits any party from establishing a legal residence for a minor child of the parties outside the school district in which the child resided on the 180th day before the commencement of the action, or since birth if the child is less than 6 months old, or other school district agreed upon by the parties, and from removing a minor child of the parties from the state for 14 consecutive days or more without the written approval of the other party. The bill also makes some changes in the mediation procedure under current law and requires the court to approve any agreement that the parties reach as a result of mediation, as long as it is knowingly and voluntarily made and not unconscionable.

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

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

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

~~20.921 (2) (a) Whenever it becomes necessary in pursuance of any federal or state law or court-ordered assignment of income under s. 46.10 (14) (e), 767.25 (1) (L) (1c) (i), 767.25 (4m) (c), 767.265 or 767.51 (3m) (c) to make deductions from the salaries of state officers or employees or employees of the University of Wisconsin Hospitals and Clinics Authority, the state agency or authority by which the officers or employees are employed is responsible for making such deductions and paying over~~

Insert 7-7<sup>v</sup>



SENATE BILL 202

SECTION 1

1 the total thereof for the purposes provided by the laws or orders under which they  
2 were made.

3 SECTION 2. 49.141 (1) (b) of the statutes is amended to read:

4 49.141 (1) (b) "Custodial parent" means, with respect to a dependent child, a  
5 parent who resides with that child and, if there has been a determination of legal  
6 custody with respect to the dependent child, has legal custody of that child. For the  
7 purposes of this paragraph, "legal custody" has the meaning given in s. 767.001 (2)  
8 (a).

9 SECTION 3. 51.30 (5) (bm) of the statutes is amended to read:

10 51.30 (5) (bm) *Parents denied physical placement.* A parent who has been  
11 denied periods of physical placement with a child under s. 767.24 (4) (b) or 767.325  
12 (4) may not have the rights of a parent or guardian under pars. (a) and (b) with  
13 respect to access to that child's court or treatment records.

14 SECTION 4. 55.07 (2) of the statutes is amended to read:

15 55.07 (2) A parent who has been denied periods of physical placement under  
16 s. 767.24 (4) (b) or 767.325 (4) may not have the rights of a parent or guardian with  
17 respect to access to a child's records under this chapter.

18 SECTION 5. 102.27 (2) (a) of the statutes is amended to read:

19 102.27 (2) (a) A benefit under this chapter is assignable under s. 46.10 (14) (e),  
20 767.23 (1) (L) (1c) (i), 767.25 (4m) (c), 767.265 (1) 767.51 (3m) (c), or 767.62 (4) (b) 3

21 SECTION 6. 115.81 (9) (c) of the statutes is amended to read:

22 115.81 (9) (c) Notwithstanding ss. 48.345, 48.363, 48.427 (3), 767.24 (3), 880.12,  
23 880.15, 938.183, 938.34 (4), (4h), (4m) and (4n), 938.345 and 938.363, a surrogate  
24 parent has the authority to act as the child's parent in all matters relating to this  
25 subchapter.

PROOF W/STATS.

plain  
301.12(4)(e)

plain  
767.62(4)(b)3

\* SECTION#. AM. 115.76(12)<sup>4</sup>  
↓ insert 8-25 →

SENATE BILL 202

1 SECTION 7. 146.835<sup>X</sup> of the statutes is amended to read:

2 146.835 Parents denied physical placement rights. A parent who has  
3 been denied periods of physical placement under s. 767.24 (4)(b)<sup>✓</sup> or 767.325<sup>✓</sup> (4) may  
4 not have the rights of a parent or guardian under this chapter with respect to access  
5 to that child's patient health care records under s. 146.82 or 146.83.

6 SECTION 8. 757.48 (1) (a)<sup>X</sup> of the statutes is amended to read:

7 757.48 (1) (a) Except as provided in s. 879.23 (4), in all matters in which a  
8 guardian ad litem is appointed by the court, the guardian ad litem shall be an  
9 attorney admitted to practice in this state. ~~In order to be appointed as a guardian~~  
10 ~~ad litem under s. 767.045, an attorney shall have completed 3 hours of approved~~  
11 ~~continuing legal education relating to the functions and duties of a guardian ad litem~~  
12 ~~under ch. 767.~~ → 1997<sup>✓</sup>

13 SECTION 9. 758.19 (5) (a) 2. of the statutes is amended to read:

14 758.19 (5) (a) 2. Fees for expert witnesses called by the guardian ad litem under  
15 s. 767.045 (6), ~~1997~~ stats., if either or both parties are unable to pay those fees.

16 SECTION 10. 767.001 (1s) of the statutes is amended to read:

17 767.001 (1s) "Joint legal custody" means the condition under which both  
18 parties share legal custody and neither party's legal custody rights are superior,  
19 except with respect to specified decisions as ~~set forth~~ stipulated<sup>✓</sup> by the court or the  
20 parties and set forth in the final judgment or order.

21 SECTION 11. 767.001 (2) (intro.) and (a)<sup>X</sup> of the statutes are consolidated,  
22 renumbered 767.001 (2) and amended to read:

23 767.001 (2)<sup>✓</sup> "Legal custody" means: ~~(a) With~~ with<sup>✓</sup> respect to any person  
24 granted legal custody of a child, ~~other than a county agency or a licensed child welfare~~  
25 ~~agency under par. (b)~~<sup>✓</sup>, the right and responsibility to make major decisions

PROOF W/STATS.

1 concerning the child, except with respect to specified decisions as set forth stipulated  
2 by the ~~court or the parties~~ and set forth in the final judgment or order.

3 SECTION 12. <sup>X</sup> 767.001 (2) (b) of the statutes is repealed.

4 SECTION 13. <sup>X</sup> 767.001 (2m) of the statutes is amended to read:

5 767.001 (2m) "Major decisions" includes, but is not limited to, <sup>✓</sup> means decisions  
6 regarding consent to marry, consent to enter military service, consent to obtain a  
7 motor vehicle operator's license, and authorization for nonemergency health care  
8 ~~and choice of school and religion.~~

9 SECTION 14. 767.001 (3) <sup>X</sup> of the statutes is amended to read:

10 767.001 (3) "Mediation" means a cooperative process involving the parties and  
11 a mediator, the purpose of which is to help the parties, by applying communication  
12 and dispute resolution skills, define and resolve their own disagreements, ~~with the~~  
13 ~~best interest of the child as the paramount consideration~~ <sup>✓</sup> and to encourage the  
14 parties to cooperate in making decisions regarding their minor children, based on the  
15 principle that each parent has an equal right of access to and equal responsibility to  
16 provide care for their minor children.

17 SECTION 15. 767.001 (4m) <sup>X</sup> of the statutes is created to read:

18 767.001 (4m) "Nonemergency health care" <sup>✓</sup> means routine health care and  
19 includes such care as acute illness care, physical examinations and dental care.

20 SECTION 16. 767.02 (1) (k) <sup>X</sup> of the statutes is amended to read:

21 767.02 (1) (k) Concerning periods of physical placement or visitation rights to  
22 children, <sup>✓</sup> ~~including an action to prohibit a move with or the removal of a child under~~  
23 ~~s. 767.327 (3) (e).~~

24 SECTION 17. 767.045 <sup>X</sup> of the statutes is repealed and recreated to read:

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1           **767.045   Petition to juvenile court; guardian ad litem.**   (1)

2   Notwithstanding s. 803.01 (3) and except as provided in sub. (2), the court may not  
3   appoint a guardian ad litem for a minor child in an action affecting the family. If at  
4   any time during the pendency of an action affecting the family in which a minor child  
5   is involved the court has reason for special concern as to the welfare of the minor  
6   child, the court shall order a parent or the parents to file a petition under s. 48.25 (1)  
7   to initiate proceedings under s. 48.13. If the court takes jurisdiction over the child  
8   under s. 48.13, the court may appoint a guardian ad litem as provided in s. 48.235.

9           (2) (a) The attorney responsible for support enforcement under s. 59.53 (6) (a)  
10   may request that the court or family court commissioner appoint a guardian ad litem  
11   to bring an action or motion on behalf of a minor who is a nonmarital child whose  
12   paternity has not been adjudicated for the purpose of determining the paternity of  
13   the child, and the court or family court commissioner shall appoint a guardian ad  
14   litem, if any of the following applies:

15           1. Aid is provided under s. 46.261, 48.57 (3m), 49.19 or 49.45 on behalf of the  
16   child, or benefits are provided to the child's custodial parent under ss. 49.141 to  
17   49.161, but the state and its delegate under s. 49.22 (7) are barred by a statute of  
18   limitations from commencing an action under s. 767.45 on behalf of the child.

19           2. An application for legal services has been filed with the child support  
20   program under s. 49.22 on behalf of the child, but the state and its delegate under  
21   s. 49.22 (7) are barred by a statute of limitations from commencing an action under  
22   s. 767.45 on behalf of the child.

23           (b) A guardian ad litem appointed under par. (a) shall bring an action or motion  
24   for the determination of the child's paternity. The appointment of a guardian ad

*acknowledge legal number A. 767.62 (1) or a substantially similar law  
of another state or*

*or (3n)*

12

15

1 litem under par. (a) terminates upon the entry of the court's order determining the  
2 existence or nonexistence of paternity.

3 **SECTION 18.** 767.05 (1m)<sup>x</sup> of the statutes is amended to read:

4 767.05 (1m) RESIDENCE. No action under s. 767.02 (1) (a) or (b) may be brought  
5 unless at least one of the parties has been a bona fide resident of the county in which  
6 the action is brought for not less than ~~30 days~~<sup>✓</sup> 6 months next preceding the  
7 commencement of the action, or unless the marriage has been contracted within this  
8 state within one year prior to the commencement of the action. No action under s.  
9 767.02 (1) (c) or (d) may be brought unless at least one of the parties has been a bona  
10 fide resident of the county in which the action is brought for not less than ~~30 days~~  
11 6 months<sup>✓</sup> next preceding the commencement of the action. No action under s. 767.02  
12 (1) (c) may be brought unless at least one of the parties has been a bona fide resident  
13 of this state for not less than 6 months next preceding the commencement of the  
14 action.

15 **SECTION 19.** 767.081 (2) (a) (intro.)<sup>x</sup> of the statutes is amended to read:

16 767.081 (2) (a) (intro.) The family court commissioner shall, ~~with or~~<sup>✓</sup> without  
17 charge, provide the party with written information on the following, as appropriate  
18 to the action commenced:

19 **SECTION 20.** 767.083 (2)<sup>x</sup> of the statutes is amended to read:

20 767.083 (2) An order by the court, after consideration of the recommendation  
21 of the family court commissioner, directing an immediate hearing on the petition for  
22 the protection of the health or safety of either of the parties or of any child of the  
23 marriage parties<sup>✓</sup> or for other emergency reasons consistent with the policies of this  
24 chapter. The court shall upon granting such order specify the grounds therefor.

25 **SECTION 21.** 767.085 (1) (a) of the statutes is amended to read:

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1 767.085 (1) (a) The name and birthdate of the parties, the social security  
2 numbers of the ~~husband and wife~~ <sup>✓</sup> parties and their occupations, the date and place  
3 of marriage and the facts relating to the residence of both parties.

4 **SECTION 22.** 767.085 (1) (j) (intro.) <sup>✗</sup> of the statutes is amended to read:

5 767.085 (1) (j) (intro.) Unless the action is one under s. 767.02 (1) (g) or (h), that  
6 during the pendency of the action, the parties are prohibited from, and may be held  
7 in contempt of court for, doing any of the following without the consent of the other  
8 party <sup>✓</sup> ~~or an order of the court or family court commissioner:~~

9 **SECTION 23.** 767.085 (1) (j) 1. <sup>✗</sup> of the statutes is amended to read:

10 767.085 (1) (j) 1. Establishing a residence with <sup>✓</sup> for a minor child of the parties  
11 ~~outside the state or more than 150 miles from the residence of the other party within~~  
12 ~~the state school district in which the child resided on the 180th day before the~~  
13 ~~commencement of the action, or since birth if the child is less than 6 months old, or~~  
14 ~~other school district agreed upon by the parties.~~

15 **SECTION 24.** 767.085 (1) (j) 2. <sup>✗</sup> of the statutes is amended to read:

16 767.085 (1) (j) 2. Removing a minor child of the parties from the state for more  
17 ~~than 90~~ <sup>✓</sup> 14 consecutive days ~~or more without the written approval of the other party.~~

18 **SECTION 25.** 767.085 (2) (a) <sup>✗</sup> of the statutes is amended to read:

19 767.085 (2) (a) Either or both of the parties <sup>✓</sup> ~~to the marriage~~ may initiate the  
20 action. The party initiating the action or his or her attorney shall sign the petition.  
21 Both parties or their respective attorneys shall sign a joint petition.

22 **SECTION 26.** 767.087 (1) (c) <sup>✗</sup> of the statutes is amended to read:

23 767.087 (1) (c) Unless the action is one under s. 767.02 (1) (g) or (h), without  
24 the consent of the other party <sup>✓</sup> ~~or an order of the court or family court commissioner,~~  
25 ~~establishing a residence with for a minor child of the parties outside the state or more~~

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1 ~~than 150 miles from the residence of the other party within the state school district~~  
 2 ~~in which the child resided on the 180th day before the commencement of the action,~~  
 3 ~~or since birth if the child is less than 6 months old, or other school district agreed upon~~  
 4 ~~by the parties, removing a minor child of the parties from the state for more than 90~~  
 5 ~~14 consecutive days or more without the written approval of the other party or~~  
 6 ~~concealing a minor child of the parties from the other party.~~

7 SECTION 27. 767.087<sup>x</sup> (2) of the statutes is amended to read:

8 767.087 (2) The prohibitions under sub. (1) shall apply until the action is  
 9 dismissed, or until a final judgment in the action is entered <sup>✓</sup> ~~or until the court or~~  
 10 ~~family court commissioner orders otherwise.~~

11 SECTION 28. 767.087<sup>x</sup> (3) (b) of the statutes is amended to read:

12 767.087 (3) (b) An act in violation of sub. (1) (c) is not a contempt of court if the  
 13 ~~court finds that the action was taken to protect a party or~~ by clear and convincing  
 14 evidence that the party took the action to protect a minor child of the parties from  
 15 physical abuse by the other party and that there was no reasonable opportunity  
 16 under the circumstances for the party and that the party obtained or made a  
 17 reasonable attempt to obtain an order <sup>✓</sup> ~~under sub. (2) authorizing the action.~~

18 SECTION 29. 767.10 (1)<sup>x</sup> of the statutes is amended to read:

19 767.10 (1) The parties in an action for an annulment, divorce or legal  
 20 separation may, ~~subject to the approval of the court,~~ stipulate for a division of  
 21 property, for maintenance payments, for the support of children, for periodic family  
 22 support payments under s. 767.261 or for legal custody and physical placement, in  
 23 case a divorce or legal separation is granted or a marriage annulled.

24 SECTION 30. 767.11 (8) (b) (intro.) of the statutes is amended to read:

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767.11 (8) (b) (intro.) A court may, in its discretion, shall hold a trial or hearing without requiring attendance at the session under par. (a) if the court finds that attending the session will cause undue hardship or would endanger the health or safety of one of the parties. In making its determination of whether attendance at the session would endanger the health or safety of one of the parties, the court shall consider evidence all of the following:

SECTION 31. 767.11 (8) (b) 1. of the statutes is amended to read:

767.11 (8) (b) 1. That ~~Whether~~ a party engaged in has been convicted of a crime involving abuse, as defined in s. 813.122 (1) (a) 48.02 (1), of the child, as defined in s. 48.02 (2).

SECTION 32. 767.11 (8) (b) 2. of the statutes is amended to read:

767.11 (8) (b) 2. Interspousal Whether a party has been convicted of battery as described under s. 940.19 or 940.20 (1m) or domestic abuse as defined in s. 813.12 (1) (a) against the other party.

SECTION 33. 767.11 (8) (b) 3. of the statutes is repealed.

SECTION 34. 767.11 (8) (b) 4. of the statutes is amended to read:

767.11 (8) (b) 4. Any other clear and convincing evidence indicating that a party's health or safety will be endangered by attending the session.

SECTION 35. 767.11 (9) (intro.) and (b) of the statutes are consolidated, renumbered 767.11 (9) and amended to read:

767.11 (9) PROHIBITED ISSUES IN MEDIATION. If mediation is provided by a mediator assigned under sub. (6), no issue relating to property division, maintenance or child support may be considered during the mediation unless ~~all of the following~~ apply: (b) ~~The~~ the parties agree in writing to consider the property division, maintenance or child support issue.



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1 SECTION 36. <sup>X</sup>767.11 (9) (a) of the statutes is repealed.

2 SECTION 37. <sup>X</sup>767.11 (10) (intro.) of the statutes is amended to read:

3 767.11 (10) POWERS AND DUTIES OF MEDIATOR. (intro.) A mediator assigned  
4 under sub. (6) shall be guided by the best interest of the child and may do any of the  
5 following, at his or her discretion:

6 SECTION 38. <sup>X</sup>767.11 (10) (a) of the statutes is amended to read:

7 767.11 (10) (a) Include the counsel of any party or any appointed both parties  
8 and any guardian ad litem appointed under s. 48.235 in the mediation.

9 SECTION 39. <sup>X</sup>767.11 (10) (b) of the statutes is amended to read:

10 767.11 (10) (b) Interview any child of the parties, with or without a party  
11 neither of the parties present or with both of the parties present.

12 SECTION 40. <sup>X</sup>767.11 (10) (e) (intro.) and 4. of the statutes are consolidated,  
13 renumbered 767.11 (10) (e) and amended to read:

14 767.11 (10) (e) Terminate mediation if a party does not cooperate or if mediation  
15 is not appropriate or if any of the following facts exist: <sup>✓</sup>4. Other evidence which  
16 indicates ~~one of the parties'~~ that the health or safety of one of the parties will be  
17 endangered if mediation is not terminated.

18 SECTION 41. 767.11 (10) (e) 1. to 3. <sup>✓</sup>of the statutes are repealed.

19 SECTION 42. <sup>X</sup>767.11 (12) (a) and (b) of the statutes are amended to read:

20 767.11 (12) (a) Any agreement which resolves issues of legal custody or periods  
21 of physical placement between the parties reached as a result of mediation under this  
22 section shall be prepared in writing, reviewed by the attorney, if any, for each party  
23 and by any appointed guardian ad litem appointed under s. 48.235, and submitted  
24 to the court to be included in the court order as a stipulation. Any reviewing attorney  
25 or guardian ad litem shall certify on the mediation agreement that he or she reviewed

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1 it and the guardian ad litem, if any, shall comment on the agreement based on the  
 2 best interest of the child. The mediator shall certify that the written mediation  
 3 agreement is in the best interest of the child based on the information presented to  
 4 the mediator and that it accurately reflects the agreement made between the parties.  
 5 The court may approve or reject the agreement, based on the best interest of the  
 6 child. The court shall state in writing its reasons for rejecting an agreement shall  
 7 approve the agreement if the court finds that the agreement is knowingly and  
 8 voluntarily made. If the court as a matter of law finds that any aspect of the  
 9 agreement is unconscionable, the court shall reject the unconscionable aspect or so  
 10 limit the application of the unconscionable aspect as to avoid any unconscionable  
 11 result.

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

22 SECTION 43. 767.11 (14) (a) 1. <sup>✓</sup> of the statutes is amended to read:

23 767.11 (14) (a) 1. The conditions of the child's each parent's home.

24 SECTION 44. 767.11 (14) (a) 2. <sup>✓</sup> of the statutes is amended to read:

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1 767.11 (14) (a) 2. Each party's performance of parental duties and  
2 responsibilities relating to the basic care of the child.

3 SECTION 45. 767.11 (14) (a) 3. of the statutes is repealed.

4 SECTION 46. 767.11 (14) (b) of the statutes is amended to read:

5 767.11 (14) (b) The person or entity investigating the parties under par. (a)  
6 shall complete the investigation and submit the results to the court. The court shall  
7 make the results available to both parties. The report shall be a part of the record  
8 in the action unless the court orders otherwise. The report shall not be considered  
9 as a recommendation as to legal custody or physical placement but as evidence  
10 relating to the condition of each parent's home and the ability of each parent to  
11 provide basic care for the child and may be considered by the court for the purpose  
12 of determining whether to order the filing of a petition under s. 48.25 (1) to initiate  
13 proceedings under s. 48.13.

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14 SECTION 47. 767.115 (title) and (1) of the statutes are amended to read:

15 **767.115 (title) Educational program on the effects of divorce family**  
16 **breakup on children.** (1) At any time during the pendency of an action affecting  
17 the family in which a minor child is involved and in which the court or family court  
18 commissioner determines that it is appropriate and in the best interest of the child,  
19 the court or family court commissioner, on its own motion, may order the parties to  
20 attend a program specified by the court or family court commissioner concerning the  
21 effects on a child of a dissolution of the marriage break in the family relationship.  
22 A program under this subsection shall be educational rather than therapeutic in  
23 nature and may not exceed a total of 4 hours in length. The parties shall be  
24 responsible for the cost, if any, of attendance at the program. The court or family  
25 court commissioner may specifically assign responsibility for payment of any cost.

→ Insert 18-25 ✓

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1 ~~No facts or information obtained in the course of the program, and no report resulting~~  
2 ~~from the program, is admissible in any action or proceeding.~~

3 SECTION 48. 767.14<sup>X</sup> of the statutes is amended to read:

4 **767.14 Service on and appearance by family court commissioner.** In  
5 any action affecting the family, each party shall, either within 20 days after making  
6 service on the opposite party of any petition or pleading or before filing such petition  
7 or pleading in court, serve a copy of the same upon the family court commissioner of  
8 the county in which the action is begun, whether such action is contested or not. No  
9 judgment in any such action shall be granted unless this section is complied with  
10 except when otherwise ordered by the court. Such commissioner ~~may~~ shall appear  
11 in an action under this chapter ~~when appropriate; and shall appear~~ when requested  
12 by the court or by a party.

13 SECTION 49. 767.23 (1) (intro.)<sup>X</sup> of the statutes is amended to read:

14 767.23 (1) (intro.) Except as provided in ch. 822, in every action affecting the  
15 family, including a paternity action after paternity has been adjudicated, the court  
16 or family court commissioner ~~may~~ shall, during the pendency thereof, make just and  
17 reasonable temporary orders concerning the following matters:

18 SECTION 50. 767.23 (1) (a)<sup>X</sup> of the statutes is amended to read:

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

25 SECTION 51. 767.23 (1) (am)<sup>X</sup> of the statutes is repealed and recreated to read:

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1 767.23 (1) (am) Granting equal periods of physical placement to the parties  
 2 unless the parties agree to a different physical placement allocation or unless a  
 3 conflicting order under s. 48.345 or subch. VI of ch. 938 is in effect.

4 SECTION 52. 767.23 (1) (bm) of the statutes is repealed.

5 SECTION 53. 767.23 (1) (c) of the statutes is renumbered 767.23 (1c) (a) *and*  
*amended to read:*

6 SECTION 54. 767.23 (1) (d) of the statutes is renumbered 767.23 (1c) (b).

7 SECTION 55. 767.23 (1) (e) of the statutes is renumbered 767.23 (1c) (c).

8 SECTION 56. 767.23 (1) (f) of the statutes is renumbered 767.23 (1c) (d).

9 SECTION 57. 767.23 (1) (g) of the statutes is renumbered 767.23 (1c) (e).

10 SECTION 58. 767.23 (1) (h) of the statutes is renumbered 767.23 (1c) (f).

11 SECTION 59. 767.23 (1) (i) of the statutes is renumbered 767.23 (1c) (g).

12 SECTION 60. 767.23 (1) (k) of the statutes is renumbered 767.23 (1c) (h).

13 SECTION 61. 767.23 (1) (L) of the statutes is renumbered 767.23 (1c) (i) *and*  
*amended to read:*

14 SECTION 62. 767.23 (1c) (intro.) of the statutes is created to read:

15 767.23 (1c) (intro.) In every action affecting the family, the court or family court  
 16 commissioner may, during the pendency thereof, make just and reasonable  
 17 temporary orders concerning the following matters:

18 SECTION 63. 767.23 (1n) of the statutes is amended to read:

19 767.23 (1n) ~~Before~~ Except as provided in sub. (1) (a) and (am), before making  
 20 any temporary order under sub. (1) or (1c), the court or family court commissioner  
 21 shall consider those factors which the court is required by this chapter to consider  
 22 before entering a final judgment on the same subject matter. If the court or family  
 23 court commissioner makes a temporary child support order that deviates from the  
 24 amount of support that would be required by using the percentage standard  
 25 established by the department under s. 49.22 (9), the court or family court

Insert 20-5

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1 commissioner shall comply with the requirements of s. 767.25 (1n). A temporary  
 2 order under sub. (1) or (1c) may be based upon the written stipulation of the parties,  
 3 ~~subject to the approval of the court or the family court commissioner.~~ Temporary  
 4 orders made by the family court commissioner may be reviewed by the court as  
 5 provided in s. 767.13 (6).

6 SECTION 64. 767.23 (2) of the statutes is amended to read:

7 767.23 (2) Notice of motion for an order or order to show cause under sub. (1)  
 8 or (1c) may be served at the time the action is commenced or at any time thereafter  
 9 and shall be accompanied by an affidavit stating the basis for the request for relief.

10 SECTION 65. 767.24 (1) of the statutes is amended to read:

11 767.24 (1) GENERAL PROVISIONS. In rendering a judgment of annulment, divorce  
 12 or legal separation, or in rendering a judgment in an action under s. 767.02 (1) (e),  
 13 the there are rebuttable presumptions that both parents are fit and have the ability  
 14 to rear their children, that both parents are qualified to decide what is best for their  
 15 children and that joint legal custody and equal periods of physical placement are  
 16 fundamental rights of each parent and child. The court shall make such provisions  
 17 as it deems just and reasonable concerning the legal custody and physical placement  
 18 of any minor child of the parties, as are provided in this section.

19 SECTION 66. 767.24 (2) (a) of the statutes is renumbered 767.24 (2) (a) (intro.)  
 20 and amended to read:

21 767.24 (2) (a) (intro.) Subject to par. (b), based on the best interest of the child  
 22 and after considering the factors under sub. (5), the The court may give joint legal  
 23 custody or sole legal custody of a minor child. to one parent if either of the following  
 24 applies:

25 SECTION 67. 767.24 (2) (a) 1. and 2. of the statutes are created to read:

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1 767.24 (2) (a) 1. Both parties agree to sole legal custody with one parent.

2 2. The parental rights of one parent have been terminated under subch. VIII  
3 of ch. 48.

4 SECTION 68. 767.24 (2) (b) of the statutes is repealed and recreated to read:

5 767.24 (2) (b) The court shall give joint legal custody if one or both parties  
6 request joint legal custody.

7 SECTION 69. 767.24 (3) of the statutes is repealed.

8 SECTION 70. 767.24 (4) (a) of the statutes is amended to read:

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9 767.24 (4) (a) ~~Except as provided under par. (b), if~~ If the court orders sole legal  
10 custody because the parties agree to it under sub. (2)(a) 1. or joint legal custody under  
11 sub. (2) (b), the court shall allocate periods of physical placement between the parties  
12 in accordance with this subsection. ~~In determining the allocation of periods of~~  
13 ~~physical placement, the court shall consider each case on the basis of the factors in~~  
14 ~~sub. (5).~~

15 SECTION 71. 767.24 (4) (b) of the statutes is repealed and recreated to read:

16 767.24 (4) (b) The court shall approve any written schedule for physical  
17 placement that the parties agree to and submit to the court. If the parties do not  
18 agree on a placement schedule, the court shall require each party to submit a  
19 placement proposal. The court shall approve the proposal submitted that sets forth  
20 the most equal allocation of periods of physical placement between the parties. If  
21 neither party proposes substantially equal periods of physical placement and each  
22 party proposes that he or she be awarded physical placement for the greater period  
23 of time, the court shall allocate equal alternating periods of physical placement  
24 between the parties and shall require that the parties annually alternate spending  
25 all of the following with the child:

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- 1 1. New Year's Day.
- 2 2. Easter.
- 3 3. Memorial Day.
- 4 4. Independence Day (July 4).
- 5 5. Labor Day.
- 6 6. Thanksgiving Day.
- 7 7. Christmas Eve.
- 8 8. Christmas Day.
- 9 9. New Year's Eve.
- 10 10. The child's birthday.

11 SECTION 72. 767.24 (4) (cm) <sup>X</sup> of the statutes is repealed.

12 SECTION 73. 767.24 (4) (d) <sup>X</sup> of the statutes is amended to read:

13 767.24 (4) (d) <sup>✓</sup> ~~If the~~ The court grants periods of physical placement to more than  
 14 one parent, it shall order a parent with legal custody and physical placement rights  
 15 to provide the notice required under s. 767.327 (1) (2). <sup>✓</sup>

16 SECTION 74. 767.24 (5) <sup>X</sup> of the statutes is repealed.

17 SECTION 75. 767.24 (6) (a) and (am) <sup>X</sup> of the statutes are repealed.

18 SECTION 76. 767.24 (6) (b) <sup>X</sup> of the statutes is amended to read:

19 767.24 (6) (b) ~~Notwithstanding s. 767.001 (1s), in making an order of~~ If the  
 20 court awards joint legal custody, the court may give one party parties may stipulate  
 21 that one party has the <sup>✓</sup> sole power to make specified decisions, while both parties  
 22 retain equal rights and responsibilities for other decisions. The court shall  
 23 incorporate the terms of the stipulation into the final judgment or order.

24 SECTION 77. 767.24 (6) (bm) <sup>X</sup> of the statutes is created to read:

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SECTION 77

1           767.24 (6) (bm) If the court awards joint legal custody, the parties may stipulate  
 2 to the primary care physicians for a minor child, and the court shall incorporate the  
 3 terms of the stipulation into the final judgment or order. If the parties do not agree  
 4 on the primary care physicians, the court may specify the primary care physicians  
 5 for a minor child after considering the child's present health care and health  
 6 insurance arrangements and any orders made by the court under s. 767.25 (4m).

7           **SECTION 78.** 767.24 (6) (c) <sup>X</sup> of the statutes is amended to read:

8           767.24 (6) (c) ~~In making an order of joint legal custody and periods of physical~~  
 9 ~~placement, the~~ <sup>✓</sup>The court may specify one parent as the primary caretaker of the  
 10 child and one home as the primary home of the child, for the purpose of determining  
 11 eligibility for aid under s. 49.19 or benefits under ss. 49.141 to 49.161 ~~or for any other~~  
 12 ~~purpose the court considers appropriate~~ only if both parents are dependent persons,  
 13 as defined in s. 49.01 (2).

14           **SECTION 79.** 767.245 (1) <sup>X</sup> of the statutes is amended to read:

15           767.245 (1) Except as provided in sub. (2m), upon petition by a grandparent,  
 16 greatgrandparent, stepparent or person who has maintained a relationship similar  
 17 to a parent-child relationship with the child, the court may grant reasonable  
 18 visitation rights to that person if the parents have notice of the hearing and if the  
 19 court determines that by a preponderance of the evidence that the visitation is in the  
 20 best interest of the child not harmful to the child or to the child's relationship with  
 21 either of the child's parents. <sup>✓</sup>

22           **SECTION 80.** 767.245 (2) <sup>X</sup> of the statutes is repealed.

23           **SECTION 81.** 767.245 (3) (intro.) <sup>X</sup> of the statutes is amended to read:

24           767.245 (3) (intro.) The court may grant reasonable visitation rights, with  
 25 respect to a child, to a grandparent of the child if the child's parents have notice of

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1 the hearing and the court determines, by a preponderance of the evidence, all of the  
2 following:

3 SECTION 82. 767.245 (3) (f) of the statutes is amended to read:

4 767.245 (3) (f) The visitation is in the best interest of the child not harmful to  
5 the child or to the child's relationship with either of the child's parents.

6 SECTION 83. 767.245 (3m) (c) of the statutes is amended to read:

7 767.245 (3m) (c) If a party or the any guardian ad litem appointed under s.  
8 48.235 refuses to accept a recommendation under this subsection, the action shall be  
9 set for trial.

10 SECTION #. RP. 767.25 (1m) (hm)

SECTION 84. 767.25 (2) of the statutes is amended to read:

11 767.25 (2) The court may ~~protect and promote the best interests of the minor~~  
12 ~~children by setting~~ set aside a portion of the child support which either party is  
13 ordered to pay in a separate fund or trust for the support, education and welfare of  
14 such children.

15 SECTION 85. 767.255 (1) of the statutes is amended to read:

16 767.255 (1) Upon every judgment of annulment, divorce or legal separation, or  
17 in rendering a judgment in an action under s. 767.02 (1) (h), the court shall divide  
18 the property of the parties and divest and transfer the title of any such property  
19 accordingly. A certified copy of the portion of the judgment that affects title to real  
20 estate shall be recorded in the office of the register of deeds of the county in which  
21 the lands so affected are situated. The court may ~~protect and promote the best~~  
22 ~~interests of the children by setting~~ set aside a portion of the property of the parties  
23 in a separate fund or trust for the support, maintenance, education and general  
24 welfare of any minor children of the parties.

25 SECTION 86. 767.265 (3h) of the statutes is amended to read:

→ insert 25-25 ✓

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1           **767.265 (3h)** A person who receives notice of assignment under this section or  
2 s. 767.23 ~~(1)(L)~~ (1c)(i), 767.25 (4m) (c) or 767.51 (3m) (c) or similar laws of another  
3 state shall withhold the amount specified in the notice from any money that person  
4 pays to the payer later than one week after receipt of notice of assignment. Within  
5 5 days after the day the person pays money to the payer, the person shall send the  
6 amount withheld to the clerk of court or support collection designee, whichever is  
7 appropriate, of the jurisdiction providing notice or, in the case of an amount ordered  
8 withheld for health care expenses, to the appropriate health care insurer, provider  
9 or plan. Except as provided in sub. (3m), for each payment sent to the clerk of court  
10 or support collection designee, the person from whom the payer receives money shall  
11 receive an amount equal to the person's necessary disbursements, not to exceed \$3,  
12 which shall be deducted from the money to be paid to the payer. Section 241.09 does  
13 not apply to assignments under this section.

14           **SECTION 87.** 767.265 (4) of the statutes is amended to read:

15           **767.265 (4)** A withholding assignment or order under this section or s. 767.23  
16 ~~(1)(L)~~ (1c)(i), 767.25 (4m) (c) or 767.51 (3m) (c) has priority over any other  
17 assignment, garnishment or similar legal process under state law.

18           **SECTION 88.** 767.265 (6) (a) of the statutes is amended to read:

19           **767.265 (6) (a)** Except as provided in sub. (3m), if after receipt of notice of  
20 assignment the person from whom the payer receives money fails to withhold the  
21 money or send the money to the clerk of court or support collection designee or the  
22 appropriate health care insurer, provider or plan as provided in this section or s.  
23 767.23 ~~(1)(L)~~ (1c)(i), 767.25 (4m) (c) or 767.51 (3m) (c), the person may be proceeded  
24 against under the principal action under ch. 785 for contempt of court or may be  
25 proceeded against under ch. 778 and be required to forfeit not less than \$50 nor more

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1 than an amount, if the amount exceeds \$50, that is equal to 1% of the amount not  
2 withheld or sent.

3 **SECTION 89.** 767.265 (6) (b) of the statutes is amended to read:

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

10 **SECTION 90.** 767.265 (6) (c) of the statutes is amended to read:

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

20 **SECTION 91.** 767.325 (1)<sup>X</sup> of the statutes is repealed and recreated to read:

21 767.325 (1) MODIFICATIONS. (a) The court shall modify an order of physical  
22 placement in a way that alters the time a parent may spend with his or her child or  
23 an order of legal custody if any of the following applies:

24 1. A parent requests a modification and the current order is not in conformity  
25 with s. 767.24<sup>X</sup>.

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1           2. The parental rights of a parent have been terminated under subch. VIII of  
2 ch. 48.

3           3. The parties agree to a modification.

4           (b) A modification under this subsection shall be consistent with s. 767.24.

5           **SECTION 92.** 767.325 (2)<sup>X</sup> of the statutes is repealed.

6           **SECTION 93.** 767.325 (3)<sup>X</sup> of the statutes is repealed.

7           **SECTION 94.** 767.325 (4)<sup>X</sup> of the statutes is repealed.

8           **SECTION 95.** 767.327<sup>X</sup> of the statutes is repealed and recreated to read:

9           **767.327 Moving the child's residence outside the school district and**  
10 **other removals.** (1) Except as provided in sub. (5)<sup>✓</sup>, if both parents of a child in an  
11 action affecting the family are awarded physical placement rights to the child,  
12 neither parent may establish a legal residence for the child outside the school district  
13 in which the child resided on the 180th day before the commencement of the action  
14 affecting the family, or since birth if the child is less than 6 months old, or other school  
15 district agreed upon by the parties.

16           (2) (a) A parent specified in sub. (1)<sup>✓</sup> who wishes to establish his or her legal  
17 residence outside the state or at any location within the state that is at a distance  
18 of 150 miles or more from the school district in which the child resided on the 180th  
19 day before the commencement of the action affecting the family, or since birth if the  
20 child is less than 6 months old, or other school district agreed upon by the parties,  
21 shall provide not less than 60 days' written notice to the other parent, with a copy  
22 to the court, of his or her intent regarding changing his or her legal residence.

23           (b) The parent shall send the notice under par. (a)<sup>✓</sup> by certified mail. The notice  
24 shall state the parent's proposed action, including the specific date and location of

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1 the move, and that the other parent may request a modification to the physical  
2 placement order as provided in sub. (3). ✓

3 (3) If the proposed move under sub. (2) ✓ would make it difficult or impractical  
4 for the parties to comply with the physical placement order and at the same time for  
5 the child to remain in the same school district, either party may file a petition, motion  
6 or order to show cause for modification of the physical placement order.

7 (4) (a) If after a notice under sub. (2) has been sent or a petition, motion or order  
8 to show cause under sub. (3) has been filed the parties agree to a modification of the  
9 physical placement order or to a change in the child's school district and file a  
10 stipulation with the court, the court shall approve the agreement and incorporate the  
11 terms of the stipulation into a revised order.

12 (b) If the parties do not agree to a modification after a petition, motion or order  
13 to show cause under sub. (3) has been filed, the court may modify the physical  
14 placement order, subject to all of the following:

15 1. The parent not proposing the move shall be awarded periods of physical  
16 placement that include weekdays and weeknights when school is in session, at least  
17 one weekend per month, at least 4 ✓ weeks during the summer months when school  
18 is not in session and alternating holidays.

19 2. The parent proposing the move shall be awarded the maximum amount of  
20 physical placement that is reasonable under the circumstances.

21 3. The parent proposing the move shall be responsible for the transportation  
22 costs of exercising his or her physical placement rights.

23 (5) The court may allow a parent specified in sub. (1) ✓ to establish a legal  
24 residence for the child outside the school district in which the child resided on the  
25 180th day before the commencement of the action affecting the family, or since birth

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1 if the child is less than 6 months old, or other school district agreed upon by the  
2 parties, if all of the following apply:

3 (a) The parent desiring to establish a different legal residence for the child files  
4 a petition, motion or order to show cause for that purpose.

5 (b) The other parent has notice of the hearing on the petition, motion or order  
6 to show cause.

7 (c) The parent desiring to establish a different legal residence for the child  
8 shows by clear and convincing evidence that, for a period of at least one year, the  
9 other parent has exercised his or her physical placement rights for less than 10% of  
10 the amount of time that he or she was awarded by the court.

11 (6) Notwithstanding sub. (1), if both parents specified in sub. (1) wish to  
12 establish their legal residences or a legal residence for the child outside the current  
13 school district of the child and do not agree on a new school district for the child, the  
14 court may designate one of the new legal residences of the parents as the child's legal  
15 residence for the purpose of establishing a new school district for the child. In  
16 making the determination under this subsection, the court shall specify as the child's  
17 legal residence the location that the court determines will maximize the amount of  
18 time that each parent may spend with the child.

19 (7) Notwithstanding sub. (1), if a parent specified in sub. (1) has established  
20 his or her legal residence outside the state or at a location within the state that is at  
21 a distance of 150 miles or more from the child's current school district, the court may  
22 allow the parent whose legal residence is in the child's current school district to  
23 establish a legal residence for the child outside the child's current school district if  
24 the move does not increase the distance between the child and the other parent and  
25 the other parent does not wish to move back to the child's current school district.

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1 (8) Unless the parents agree otherwise, a parent with legal custody and  
2 physical placement rights shall notify and obtain the written approval of the other  
3 parent before removing the child from the state for a period of 14 days or more.

4 SECTION 96. 767.33 (1m) (a) of the statutes is renumbered 767.33 (1m) and  
5 amended to read:

6 767.33 (1m) Except as provided in par. (b), this This section applies only to an  
7 order under s. 767.23 or 767.25 in which payment is expressed as a fixed sum. It does  
8 not apply to such an order in which payment is expressed as a percentage of parental  
9 income.

10 SECTION 97. 767.33 (1m) (b) of the statutes is repealed.

11 SECTION 98. 767.45 (1) (d) of the statutes is amended to read:

12 767.45 (1) (d) A man alleged or alleging himself to be the father of the child,  
13 including a man against whom an action was dismissed under s. 767.458 (1m),  
14 stats., before the effective date of this paragraph ... [revisor inserts date].

15 SECTION 99. 767.45 (1) (i) of the statutes is amended to read:

16 767.45 (1) (i) A guardian ad litem appointed for the child under s. 48.235,  
17 767.045 (1) (e) (2) (a) or 938.235.

18 SECTION 100. 767.45 (2) of the statutes is repealed.

19 SECTION 101. 767.458 (1) (b) of the statutes is amended to read:

20 767.458 (1) (b) If the respondent is unable to afford counsel due to indigency,  
21 and the petitioner is represented by a government attorney under s. 767.45 (1) (g) or  
22 (6) or the action is commenced on behalf of the child by an attorney appointed under  
23 s. 767.045 (1) (e) (2) (a), counsel shall be appointed for the respondent as provided in  
24 s. 767.52 and ch. 977, unless the respondent knowingly and voluntarily waives the  
25 appointment of counsel;

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1997 Stats., or 767.463, 1997



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Insert 32-1 ->

1 SECTION 102. 767.458 (1) (c) of the statutes is amended to read:

2 767.458 (1) (c) ~~Except as provided under sub. (1m), the~~ The respondent may  
3 request the administration of genetic tests which either demonstrate that he is not  
4 the father of the child or which demonstrate the probability that he is or is not the  
5 father of the child;

6 SECTION 103. 767.458 (1) (d) of the statutes is amended to read:

7 767.458 (1) (d) ~~Except as provided under sub. (1m), the~~ The court will order  
8 genetic tests upon the request of any party; and

9 SECTION 104. 767.458 (1m) of the statutes is repealed.

10 SECTION 105. 767.46 (2) (c) of the statutes is amended to read:

11 767.46 (2) (c) If the alleged father voluntarily acknowledges paternity of the  
12 child, that he agree to the duty of support, the legal custody of the child, periods of  
13 physical placement of the child and other matters as determined to be in the best  
14 interests of the child by the court.

15 SECTION 106. 767.46 (4) of the statutes is amended to read:

16 767.46 (4) If a party or the any guardian ad litem appointed under s. 48.235  
17 or 767.475 (1) refuses to accept a recommendation made under this section and  
18 genetic tests have not yet been taken, the court shall require the appropriate parties  
19 to submit to genetic tests. After the genetic tests have been taken the court shall  
20 make an appropriate final recommendation.

21 SECTION 107. 767.46 (5) of the statutes is amended to read:

22 767.46 (5) If the any guardian ad litem appointed under s. 48.235 or 767.475  
23 (1) or any party refuses to accept any final recommendation, the action shall be set  
24 for trial.

25 SECTION 108. 767.465 (2m) (a) of the statutes is amended to read:

SECTION# . RP. 767.463

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1           767.465 (2m) (a) At any time after service of the summons and petition, a  
 2 respondent who is the alleged father may, with or without appearance in court and  
 3 subject to the approval of the court, in writing acknowledge that he has read and  
 4 understands the notice under s. 767.455 (5g) and stipulate that he is the father of the  
 5 child and for child support payments, legal custody and physical placement. The  
 6 court may not approve a stipulation for child support unless it provides for payment  
 7 of child support determined in a manner consistent with s. 767.25 or 767.51.

8           **SECTION 109.** 767.475 (1) of the statutes is amended to read:

9           767.475 (1) ~~Except as provided in s. 767.045 (1) (e), the~~ The court may appoint  
 10 ~~a guardian ad litem for the child and shall appoint a guardian ad litem for a minor~~  
 11 ~~parent or minor who is alleged to be a parent in a paternity proceeding unless the~~  
 12 ~~minor parent or the minor alleged to be the parent is represented by an attorney.~~

13           **SECTION 110.** 767.51 (3) of the statutes is amended to read:

14           767.51 (3) The judgment or order may contain any other provision directed  
 15 against the ~~appropriate party~~ parties to the proceeding, concerning the duty of  
 16 support, the legal custody and guardianship of the child, periods of physical  
 17 placement, the furnishing of bond or other security for the payment of the judgment,  
 18 or any other matter ~~in the best interest of the child. Unless the court orders~~  
 19 ~~otherwise, if there is no presumption of paternity under s. 891.41 the mother shall~~  
 20 ~~have sole legal custody of the child. The court shall order either party or both to pay~~  
 21 ~~for the support of any child of the parties who is less than 19 years old and is pursuing~~  
 22 ~~an accredited course of instruction leading to the acquisition of a high school diploma~~  
 23 ~~or its equivalent. The judgment or order may direct the father to pay or contribute~~  
 24 make an equal contribution to the reasonable expenses of the mother's pregnancy  
 25 and confinement during pregnancy and ~~may shall~~ shall direct ~~either party both parties~~ to

insert 33-25 ✓ →

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1 pay or contribute to the costs of genetic tests, attorney fees and other costs.  
 2 ~~Contributions to the costs of genetic tests shall be paid to the county which paid for~~  
 3 ~~the genetic tests.~~

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4 SECTION 111. 767.51 (4)<sup>X</sup> of the statutes is amended to read:

5 767.51 (4) Support judgments or orders ordinarily shall be for periodic  
 6 payments which may vary in amount if appropriate. The payment amount may be  
 7 expressed as a percentage of the parent's income or as a fixed sum, or as a  
 8 combination of both in the alternative by requiring payment of the greater or lesser  
 9 of either a percentage of the parent's income or a fixed sum. The father's liability for  
 10 past support of the child shall be limited to support for the period after the birth of  
 11 ~~the child~~<sup>✓</sup> paternity has been adjudicated.

12 SECTION 112. 767.51 (5) (e)<sup>X</sup> of the statutes is amended to read:

13 767.51 (5) (e) The need and capacity of the child for education, ~~including higher~~  
 14 ~~education.~~

15 SECTION 113. 767.51 (5) (i), (im) and (j)<sup>X</sup> of the statutes are repealed.

16 SECTION 114. 767.51 (6)<sup>X</sup> of the statutes is amended to read:

17 767.51 (6) Sections 767.24, 767.245, 767.263, 767.265, 767.267, 767.29,  
 18 767.293, 767.30, 767.305, 767.31, 767.32 and, 767.325, 767.327<sup>✓</sup> and 767.329<sup>✓</sup>, where  
 19 applicable, shall apply to a judgment or order under this section.

20 SECTION 115. 767.52 (1)<sup>X</sup> of the statutes is amended to read:

21 767.52 (1) At the pretrial hearing, at the trial and in any further proceedings  
 22 in any paternity action, any party may be represented by counsel. If the respondent  
 23 is indigent and the state is the petitioner under s. 767.45 (1) (g), the petitioner is  
 24 represented by a government attorney as provided in s. 767.45 (6) or the action is  
 25 commenced on behalf of the child by an attorney appointed under s. 767.045 (1)<sup>✓</sup> (e)

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1 (2) (a), counsel shall be appointed for the respondent as provided in ch. 977, and  
2 subject to the limitations under sub. (2m), unless the respondent knowingly and  
3 voluntarily waives the appointment of counsel.

4 SECTION 116. 767.53 (3) of the statutes is created to read:

5 767.53 (3) The records of any past proceeding in which paternity was  
6 established are open to public inspection under ss. 19.31 to 19.39.

7 SECTION 117. 769.302 of the statutes is amended to read:

8 **769.302 Action by minor parent.** A minor parent, or a guardian or other  
9 legal representative of a minor parent, may maintain a proceeding on behalf of or for  
10 the benefit of the minor's child. Notwithstanding s. 767.045 (1) or 803.01 (3), the  
11 court may appoint a guardian ad litem for the minor's child, but the court need not  
12 appoint a guardian ad litem for a minor parent who maintains such a proceeding  
13 unless the proceeding is one for the determination of parentage, in which case the  
14 court or a family court commissioner shall appoint a guardian ad litem for a minor  
15 parent within this state who maintains such a proceeding or for a minor within this  
16 state who is alleged to be a parent, as provided in s. 767.475 (1).

17 SECTION 118. 802.12 (3) (b) of the statutes is amended to read:

18 802.12 (3) (b) If a guardian ad litem has been appointed under s. 48.235, he or  
19 she shall be a party to any settlement alternative regarding custody, physical  
20 placement, visitation rights, support or other interests of the ward.

21 SECTION 119. 803.01 (3) (b) 1. of the statutes is amended to read:

22 803.01 (3) (b) 1. The guardian ad litem shall be appointed by a circuit court of  
23 the county where the action is to be commenced or is pending, except that the a  
24 guardian ad litem appointed under s. 767.475 (1) shall be appointed by a family court

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Insert 35-6

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1 commissioner of the county in those actions to establish paternity that are before the  
2 family court commissioner. → Insert 36-2 ✓

3 SECTION 120. 803.01 (3) (b) 2. <sup>x</sup> of the statutes is amended to read:

4 803.01 (3) (b) 2. When the plaintiff is a minor 14 years of age or over, upon the  
5 plaintiff's application or upon the state's application under s. 767.045 (1) (e) (2) (a);  
6 or if the plaintiff is under that age or is mentally incompetent, upon application of  
7 the plaintiff's guardian or of a relative or friend or upon application of the state under  
8 s. 767.045 (1) (e) (2) (a). If the application is made by a relative, friend or the state,  
9 notice thereof must first be given to the guardian if the plaintiff has one in this state;  
10 if the plaintiff has none, then to the person with whom the minor or mentally  
11 incompetent resides or who has the minor or mentally incompetent in custody.

12 SECTION 121. 814.61 (1) (c) of the statutes is amended to read:

13 814.61 (1) (c) Paragraphs (a) and (b) do not apply to any action to determine  
14 paternity brought by the state or its delegate under s. 767.45 (1) (g) or (h) or  
15 commenced on behalf of the child by an attorney appointed under s. 767.045 (1) (e)  
16 (2) (a) or to an action under ch. 769.

17 SECTION 122. 814.61 (7) (c) of the statutes is amended to read:

18 814.61 (7) (c) Paragraphs (a) and (b) do not apply to a petition or motion filed  
19 by the state or its delegate in connection with an action to determine paternity under  
20 s. 767.45 (1) (g), to a petition or motion filed by an attorney appointed under s.  
21 767.045 (1) (e) (2) (a) in connection with an action to determine paternity when the  
22 circumstances specified in s. 767.045 (1) (e) (2) (a) 1. or 2. apply or to a petition or  
23 motion filed in an action under ch. 769.

24 SECTION 123. 891.39 (1) (a) of the statutes is renumbered 891.39 (1) and  
25 amended to read:

Insert 36-16 ✓

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✓ Insert 36-25 →

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1 891.39 (1) Whenever it is established in an action or proceeding that a child was  
 2 born to a woman while she was the lawful wife of a specified man, any party asserting  
 3 in such action or proceeding that the husband was not the father of the child shall  
 4 have the burden of proving that assertion by a clear and satisfactory preponderance  
 5 of the evidence. In all such actions or proceedings the husband and the wife are  
 6 competent to testify as witnesses to the facts. The Except as provided in s. 767.045,  
 7 the court or judge in such cases shall appoint a guardian ad litem to appear for and  
 8 represent the child whose paternity is questioned.

9 SECTION 124. 891.39 (1) (b) <sup>X</sup> of the statutes is repealed.

10 SECTION 125. 977.05 (4) (i) 7. <sup>X</sup> of the statutes is amended to read:

11 977.05 (4) (i) 7. Cases involving paternity determinations, as specified under  
 12 s. 767.52, in which the state is the petitioner under s. 767.45 (1) (g) or in which the  
 13 action is commenced on behalf of the child by an attorney appointed under s. 767.045  
 14 (1) (e) (2) (a). <sup>✓</sup>

15 SECTION 126. 977.05 (6) (b) 1. <sup>X</sup> of the statutes is amended to read:

16 977.05 (6) (b) 1. The action is not brought by the state, its delegate under s.  
 17 ~~or an attorney~~ or an attorney appointed under s. 767.045 (1) (e) (2) (a).

18 SECTION 127. Initial applicability.

19 (1) ~~The provisions of this subsection apply~~ <sup>Insert 37-19</sup> to actions affecting the family, including an action to  
 20 enforce or modify a judgment or order in an action affecting the family previously  
 21 granted, that are commenced on the effective date of this subsection.

22 (END) <sup>✓</sup>

Insert 37-21 <sup>✓</sup>

D-note

plan → 59.53(6)(a) ✓

stat →

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

LRB-0211/?dn

PJK

I have updated this draft to account for legislation that passed last session. Because there were significant changes to the family statutes, I made this redraft a preliminary version so that you could review how I addressed those changes. Especially note the following areas:

1. The educational program on the effects of divorce on children now applies in paternity actions also. See s. 767.115.

2. In general, you should review all of the additions from last session to the statutes regarding paternity actions and voluntary acknowledgment of paternity (ss. 767.45 to 767.62) to see if any changes to those sections need to be added to this draft. The vast majority of those changes were made in Act 191.

3. Specifically, look at s. 767.463, which I repealed in this draft. Section 767.463 allows a court to dismiss a paternity action if the court determines that an adjudication of paternity would not be in the child's best interest.

4. Also specifically look at s. 767.465 (1m), which allows a court to adjudicate a man to be the father of a child if the mother fails to appear at a required appearance and there is sufficient evidence for the adjudication. I did not treat that section in this draft.

5. See how I reconciled ss. 767.23 and 767.477. Is this what you want?

6. I repealed s. 767.25 (1m) (hm), which we had not repealed in the previous version of the draft. Is this okay?

7. See how I treated s. 767.62. Do you want to amend s. 767.62 (4) (d) 3. in a manner similar to the way in which s. 767.51 (4) is amended? If so, what would be the relevant time or event for the beginning of the support liability?

Pamela J. Kahler  
Senior Legislative Attorney  
266-2682

(I assume inadvertently)

Law

## Excerpt A-6

no 911 Additionally, at any time in a paternity action, a judge or family court commissioner may refuse to order genetic tests and dismiss the paternity action on the motion of a party or guardian ad litem if the judge or family court commissioner determines that a paternity determination is not in the child's best interest.

(end of ins. A-6)

regardless of who commenced it,



Insert 7-7

(sp)

Section #. 20.921 (2) of the statutes is amended to read:

(1c)(i)

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

NOTE: Par. (a) is shown as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c).

(b) The head of each state agency or the chief executive officer of the University of Wisconsin Hospitals and Clinics Authority shall deduct from the salary of any employe the amount certified under s. 7.33 (5) which is received by the employe for service as an election official while the employe is on a paid leave of absence under s. 7.33 (3).

History: 1971 c. 214, 270, 336; Sup. Ct. Order, 67 W (2d) 585, 773 (1975); 1977 c. 29 s. 1649; 1977 c. 418; 1981 c. 20, 187; 1983 a. 368; 1985 a. 29 s. 3202 (23) (d); 1987 a. 111, 391, 399; 1989 a. 278, 336; 1991 a. 316; 1993 a. 481; 1995 a. 27; 1997 a. 191, 237; s. 13.93 (2) (c).

(end of ins. 7-7)

9. Other health impairments.

10. Learning disabilities.

(b) "Child with a disability" may, at the discretion of the local educational agency and consistent with department rules, include a child who, by reason of his or her significant developmental delay, needs special education and related services.

(6) "Division" means the division for learning support, equity and advocacy in the department.

(7) "Free appropriate public education" means special education and related services that are provided at public expense and under public supervision and direction, meet the standards of the department, include an appropriate preschool, elementary or secondary school education and are provided in conformity with an individualized education program.

(8) "Hearing officer" means an independent examiner appointed to conduct hearings under s. 115.80.

(9) "Individualized education program" means a written statement for a child with a disability that is developed, reviewed and revised in accordance with s. 115.787.

(10) "Local educational agency", except as otherwise provided, means the school district in which the child with a disability resides, or the department of health and family services or the department of corrections if such department is responsible for providing a free appropriate public education to the child.

(11) "Native language", when used with reference to an individual of limited English proficiency, means the language normally used by the individual.

115.76

(12) "Parent" means a biological parent; a husband who has consented to the artificial insemination of his wife under s. 891.40; a male who is presumed to be the child's father under s. 891.41; a male who has been adjudicated the child's father under subch. VIII of ch. 48, under ss. 767.45 to 767.51, by final order or judgment of an Indian tribal court of competent jurisdiction or by final order or judgment of a court of competent jurisdiction in another state; an adoptive parent; a legal guardian; a person acting as a parent of a child; a person appointed as a sustaining parent under s. 48.428; or a person assigned as a surrogate parent under s. 115.792 (1)(a) 2. "Parent" does not include any person whose parental rights have been terminated; the state or a county or a child welfare agency if a child was made a ward of the state or a county or child welfare agency under ch. 880 or if a child has been placed in the legal custody or guardianship of the state or a county or a child welfare agency under ch. 48 or ch. 767; or an American Indian tribal agency if the child was made a ward of the agency or placed in the legal custody or guardianship of the agency.

(13) "Person acting as a parent of a child" means a relative of the child or a private individual allowed to act as a parent of a child by the child's biological or adoptive parents or guardian, and includes the child's grandparent, neighbor, friend or private individual caring for the child with the explicit or tacit approval of the child's biological or adoptive parents or guardian. "Person acting as a parent of a child" does not include any person that receives public funds to care for the child if such funds exceed the cost of such care.

(14) "Related services" means transportation and such developmental, corrective and other supportive services as may be required to assist a child with a disability to benefit from special education, including speech-language pathology and audiology services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; social work services; counseling services, including rehabilitative counseling; orientation and mobility services; medical services for diagnostic and evaluative purposes only; and the early identification and assessment of disabling conditions in children.

(15) "Special education" means specially designed instruction, regardless of where the instruction is conducted, that is provided at no cost to the child or the child's parents, to meet the unique needs of a child with a disability, including instruction in physical education.

(16) "Supplementary aids and services" means aids, services and other supports that are provided in regular education classes or other education-related settings to enable a child with a disability to be educated with non-disabled children to the maximum extent appropriate.

(17) "Transition services" has the meaning given in 20 USC 1401 (30).

1740 ~~Additions are indicated by underline; deletions by strikeout~~

*(end of ins 8-25)*

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Insert 18-25

1873

Section #. 767.115 (1) (a) of the statutes is amended to read:

767.115 (1) (a) At any time during the pendency of an action affecting the family in which a minor child is involved and in which the court or family court commissioner determines that it is appropriate ~~and in the best interest of the child~~, the court or family court commissioner, on its own motion, may order the parties to attend a program specified by the court or family court commissioner concerning the effects on a child of a ~~dissolution of the marriage~~.

History: 1993 a. 225; 1997 a. 45.

✓ break in the family relationship

Insert 18-25 coded

2073

Section #. 767.115 (1) (b) <sup>✓</sup> of the statutes is amended to read:

767.115 (1) (b) At any time during the pendency of an action to determine the paternity of a child, or an action affecting the family for which the underlying action was an action to determine the paternity of a child, if the court or family court commissioner determines that it is appropriate ~~and in the best interest of the child~~, <sup>✓</sup> the court or family court commissioner, on its own motion, may order either or both of the parties to attend a program specified by the court or family court commissioner providing training in parenting or coparenting skills, or both.

~~History: 1993 a. 225; 1997 a. 45.~~



insert 18-25 contd

3 of 3

Section #. 767.115 (1m)<sup>X</sup> of the statutes is amended to read:

767.115 (1m) A program under sub. (1) shall be educational rather than therapeutic in nature<sup>✓</sup> and ~~may not exceed a total of 4 hours in length.~~ The parties shall be responsible for the cost, if any, of attendance at the program. ~~The court or family court commissioner may specifically assign responsibility for payment of any cost. No facts or information obtained in the course of the program, and no report resulting from the program, is admissible in any action or proceeding.~~

~~History: 1993 a. 225; 1997 a. 45.~~

(end of ins. 18-25)

Inset 20-5

1001

Section #. ~~767.23 (1) (c)~~ of the statutes is renumbered ~~767.23 (1e) (a)~~ and amended to read:

Subject to A. 767.477, requiring

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

History: 1971 c. 149; 1971 c. 211 s. 126; 1971 c. 220. 307; 1975 c. 283; Sup. Ct. Order, 73 W (2d) xxxi (1976); 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 111, 196; 1979 c. 352 s. 39; Stats. 1979 s. 767.23; 1983 a. 27; 1983 a. 204 s. 22; 1983 a. 447; 1985 a. 29 s. 3202 (9); 1987 a. 355, 364, 413; 1989 a. 212; 1991 a. 39; 1993 a. 78, 481, 490; 1995 a. 27 ss. 7100h, 9126 (19); 1995 a. 70, 404.

(end of ins 20-5)

Section # ~~767.23 (1) (L)~~ of the statutes is renumbered ~~767.23 (1c) (i)~~ and amended to read:

Subject to ~~§. 767.477~~,<sup>✓</sup> requiring

767.23 (1c) (i) ~~Requiring~~<sup>↑</sup> either party or both parties to execute an assignment of income for payment of health care expenses of minor children.

History: 1971 c. 149; 1971 c. 211 s. 126; 1971 c. 220, 307; 1975 c. 283; Sup. Ct. Order, 73 W (2d) xxxi (1976); 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 111, 196; 1979 c. 352 s. 39; Stats. 1979 s. 767.23; 1983 a. 27; 1983 a. 204 s. 22; 1983 a. 447; 1985 a. 29 s. 3202 (9); 1987 a. 355, 364, 413; 1989 a. 212; 1991 a. 39; 1993 a. 78, 481, 490; 1995 a. 27 ss. 7100h, 9126 (19); 1995 a. 70, 404.

(end of ins. 20-13)

insert 25-25

1876

SECTION # RC. 767.265(3h), as affected by 1997 Wisconsin Act 191, section 416, and 1999 Wisconsin Act ... (this act)

Section #. 767.265 (3h) of the statutes is amended to read:

(1c)(i)

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

NOTE: Sub. (3h) is repealed and recreated eff. 10-1-99 or the date stated in the notice published by the department of workforce development in the Wisconsin Administrative Register under s. 767.29 (1) (f), whichever is earlier, by 1997 Wis. Act 191 to read:

(1c)(i)

767.265 (3h) A person who receives notice of assignment under this section or s. 767.23 (1)(L), 767.25 (4m) (c), 767.51 (3m) (c) or 767.62 (4) (b) 3. or similar laws of another state shall withhold the amount specified in the notice from any money that person pays to the payer later than one week after receipt of notice of assignment. Within 5 days after the day the person pays money to the payer, the person shall send the amount withheld to the department or its designee, whichever is appropriate, or, in the case of an amount ordered withheld for health care expenses, to the appropriate health care insurer, provider or plan. With each payment sent to the department or its designee, the person from whom the payer receives money shall report to the department or its designee the payer's gross income or other gross amount from which the payment was withheld. Except as provided in sub. (3m), for each payment sent to the department or its designee, the person from whom the payer receives money shall

no bold



ens 25-25 cont'd

2076

receive an amount equal to the person's necessary disbursements, not to exceed \$3, which shall be deducted from the money to be paid to the payer. Section 241.09 does not apply to assignments under this section.

} no bold

History: 1971 c. 110; 1975 c. 94 s. 91 (3); 1975 c. 199; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196, 221; Stats. 1979 s. 767.265; 1981 c. 20, 186; 1983 a. 27, 384; 1985 a. 29; 1987 a. 38 s. 136; 1987 a. 332 s. 64; 1987 a. 398, 403; 1989 a. 31, 56, 212, 336; 1991 a. 287; 1993 a. 16, 326, 389, 481; 1995 a. 27 s. 9130 (4); 1995 a. 279, 404; 1997 a. 27, 191.



Ins. 25-25 cont'd

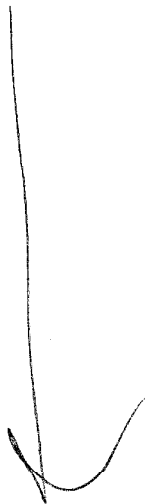
3076

Section #. 767.265 (4)<sup>x</sup> of the statutes is amended to read:

767.25  
(1)(c)

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

History: 1971 c. 110; 1975 c. 94 s. 91 (3); 1975 c. 199; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196, 221; Stats. 1979 s. 767.265; 1981 c. 20, 186; 1983 a. 27, 384; 1985 a. 29; 1987 a. 38 s. 136; 1987 a. 332 s. 64; 1987 a. 398, 403; 1989 a. 31, 56, 212, 336; 1991 a. 287; 1993 a. 16, 326, 389, 481; 1995 a. 27 s. 9130 (4); 1995 a. 279, 404; 1997 a. 27, 191.



Section #. 767.265 (6) (a) of the statutes is amended to read:

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

NOTE: Par. (a) is repealed and recreated eff. 10-1-99 or the date stated in the notice published by the department of workforce development in the Wisconsin Administrative Register under s. 767.29 (1) (f), whichever is earlier, by 1997 Wis. Act 191 to read:

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

History: 1971 c. 110; 1975 c. 94 s. 91 (3); 1975 c. 199; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196, 221; Stats. 1979 s. 767.265; 1981 c. 20, 186; 1983 a. 27, 384; 1985 a. 29; 1987 a. 38 s. 136; 1987 a. 332 s. 64, 1987 a. 398, 403; 1989 a. 31, 56, 212, 336; 1991 a. 287; 1993 a. 16, 326, 389, 481; 1995 a. 27 s. 9130 (4); 1995 a. 279, 404; 1997 a. 27, 191.

SECTION #. RC, 767.265(6)(a), as affected by 1997 Wisconsin Act 191, section 420, and 1999 Wisconsin Act... (this act),

767.265  
no bold

(1c)(i)



Section #. 767.265 (6) (b) of the statutes is amended to read:

(1c)(i)

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

NOTE: Par. (b) is repealed and recreated eff. 10-1-99 or the date stated in the notice published by the department of workforce development in the Wisconsin Administrative Register under s. 767.29 (1) (f), whichever is earlier, by 1997 Wis. Act 191 to read:

(1c)(i)

no bold

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

History: 1971 c. 110; 1975 c. 94 s. 91 (3); 1975 c. 199; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196, 221; Stats. 1979 s. 767.265; 1981 c. 20, 186; 1983 a. 27, 384; 1985 a. 29; 1987 a. 38 s. 136; 1987 a. 332 s. 64; 1987 a. 398, 403; 1989 a. 31, 56, 212, 336; 1991 a. 287; 1993 a. 16, 326, 389, 481; 1995 a. 27 s. 9130 (4); 1995 a. 279, 404; 1997 a. 27, 191.

SECTION # . RC; 767.265 (6) (b), as affected by 1997 Wisconsin Act 191, section 422, and 1999 Wisconsin Act... (this act)



ins 25-25 cont'd

6076

Section #. 767.265 (6) (c) <sup>X</sup> of the statutes is amended to read:

✓  
(1c)(i)

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

History: 1971 c. 110; 1975 c. 94 s. 91 (3); 1975 c. 199; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196, 221; Stats. 1979 s. 767.265; 1981 c. 20, 186; 1983 a. 27, 384; 1985 a. 29; 1987 a. 38 s. 136; 1987 a. 332 s. 64; 1987 a. 398, 403; 1989 a. 31, 56, 212, 336; 1991 a. 287; 1993 a. 16, 326, 389, 481; 1995 a. 27 s. 9130 (4); 1995 a. 279, 404; 1997 a. 27, 191.

(end of ins 25-25)

insert 32-1

10/2

Section #. 767.458 (1) (c)<sup>x</sup> of the statutes is amended to read:

767.458 (1) (c) ~~Except as provided under sub. (1m) and s. 767.463,~~ <sup>The</sup> respondent may request the administration of genetic tests which either demonstrate that he is not the father of the child or which demonstrate the probability that he is or is not the father of the child;

History: 1979 c. 352; 1983 a. 447 s. 34; Stats. 1983 s. 767.457; 1987 a. 27 ss. 2136t, 2137d, 2137e; Stats. 1987 s. 767.458; 1987 a. 403, 413; 1993 a. 16, 481; 1995 a. 100; 1997 a. 191.



ens 32-1 contd

2 of 2

Section #. 767.458 (1) (d) <sup>x</sup> of the statutes is amended to read:

767.458 (1) (d) ~~Except as provided in subs. (1m) and (2) and s. 767.463,~~ <sup>The</sup> the court will order genetic tests upon the request of any party; and

~~History: 1979 c. 352; 1983 a. 447 s. 34; Stats. 1983 s. 767.457; 1987 a. 27 ss. 2136t, 2137d, 2137e; Stats. 1987 s. 767.458; 1987 a. 403, 413; 1993 a. 16, 481; 1995 a. 100; 1997 a. 191.~~

(end of ins 32-1)

Section #. 767.475 (1) (a)<sup>x</sup> of the statutes is renumbered 767.475 (1) and amended to read:

The court  
 767.475 (1) Except as provided in par. (b), the court may appoint a guardian ad litem for the child and shall appoint a guardian ad litem for a minor parent or minor who is alleged to be a parent in a paternity proceeding unless the minor parent or the minor alleged to be the parent is represented by an attorney.

~~History: 1979 c. 352; 1981 c. 391; 1983 a. 447; 1989 a. 212; 1993 a. 481; 1995 a. 275; 1997 a. 191.~~

SECTION # . RP; 767.475 (1) (b)<sup>x</sup>





Section # 767.51 (3) of the statutes is amended to read:

parties

767.51 (3) A judgment or order determining paternity may contain any other provision directed against the ~~appropriate party~~ to the proceeding, concerning the duty of support, the legal custody and guardianship of the child, periods of physical placement, the furnishing of bond or other security for the payment of the judgment, or any other matter ~~in the best interest of the child. Unless the court orders otherwise, if there is no presumption of paternity under s. 891.41 (1) the mother shall have sole legal custody of the child.~~ The court shall order either party or both to pay for the support of any child of the parties who is less than 18 years old, or any child of the parties who is less than 19 years old if the child is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent. The judgment or order may direct the father to pay or contrib-

shall

~~ute~~ to the reasonable expenses of the mother's pregnancy and confinement during pregnancy and ~~may~~ direct either party to pay or contribute to the costs of genetic tests, attorney fees and other costs. Contributions to the costs of genetic tests shall be paid to the county which paid for the genetic tests.

both parties

History: 1979 c. 352; 1983 a. 27, 192, 447; 1985 a. 29; 1985 a. 315 s. 22; 1987 a. 27, 37, 355, 413; 1989 a. 212; 1991 a. 39; 1993 a. 481; 1995 a. 27 ss. 7115, 7116, 9126 (19); 1995 a. 100, 201, 279, 375, 404; 1997 a. 27, 35, 191; s. 13.93 (2) (c).

make an equal contribution

(end of ins 33-25)

Section #. 767.62 (3) (b) of the statutes is amended to read:

767.62 (3) (b) <sup>ln</sup> ~~Except as provided in s. 767.045, in~~ an action specified in par. (a) <sup>2</sup> the court or family court commissioner ~~may appoint a guardian ad litem for the child and~~ shall appoint a guardian ad litem for a party who is a minor, unless the minor party is represented by an attorney.

History: ~~1993 a. 481; 1995 a. 100; 1997 a. 191.~~



Section #. 767.62 (4) (a) of the statutes is amended to read:

767.62 (4) (a) In an action under sub. (3) (a), if the persons who signed and filed the statement acknowledging paternity as parents of the child had notice of the hearing, the court or family court commissioner may make an order that contains any provision directed against the <sup>✓</sup>appropriate party to the proceeding concerning the duty of support, the legal custody or guardianship of the child, periods of physical placement, the furnishing of bond or other security for the payment of amounts under the order or any other matter ~~in the best interest of the child. Unless the court orders otherwise, if there is no presumption of paternity under s. 891.41 (1) the mother shall have sole legal custody of the child.~~ The court or family court commissioner shall order either party or both to pay for the support of any child of the parties who is less than 18 years old, or any child of the parties who is less than 19 years old if the child is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent. The order may direct the father to ~~pay or contribute to~~ the reasonable expenses of the mother's pregnancy and confinement during pregnancy and ~~may~~ <sup>shall</sup> direct ~~either party~~ to pay or contribute to the costs of attorney fees or other costs.

History: 1993 a. 481; 1995 a. 100; 1997 a. 191.

Parties

make an equal contribution

both parties ✓



Ins. 35-6 contd

3 of 3

Section #. 767.62 (4) (e) <sup>x</sup>6. of the statutes is amended to read:

767.62 (4) (e) 6. The need and capacity of the child for education, <sup>✓</sup>including higher education,

~~History: 1993 a. 481; 1995 a. 100; 1997 a. 191.~~

SECTION #. RP. 767.62(4)(e) 12,<sup>x</sup> 13.  
and 14.

(end of ins. 35-6)

Insert 36-2

no A and a guardian ad litem appointed  
under s. 767.62(3)(b)<sup>v</sup> shall be  
appointed by a family court  
commissioner of the county in those  
actions specified in s. 767.62(3)(a)<sup>v</sup>  
that are before the family court  
commissioner

(end of ins. 36-2)

insert 36-16

1081

Section #. 814.61 (1) (c) 1. of the statutes is amended to read:

814.61 (1) (c) 1. An action to determine paternity brought by the state or its delegate under s. 767.45 (1) (g) or (h) or commenced on behalf of the child by an attorney appointed under s. 767.045

~~(1) (c)~~ → (2) (a) ✓

History: 1981 c. 317; 1983 a. 27; 1983 a. 189 s. 329 (28); 1983 a. 228, 447, 538; 1985 a. 29, 169; 1987 a. 27 ss. 2143p, 3202 (24); 1987 a. 144, 355, 399; 1989 a. 31; 1989 a. 56 s. 259; 1989 a. 191; 1991 a. 39, 221, 269; 1993 a. 16, 319, 326, 481, 491; 1995 a. 27, 201, 224, 269, 279, 289, 306; 1997 a. 27, 35, 285.

(end of ins. 36-16)

Insert 36-25

Section # 891.39 (1) (a) of the statutes is amended to read:

renumbered 891.39(1) and

10/1

891.39 (1) Whenever it is established in an action or proceeding that a child was born to a woman while she was the lawful wife of a specified man, any party asserting in such action or proceeding that the husband was not the father of the child shall have the burden of proving that assertion by a clear and satisfactory preponderance of the evidence. In all such actions or proceedings the husband and the wife are competent to testify as witnesses to the facts. The court or judge in such cases shall appoint a guardian ad litem to appear for and represent the child whose paternity is questioned. Results of a genetic test, as defined in s. 767.001 (1m), showing that a man other than the husband is not excluded as the father of the child and that the statistical probability of the man's parentage is 99.0% or higher constitute a clear and satisfactory preponderance of the evidence of the assertion under this paragraph, even if the husband is unavailable to submit to genetic tests, as defined in s. 767.001 (1m).

History: 1971 c. 298; 1979 c. 196; 1979 c. 352 s. 39; 1983 a. 447; 1983 a. 315; 1989 a. 122; 1993 a. 16, 486, 1995 a. 27, 225; 1997 a. 191.

Except as provided in  
s. 767.045, the

(end of ins. 36-25)

Insert 37-19

The treatment of sections 20.921(2)(a), 49.141(1)  
(b), 51.30(5)(bm), 55.07(2), 102.27(2)(a),  
146.835, 757.48(1)(a), 758.19(5)(a) 2., 767.001  
(1s), (2)(intro.), (a) and (b), (2m), (3) and (4m),  
767.02(1)(k), 767.045, 767.05(1m),  
767.081(2)(a)(intro.), 767.083(2), 767.085(1)(a)  
and (j)(intro.), 1. and 2. and (2)(a), 767.087  
(1)(c), (2) and (3)(b), 767.10(1), 767.11(8)(b)  
(intro.), 1., 2., 3. and 4., (9)(intro.), (a) and (b),  
(10)(intro.), (a), (b) and (e)(intro.), 1. to 3. and 4.,  
(12)(a) and (b) and (14)(a) 1., 2. and 3. and (b),  
767.115(1)(a) and (b) and (1m), 767.14, 767.23  
(1)(intro.), (a), (am), (bm), (c), (d), (e), (f), (g), (h),  
(i), (k) and (L), (1c)(intro.), (1n) and (2), 767.24  
(1), (2)(b), (3), (4)(a), (b), (cm) and (d), (5) and  
(6)(a), <sup>(am)</sup> (b), (bm) and (c), 767.245(1), (2), (3)(intro.)  
and (f) and (3m)(c), 767.25(1m)(hm) and (2),  
767.255(1), 767.265(4) and (b)(c), 767.325(1),



~~(2), (3) and (4), 767.327, 767.33(1m)(a) and (b),  
767.45(1)(d) and (i) and (2), 767.458(1)(b), (c) and  
(d) and (1m), 767.46(2)(c), (4) and (5), 767.463,  
767.465(2m)(a), 767.475(1)(a) and (b), 767.51(3),  
(4), (5)(e), (i), (im) and (j) and (6), 767.52(1),  
767.53(3), 767.62(3)(b) and (4)(a) and (e) 6.,  
12., 13. and 14., 769.302, 802.12(3)(b),  
803.01(3)(b) 1. and 2., 814.61(1)(c) 1. and (7)(c),  
891.39(1)(a) and (b) and 977.05(4)(i) 7. and (6)  
(b) 1. of the statutes, the renumbering and  
amendment of section 767.24(2)(a) of the statutes,  
the amendment of section 767.265(3h) and  
(b)(a) and (b) of the statutes and the creation of  
section 767.24(2)(a) 1. and 2. of the statutes  
first apply ✓~~

(end of ins 37-19)

1999

Insert 37-21

1072

Nonstat File Sequence: **FFF**

LRB 0211 / PI

PJK : \_\_\_\_ : \_\_\_\_

**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 # \_\_\_\_ . Effective dates:**

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

*STET* *#7* *NO P* ..... The *repeal and recreation* *treatment* of sections *767, 265, (3h) and (b)(a) and (b)* of the statutes takes effect on .....

1. In the component bar: For the budget action phrase, execute:.. **create** → **action:** → \*NS: → **94XX**  
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 .....

Insert 37-21

202

Act 191, § 9455

1997-98 BIENNIAL SESSION

1997-98 BIENNIAL

Repeal of sections 20.445 (3)(k) and (r) and 25.68 and subchapter II (title) of chapter 224 of the statutes takes effect on April 1, 1998.

(5) Centralized receipt and disbursement of child support. The repeal and recreation of sections 20.445 (3)(k) and (r) and 25.68 of the statutes takes effect on the date stated in the notice published by the department of workforce development in the Wisconsin Administrative Register under section 767.29 (1)(f) of the statutes, as created by 1997 Wisconsin Act 27, or on October 1, 1999, whichever is earlier.

(6) Modifications related to centralized receipt and disbursement. The amendment of sections 767.027 (1)(b) and 767.263 (2) of the statutes and the repeal and recreation of sections 767.25 (6)(intro.), 767.261 (intro.), 767.263 (1), 767.265 (1), (2r), (3h) and (6)(a) and (b), 767.29 (1m)(intro.), 767.51 (5p)(intro.) and 767.62 (4)(b)3.a. (by Section 489) and (g)(intro.) (by Section 490) of the statutes take effect on the date stated in the notice published by the department of workforce development in the Wisconsin Administrative Register under section 767.29 (1)(f) of the statutes, or on October 1, 1999, whichever is earlier.

(7) Notification to new employer of parent's obligation to provide health care coverage for a child. The treatment of sections 767.25 (4m)(d) 2. and 2m. and (f) and 767.51 (3m)(d)2. and 2n. and (f) of the statutes takes effect on April 1, 1998.

(8) Voluntary acknowledgment of paternity. The treatment of sections 20.921 (2)(a), 48.02 (13), 48.42 (4)(b) 2., 48.837 (4)(e), 48.91 (2), 49.25 (3)(a)8., 66.184, 69.15 (3)(b)3. and (3m), 69.22 (5)(a)3., 102.27 (2)(a), 120.13 (2)(g), 565.30 (5m), 632.897 (10)(a)3., 767.045 (1)(c)(intro.), 767.078 (1)(a)1. and (2), 767.253, 767.254 (2)(intro.), 767.265 (4) and (6)(c), 767.27 (2m), 767.295 (2)(a)(intro.) and (c), 767.30 (1), 767.303 (1), 767.305, 767.32 (1)(b)4., (2m) and (2s), 767.45 (1)(c) and (k), (5m), (6m) and (6p), 767.458 (3), 767.466 (intro.), 767.62 (by Section 488), 802.12 (3)(d)1. and 3., 808.075 (4)(d)9., 10. and 11., 852.05 (2) and 938.02 (13) of the statutes, the amendment of sections 767.265 (1), (3h) and (6)(a) and (b) and 767.29 (1m)(intro.) of the statutes and Section 9355 (6) of this act take effect on April 1, 1998, or on the day after publication, whichever is later.

Section 9455. Effective dates; other.

(1) Certification, decertification or recertification of law enforcement officers by law enforcement standards board. The treatment of section 165.85 (3)(c) and (cm), (3m), and (4)(d) and (f) of the statutes and Section 9356 (1) of this act take effect on April 1, 1998, or on the day after publication, whichever is later.

ANIMALS; HUMANE OFFICERS

1997 WIS. ACT 192

1997 A.B. 586

Date of enactment: April 27, 1998

Date of publication: May 11, 1998

Effective date: See Section 34

An Act to repeal 58.07, 174.046, 951.15 (2) to (4) and 951.162 (title); to renumber 173.01 to 173.07 and 951.15 (1); to renumber and amend 951.16, 951.162, 951.165 (title), (1), (2) and (3) and 951.17; to amend 20.115 (2)(j), 60.24 (3)(xm), 93.07 (11), chapter 172 (title), 174.01 (2), 174.13 (3), 895.57 (1)(a), 943.75 (1)(a), 951.01 (4), 951.03, 951.18 (1) and (4)(a) 2. and (b) and 958.20 (1)(intro.) and (2); to repeal and recreate chapter 173 (title) and 951.15 (title); and to create 95.21 (1)(a), 170.065, subchapter I (title) of chapter 172 [precedes 172.01], 172.012, subchapter II (title) of chapter 172 [precedes 172.51], 173.01 to 173.27, 757.69 (1)(n) and 951.01 (3e) of the statutes; relating to humane officers, the custody and disposition of animals, granting rule-making authority, making an appropriation and providing a penalty.

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

2010

Additions are indicated by underlines; deletions by strikethrough

(end of ins 37-21)

Section 1. 20.115 (20.115(2)(j) Dog license responsibilities under administrator the rabies 93.07 (11) and ch. 17 174.09 (1) shall be cre

Section 2. 58.07 of Section 3. 60.24 (3) 60.24(3)(xm) Perfo damage in the town t

Section 4. 93.07 (1) 93.07(11) Humane pointed humane offic prevention of cruelty agents when engage

Section 5. 95.21 (1) 95.21(1)(a) "Huma

Section 6. 170.065

170.065. Exemption

Sections 170.01 to enforcement officer

Section 7. Chapt

Section 8. Subch to read:

Section 9. 172.012

172.012. Exemption

This chapter does enforcement officer

Section 10. Subch to read:

Section 11. Chap

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

LRB-0211/P1dn  
PJK:jlg:lp

December 3, 1998

I have updated this draft to account for legislation that passed last session. Because there were significant changes to the family law statutes, I made this redraft a preliminary version so that you could review how I addressed those changes. Especially note the following areas:

1. The educational program on the effects of divorce on children now applies in paternity actions also. See s. 767.115.

2. In general, you should review all of the additions from last session to the statutes regarding paternity actions and voluntary acknowledgment of paternity (ss. 767.45 to 767.62) to see if any changes to those sections need to be added to this draft. The vast majority of those changes were made in Act 191.

3. Specifically, look at s. 767.463, which I repealed in this draft. Section 767.463 allows a court to dismiss a paternity action if the court determines that an adjudication of paternity would not be in the child's best interest.

4. Also specifically look at s. 767.465 (1m), which allows a court to adjudicate a man to be the father of a child if the mother fails to appear at a required appearance and there is sufficient evidence for the adjudication. I did not treat that section in this draft.

5. See how I reconciled ss. 767.23 and 767.477. Is this what you want?

6. I repealed s. 767.25 (1m) (hm), which (I assume inadvertently) we had not repealed in the previous version of the draft. Is this okay?

7. See how I treated s. 767.62. Do you want to amend s. 767.62 (4) (d) 3. in a manner similar to the way in which s. 767.51 (4) is amended? If so, what would be the relevant time or event for the beginning of the support liability?

Pamela J. Kahler  
Senior Legislative Attorney  
266-2682

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767.24 (2) (b) of the statutes is repealed and recreated to read:

767.24 (2) (b) 1. The court shall give joint legal custody if one or both parties request joint legal custody, unless 2 applies.

2. If a party objecting to joint legal custody offers evidence that the other party has been convicted of a crime involving abuse, as defined in s. 48.02 (1), of the child, as defined in s. 48.02 (2) or battery as described under s. 940.19 or 940.20 (1m) against the objecting party, a rebuttable presumption is created that the parties will be unable to cooperate in future decision making required under an award of joint custody. This presumption may be rebutted by clear and convincing evidence that the conviction will not interfere with the parties' ability to cooperate in the future decision making required. A court shall grant joint legal custody, notwithstanding the objection, if it finds that the presumption has been rebutted, and that both parties are capable of cooperating in future decision making performing parental, are capable of duties and responsibilities and wish to have an active role in raising the child.

767.24 (5) of the statutes is repealed and recreated to read:

(5) **CONSIDERATIONS IN CERTAIN CUSTODY AND PHYSICAL PLACEMENT DETERMINATIONS.** If an objection to joint legal custody has been raised under sub (2), and joint legal custody has been awarded, the court may request the parties to submit in writing, suggestions as how to reduce possible sources of conflict or physical contact between the parties and may order the parties to comply with those suggestions it deems appropriate and necessary.



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-0211/01  
PJK:jlj:lp

V mis run

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Tuesam  
(if possible)

regenerate  
↓

1     **AN ACT to repeal** 767.001 (2) (b), 767.11 (8) (b) 3., 767.11 (9) (a), 767.11 (10) (e)  
2           1. to 3., 767.11 (14) (a) 3., 767.23 (1) (bm), 767.24 (3), 767.24 (4) (cm), 767.24 (5),  
3           767.24 (6) (a) and (am), 767.245 (2), 767.25 (1m) (hm), 767.325 (2), 767.325 (3),  
4           767.325 (4), 767.33 (1m) (b), 767.45 (2), 767.458 (1m), 767.463, 767.475 (1) (b),  
5           767.51 (5) (i), (im) and (j), 767.62 (4) (e) 12., 13. and 14. and 891.39 (1) (b); **to**  
6           **renumber** 767.23 (1) (d), 767.23 (1) (e), 767.23 (1) (f), 767.23 (1) (g), 767.23 (1)  
7           (h), 767.23 (1) (i) and 767.23 (1) (k); **to renumber and amend** 767.23 (1) (c),  
8           767.23 (1) (L), 767.24 (2) (a), 767.33 (1m) (a), 767.475 (1) (a) and 891.39 (1) (a);  
9           **to consolidate, renumber and amend** 767.001 (2) (intro.) and (a), 767.11 (9)  
10          (intro.) and (b) and 767.11 (10) (e) (intro.) and 4.; **to amend** 20.921 (2) (a), 49.141  
11          (1) (b), 51.30 (5) (bm), 55.07 (2), 102.27 (2) (a), 115.76 (12), 146.835, 757.48 (1)  
12          (a), 758.19 (5) (a) 2., 767.001 (1s), 767.001 (2m), 767.001 (3), 767.02 (1) (k),  
13          767.05 (1m), 767.081 (2) (a) (intro.), 767.083 (2), 767.085 (1) (a), 767.085 (1) (j)  
14          (intro.), 767.085 (1) (j) 1., 767.085 (1) (j) 2., 767.085 (2) (a), 767.087 (1) (c),  
15          767.087 (2), 767.087 (3) (b), 767.10 (1), 767.11 (8) (b) (intro.), 767.11 (8) (b) 1.,

1 767.11 (8) (b) 2., 767.11 (8) (b) 4., 767.11 (10) (intro.), 767.11 (10) (a), 767.11 (10)  
2 (b), 767.11 (12) (a) and (b), 767.11 (14) (a) 1., 767.11 (14) (a) 2., 767.11 (14) (b),  
3 767.115 (1) (a), 767.115 (1) (b), 767.115 (1m), 767.14, 767.23 (1) (intro.), 767.23  
4 (1) (a), 767.23 (1n), 767.23 (2), 767.24 (1), 767.24 (4) (a), 767.24 (4) (d), 767.24  
5 (6) (b), 767.24 (6) (c), 767.245 (1), 767.245 (3) (intro.), 767.245 (3) (f), 767.245  
6 (3m) (c), 767.25 (2), 767.255 (1), 767.265 (3h), 767.265 (4), 767.265 (6) (a),  
7 767.265 (6) (b), 767.265 (6) (c), 767.45 (1) (d), 767.45 (1) (i), 767.458 (1) (b),  
8 767.458 (1) (c), 767.458 (1) (d), 767.46 (2) (c), 767.46 (4), 767.46 (5), 767.465 (2m)  
9 (a), 767.51 (3), 767.51 (4), 767.51 (5) (e), 767.51 (6), 767.52 (1), 767.62 (3) (b),  
10 767.62 (4) (a), 767.62 (4) (e) 6., 769.302, 802.12 (3) (b), 803.01 (3) (b) 1., 803.01  
11 (3) (b) 2., 814.61 (1) (c) 1., 814.61 (7) (c), 977.05 (4) (i) 7. and 977.05 (6) (b) 1.; **to**  
12 **repeal and recreate** 767.045, 767.23 (1) (am), 767.24 (2) (b), 767.24 (4) (b),  
13 767.265 (3h), 767.265 (6) (a), 767.265 (6) (b), 767.325 (1) and 767.327; and **to**  
14 **create** 767.001 (4m), 767.23 (1c) (intro.), 767.24 (2) (a) 1. and 2., 767.24 (6) (bm)  
15 and 767.53 (3) of the statutes; **relating to:** standards for determining legal  
16 custody and physical placement of children in actions affecting the family,  
17 jurisdictional requirements in actions affecting the family, prohibitions against  
18 moving a child outside of a school district after divorce, standards for modifying  
19 custody and physical placement orders, temporary orders in actions affecting  
20 the family, visitation rights of 3rd parties, prohibiting the appointment of a  
21 guardian ad litem in all but certain actions affecting the family and making  
22 records of paternity proceedings open records.

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***Analysis by the Legislative Reference Bureau***

This bill makes a number of changes to the provisions of the statutes that apply to actions affecting the family, the two most common of which are divorce and

paternity actions. The changes relate especially to procedure and custody and physical placement determinations, including revisions to custody and physical placement orders, and apply to all actions affecting the family, including paternity actions after paternity has been determined, unless otherwise indicated.

**CUSTODY AND PHYSICAL PLACEMENT**

Under current law, a court must make a custody determination based on the best interest of the child. The court may grant sole custody to one parent or joint custody to both parents, but the court may grant joint custody only if the parents agree to it or if the court finds that both parents are capable of caring for the child, that no conditions exist that would interfere with the exercise of joint custody and that the parents will be able to cooperate in the future decision making required under an award of joint custody. The court may also find that neither parent is fit and proper to have custody, declare the child to be in need of protection or services and transfer legal custody to a county social services or human services department or licensed child welfare agency. Joint legal custody means that both parents have the right and responsibility to make major decisions concerning the child, and major decisions include decisions regarding consent to marry, consent to obtain a driver's license, authorization for nonemergency health care and the choice of school and religion. Current law provides that in a paternity matter the mother is to have sole legal custody unless the court orders otherwise.

This bill removes the best interest of the child as the basis for a court's determination regarding custody and provides that there are rebuttable presumptions that both parents are fit and have the ability to rear their children and that joint legal custody and equal periods of physical placement are fundamental rights of each parent and child. A court may order sole legal custody only if the parents agree that one parent should have sole legal custody or if the parental rights of one parent have been terminated. The court must order joint legal custody if one or both parents request it. The provision that authorizes the court to transfer legal custody to a county department or licensed child welfare agency is eliminated, as well as the provision related to awarding sole custody to the mother in a paternity matter.

Under current law, a court must allocate periods of physical placement (the time that a child is actually placed with a parent) after considering a number of factors, such as the wishes of the child and of each parent, the child's interaction and interrelationship with each parent, the child's adjustment to the home and community, the mental and physical health of the parties, the availability of child care services and whether either of the parties has a problem with alcohol or drug abuse. A child is entitled to periods of physical placement with each parent unless the court finds that physical placement with a parent would endanger the child's physical, mental or emotional health. The bill removes these provisions and provides that, if the court orders joint legal custody or sole legal custody because the parties have agreed to it, the court must approve any schedule for the allocation of physical placement that the parties agree to and submit to the court in writing. If the parties do not agree, the court must order each party to submit a schedule and the court must order the schedule that sets forth the most equal allocation of physical placement. If neither schedule submitted by the parties is substantially equal and each proposes

*Or a statement acknowledging a paternity matter*

*and actions related to custody and physical placement after a statement acknowledging paternity has been filed*



a greater amount of time for himself or herself, the court must order equal periods and require the parties to alternate spending with the child specified holidays and the child's birthday.

The bill changes the definition of major decisions (those decisions that any parent with legal custody may make) by excluding choice of school and religion and removes from the court the authority to specify any major decisions in addition to the ones specified in the definition. Although the parties may stipulate that one party has the sole power to make specified decisions, the bill removes from the court the authority to give one party that power and limits the court to specifying one parent as the primary caretaker of the child for the purpose of determining eligibility for benefits under the Wisconsin works program (W-2) only if both parents are eligible for public assistance funded by a relief block grant. The court may determine and specify a child's primary provider for health care if the parties do not agree.

#### **MODIFICATIONS TO CUSTODY AND PHYSICAL PLACEMENT ORDERS**

Under current law, a court may not, within the first two years after the initial order is entered, modify a physical placement order if the modification would substantially alter the amount of time that a parent spends with a child, or modify a custody order, unless the modification is necessary because the current custodial conditions are physically or emotionally harmful to the best interest of the child. After two years after the initial order is entered, a court may modify a custody order, or modify a physical placement order even if the modification would substantially alter the amount of time that a parent spends with a child, if there has been a substantial change in circumstances since the entry of the last order and if the modification is in the child's best interest. The court may modify a physical placement order if the modification does not substantially alter the amount of time that a parent spends with a child or if the parents have substantially equal periods of physical placement and that arrangement becomes impractical on the basis of the best interest of the child. This bill removes those provisions and provides that a court must modify a physical placement order in a way that alters the time a parent spends with a child, and must modify a custody order, if a parent requests a modification and the current order is not in compliance with the statutory provision that specifies the manner in which the court must award custody and physical placement, if a parent's parental rights have been terminated or if the parents agree to a modification.

Under current law, a parent who has legal custody of and physical placement with a child must provide notice to the other parent if he or she intends to establish his or her legal residence with the child at any location outside the state or at any location within the state at a distance of 150 miles or more from the other parent or if he or she intends to remove the child from the state for more than 90 consecutive days. If the other parent sends a notice of objection, the court or family court commissioner must refer the parties to mediation and appoint a guardian ad litem for the child. The parent proposing the move or removal is prohibited from taking the proposed action until the dispute is resolved, unless the parent obtains a temporary order from the court or family court commissioner allowing the move or removal. If mediation is not successful, the parent objecting to the proposed action may file a petition, motion or order to show cause for modification of legal custody

or physical placement, and the matter proceeds to a hearing before the court. The court may modify legal custody or physical placement if the move will result in a substantial change of circumstances since the last order affecting legal custody or physical placement and if modification is in the child's best interest. As an alternative to modification of legal custody or physical placement, the objecting parent may request an order prohibiting the move or the removal of the child. The court must consider whether the proposed action is reasonable; the nature and extent of the child's relationship with the other parent and the disruption to the relationship that the proposed action may cause; and the availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent in making its determination of whether to prohibit the move or the removal of the child. The court may prohibit the move or the removal if it finds that doing so is in the child's best interest. The burden of proof is on the parent objecting to the move or removal. There is a rebuttable presumption that it is in the child's best interest to remain with the parent with whom the child currently resides for the greater period of time, which may be overcome by a showing that the move or the removal is unreasonable and not in the child's best interest.

This bill provides that, if both parents are awarded physical placement with the child in any action affecting the family, neither parent may establish a legal residence for the child that is outside the school district in which the child resided on the 180th day before the commencement of the action affecting the family, or since birth if the child is less than six months old, or other school district agreed upon by the parties. The court may, however, allow a parent to establish a legal residence for the child outside of that school district if the parent shows that for at least one year the other parent has exercised his or her physical placement rights for less than 10% of the amount of time awarded by the court. If one of the parents wishes to establish his or her legal residence outside of the child's school district, that parent must provide at least 60 days' written notice to the other parent. If the proposed move would make it difficult or impractical for the physical placement arrangement to continue and at the same time for the child to remain in the same school district, either parent may request a modification to the physical placement order. The court must approve any modified physical placement schedule that the parents agree to. If the parents do not agree, the court may modify the physical placement schedule in such a way that the parent not proposing the move is awarded physical placement with the child during weekdays and weeknights while school is in session, at least one weekend per month, at least four weeks during the summer and alternating holidays. The parent proposing the move must be responsible for transportation costs incurred in exercising his or her physical placement rights and must be awarded the maximum amount of physical placement that is reasonable under the circumstances. If both parents wish to establish their legal residences or a legal residence for the child outside of the child's current school district and do not agree on a new school district, the court may designate one of the parents' new legal residences as the child's legal residence for the purpose of establishing a new school district for the child. The court must choose the legal residence that the court determines will maximize the amount of time that each parent may spend with the

child. If one of the parents has already established a legal residence outside of the child's current school district, the court may allow the other parent to establish a legal residence for the child in a different school district if the parent who moved first does not wish to move back to the child's current school district and if the move does not increase the distance from the parent who moved first.

#### **PATERNITY ACTIONS**

In addition to the changes that the bill makes with respect to actions affecting the family in general, the bill makes some changes that relate to paternity actions alone. Under current law, in a paternity action that is commenced by a man who claims to be the father of a child who was born to a woman while she was married to another man, a party may allege that a judicial determination that a man other than the mother's husband is the child's father is not in the child's best interest. If the judge or family court commissioner agrees that such a determination is not in the child's best interest, no genetic tests may be taken and the action is dismissed. Additionally, at any time in a paternity action, regardless of who commenced it, a judge or family court commissioner may refuse to order genetic tests and dismiss the paternity action on the motion of a party or guardian ad litem if the judge or family court commissioner determines that a paternity determination is not in the child's best interest. The bill eliminates these provisions and provides that a man against whom a paternity action was dismissed, on the basis of one of the eliminated provisions, before the date on which the bill is enacted may commence another paternity action.

Current law provides that the liability of an adjudicated father of a child for past support is limited to support for the period after the birth of the child. The bill changes this to support for the period after the man is adjudicated to be the father.

Current law provides that, with certain exceptions, records of paternity proceedings are closed. The bill provides that the records are open to public inspection if the alleged father was adjudicated to be the father.

#### **MISCELLANEOUS CHANGES**

The bill makes an important change related to the appointment of a guardian ad litem. Under current law, a court in an action affecting the family must appoint a guardian ad litem for a minor child to represent the interests of the minor child if the court has reason for special concern as to the welfare of the child or if legal custody or physical placement is contested. The court must also appoint a guardian ad litem to bring a paternity action on behalf of a minor nonmarital child if the state is barred from commencing a paternity action by a statute of limitations and the child's custodian is receiving benefits under W-2 or an application for legal services has been filed on behalf of the child with the state child support program. The bill retains the requirement that the court appoint a guardian ad litem to bring a paternity action on behalf of a minor nonmarital child under the same circumstances as under current law, but prohibits the court from appointing a guardian ad litem under any other circumstances in an action affecting the family. Under the bill, if the court has reason for special concern as to the welfare of a minor child, the court must order one or both parents to file a petition alleging that the child is in need of protection or

services. If the court takes jurisdiction of the child on the basis of that petition, the court may appoint a guardian ad litem for the proceedings related to that petition.

Another important change relates to temporary orders. Under current law, the court or family court commissioner may, upon request, make temporary orders pending the final judgment in an action affecting the family concerning such matters as custody and physical placement of minor children, child support and payment of debts. Under the bill, the court or family court commissioner is required in every action affecting the family to make a temporary order that grants joint legal custody of any minor children to the parties and that grants the parties equal periods of physical placement with any minor children of the parties.

→ The bill makes a number of other miscellaneous changes. Under current law, a divorce action may not be commenced unless at least one of the parties has been a resident of the county in which the action is brought for not less than 30 days. This residency requirement is lengthened to six months. Stipulations under current law are subject to the approval of the court. The bill generally removes this approval requirement and requires the court to incorporate into the appropriate judgment or order any stipulation of the parties. Under current law, the parties to an action affecting the family are prohibited from certain actions during the pendency of the action, including establishing a residence with a minor child of the parties outside the state or more than 150 miles from the residence of the other party within the state, removing a minor child of the parties from the state for more than 90 consecutive days or concealing a minor child of the parties from the other party. The bill instead prohibits any party from establishing a legal residence for a minor child of the parties outside the school district in which the child resided on the 180th day before the commencement of the action, or since birth if the child is less than six months old, or other school district agreed upon by the parties, and from removing a minor child of the parties from the state for 14 consecutive days or more without the written approval of the other party. The bill also makes some changes in the mediation procedure under current law and requires the court to approve any agreement that the parties reach as a result of mediation, as long as it is knowingly and voluntarily made and not unconscionable.

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

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

- 1           **SECTION 1.** 20.921 (2) (a) of the statutes is amended to read:
- 2           20.921 (2) (a) Whenever it becomes necessary in pursuance of any federal or
- 3 state law or court-ordered assignment of income under s. 46.10 (14) (e), 301.12 (14)
- 4 (e), 767.23 (1) (L) (1c) (i), 767.25 (4m) (c), 767.265, 767.51 (3m) (c) or 767.62 (4) (b) 3.

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1 to make deductions from the salaries of state officers or employes or employes of the  
2 University of Wisconsin Hospitals and Clinics Authority, the state agency or  
3 authority by which the officers or employes are employed is responsible for making  
4 such deductions and paying over the total thereof for the purposes provided by the  
5 laws or orders under which they were made.

6 **SECTION 2.** 49.141 (1) (b) of the statutes is amended to read:

7 49.141 (1) (b) "Custodial parent" means, with respect to a dependent child, a  
8 parent who resides with that child and, if there has been a determination of legal  
9 custody with respect to the dependent child, has legal custody of that child. For the  
10 purposes of this paragraph, "legal custody" has the meaning given in s. 767.001 (2)  
11 (a).

12 **SECTION 3.** 51.30 (5) (bm) of the statutes is amended to read:

13 51.30 (5) (bm) *Parents denied physical placement.* A parent who has been  
14 denied periods of physical placement with a child under s. 767.24 (4) (b) or 767.325  
15 (4) may not have the rights of a parent or guardian under pars. (a) and (b) with  
16 respect to access to that child's court or treatment records.

17 **SECTION 4.** 55.07 (2) of the statutes is amended to read:

18 55.07 (2) A parent who has been denied periods of physical placement under  
19 s. 767.24 (4) (b) or 767.325 (4) may not have the rights of a parent or guardian with  
20 respect to access to a child's records under this chapter.

21 **SECTION 5.** 102.27 (2) (a) of the statutes is amended to read:

22 102.27 (2) (a) A benefit under this chapter is assignable under s. 46.10 (14) (e),  
23 301.12 (14) (e), 767.23 (1) (L) (1c) (i), 767.25 (4m) (c), 767.265 (1), 767.51 (3m) (c) or  
24 767.62 (4) (b) 3.

25 **SECTION 6.** 115.76 (12) of the statutes is amended to read:

1           115.76 (12) "Parent" means a biological parent; a husband who has consented  
2 to the artificial insemination of his wife under s. 891.40; a male who is presumed to  
3 be the child's father under s. 891.41; a male who has been adjudicated the child's  
4 father under subch. VIII of ch. 48, under ss. 767.45 to 767.51, by final order or  
5 judgment of an Indian tribal court of competent jurisdiction or by final order or  
6 judgment of a court of competent jurisdiction in another state; an adoptive parent;  
7 a legal guardian; a person acting as a parent of a child; a person appointed as a  
8 sustaining parent under s. 48.428; or a person assigned as a surrogate parent under  
9 s. 115.792 (1) (a) 2. "Parent" does not include any person whose parental rights have  
10 been terminated; the state or a county or a child welfare agency if a child was made  
11 a ward of the state or a county or child welfare agency under ch. 880 or if a child has  
12 been placed in the legal custody or guardianship of the state or a county or a child  
13 welfare agency under ch. 48 ~~or ch. 767~~; or an American Indian tribal agency if the  
14 child was made a ward of the agency or placed in the legal custody or guardianship  
15 of the agency.

16           **SECTION 7.** 146.835 of the statutes is amended to read:

17           **146.835 Parents denied physical placement rights.** A parent who has  
18 been denied periods of physical placement under s. 767.24 (4) (b) or 767.325 (4) may  
19 not have the rights of a parent or guardian under this chapter with respect to access  
20 to that child's patient health care records under s. 146.82 or 146.83.

21           **SECTION 8.** 757.48 (1) (a) of the statutes is amended to read:

22           757.48 (1) (a) Except as provided in s. 879.23 (4), in all matters in which a  
23 guardian ad litem is appointed by the court, the guardian ad litem shall be an  
24 attorney admitted to practice in this state. ~~In order to be appointed as a guardian~~  
25 ~~ad litem under s. 767.045, an attorney shall have completed 3 hours of approved~~

1 continuing legal education relating to the functions and duties of a guardian ad litem  
2 under ch. 767.

3 **SECTION 9.** 758.19 (5) (a) 2. of the statutes is amended to read:

4 758.19 (5) (a) 2. Fees for expert witnesses called by the guardian ad litem under  
5 s. 767.045 (6), 1997 stats., if either or both parties are unable to pay those fees.

6 **SECTION 10.** 767.001 (1s) of the statutes is amended to read:

7 767.001 (1s) "Joint legal custody" means the condition under which both  
8 parties share legal custody and neither party's legal custody rights are superior,  
9 except with respect to specified decisions as ~~set forth~~ stipulated by the court or the  
10 parties and set forth in the final judgment or order.

11 **SECTION 11.** 767.001 (2) (intro.) and (a) of the statutes are consolidated,  
12 renumbered 767.001 (2) and amended to read:

13 767.001 (2) "Legal custody" means: ~~(a) With~~ with respect to any person  
14 granted legal custody of a child, ~~other than a county agency or a licensed child welfare~~  
15 ~~agency under par. (b),~~ the right and responsibility to make major decisions  
16 concerning the child, except with respect to specified decisions as ~~set forth~~ stipulated  
17 by the court or the parties and set forth in the final judgment or order.

18 **SECTION 12.** 767.001 (2) (b) of the statutes is repealed.

19 **SECTION 13.** 767.001 (2m) of the statutes is amended to read:

20 767.001 (2m) "Major decisions" ~~includes, but is not limited to,~~ means decisions  
21 regarding consent to marry, consent to enter military service, consent to obtain a  
22 motor vehicle operator's license, and authorization for nonemergency health care  
23 ~~and choice of school and religion.~~

24 **SECTION 14.** 767.001 (3) of the statutes is amended to read:

1           767.001 (3) "Mediation" means a cooperative process involving the parties and  
2 a mediator, the purpose of which is to help the parties, by applying communication  
3 and dispute resolution skills, define and resolve their own disagreements, ~~with the~~  
4 ~~best interest of the child as the paramount consideration~~ and to encourage the  
5 parties to cooperate in making decisions regarding their minor children, based on the  
6 principle that each parent has an equal right of access to and equal responsibility to  
7 provide care for their minor children.

8           **SECTION 15.** 767.001 (4m) of the statutes is created to read:

9           767.001 (4m) "Nonemergency health care" means routine health care and  
10 includes such care as acute illness care, physical examinations and dental care.

11           **SECTION 16.** 767.02 (1) (k) of the statutes is amended to read:

12           767.02 (1) (k) Concerning periods of physical placement or visitation rights to  
13 children, ~~including an action to prohibit a move with or the removal of a child under~~  
14 ~~s. 767.327 (3) (e).~~

15           **SECTION 17.** 767.045 of the statutes is repealed and recreated to read:

16           **767.045 Petition to juvenile court; guardian ad litem. (1)**

17 Notwithstanding s. 803.01 (3) and except as provided in sub. (2), the court may not  
18 appoint a guardian ad litem for a minor child in an action affecting the family. If at  
19 any time during the pendency of an action affecting the family in which a minor child  
20 is involved the court has reason for special concern as to the welfare of the minor  
21 child, the court shall order a parent or the parents to file a petition under s. 48.25 (1)  
22 to initiate proceedings under s. 48.13. If the court takes jurisdiction over the child  
23 under s. 48.13, the court may appoint a guardian ad litem as provided in s. 48.235.

24           (2) (a) The attorney responsible for support enforcement under s. 59.53 (6) (a)  
25 may request that the court or family court commissioner appoint a guardian ad litem



1 to bring an action or motion on behalf of a minor who is a nonmarital child whose  
2 paternity has not been acknowledged under s. 767.62 (1) or a substantially similar  
3 law of another state or adjudicated for the purpose of determining the paternity of  
4 the child, and the court or family court commissioner shall appoint a guardian ad  
5 litem, if any of the following applies:

6 1. Aid is provided under s. 46.261, 48.57 (3m) or (3n), 49.19 or 49.45 on behalf  
7 of the child, or benefits are provided to the child's custodial parent under ss. 49.141  
8 to 49.161, but the state and its delegate under s. 49.22 (7) are barred by a statute of  
9 limitations from commencing an action under s. 767.45 on behalf of the child.

10 2. An application for legal services has been filed with the child support  
11 program under s. 49.22 on behalf of the child, but the state and its delegate under  
12 s. 49.22 (7) are barred by a statute of limitations from commencing an action under  
13 s. 767.45 on behalf of the child.

14 (b) A guardian ad litem appointed under par. (a) shall bring an action or motion  
15 for the determination of the child's paternity. The appointment of a guardian ad  
16 litem under par. (a) terminates upon the entry of the court's order determining the  
17 existence or nonexistence of paternity.

18 **SECTION 18.** 767.05 (1m) of the statutes is amended to read:

19 767.05 (1m) RESIDENCE. No action under s. 767.02 (1) (a) or (b) may be brought  
20 unless at least one of the parties has been a bona fide resident of the county in which  
21 the action is brought for not less than ~~30 days~~ 6 months next preceding the  
22 commencement of the action, or unless the marriage has been contracted within this  
23 state within one year prior to the commencement of the action. No action under s.  
24 767.02 (1) (c) or (d) may be brought unless at least one of the parties has been a bona  
25 fide resident of the county in which the action is brought for not less than ~~30 days~~

1 6 months next preceding the commencement of the action. No action under s. 767.02  
2 (1) (c) may be brought unless at least one of the parties has been a bona fide resident  
3 of this state for not less than 6 months next preceding the commencement of the  
4 action.

5 **SECTION 19.** 767.081 (2) (a) (intro.) of the statutes is amended to read:

6 767.081 (2) (a) (intro.) The family court commissioner shall, ~~with or~~ without  
7 charge, provide the party with written information on the following, as appropriate  
8 to the action commenced:

9 **SECTION 20.** 767.083 (2) of the statutes is amended to read:

10 767.083 (2) An order by the court, after consideration of the recommendation  
11 of the family court commissioner, directing an immediate hearing on the petition for  
12 the protection of the health or safety of either of the parties or of any child of the  
13 ~~marriage parties~~ or for other emergency reasons consistent with the policies of this  
14 chapter. The court shall upon granting such order specify the grounds therefor.

15 **SECTION 21.** 767.085 (1) (a) of the statutes is amended to read:

16 767.085 (1) (a) The name and birthdate of the parties, the social security  
17 numbers of the ~~husband and wife~~ parties and their occupations, the date and place  
18 of marriage and the facts relating to the residence of both parties.

19 **SECTION 22.** 767.085 (1) (j) (intro.) of the statutes is amended to read:

20 767.085 (1) (j) (intro.) Unless the action is one under s. 767.02 (1) (g) or (h), that  
21 during the pendency of the action, the parties are prohibited from, and may be held  
22 in contempt of court for, doing any of the following without the consent of the other  
23 party ~~or an order of the court or family court commissioner:~~

24 **SECTION 23.** 767.085 (1) (j) 1. of the statutes is amended to read:

1           767.085 (1) (j) 1. Establishing a residence ~~with for~~ a minor child of the parties  
2 outside the ~~state or more than 150 miles from the residence of the other party within~~  
3 ~~the state school district in which the child resided on the 180th day before the~~  
4 ~~commencement of the action, or since birth if the child is less than 6 months old, or~~  
5 ~~other school district agreed upon by the parties.~~

6           **SECTION 24.** 767.085 (1) (j) 2. of the statutes is amended to read:

7           767.085 (1) (j) 2. Removing a minor child of the parties from the state for ~~more~~  
8 ~~than 90~~ 14 consecutive days ~~or more without the written approval of the other party.~~

9           **SECTION 25.** 767.085 (2) (a) of the statutes is amended to read:

10          767.085 (2) (a) ~~Either or both of the parties to the marriage~~ may initiate the  
11 action. The party initiating the action or his or her attorney shall sign the petition.  
12 Both parties or their respective attorneys shall sign a joint petition.

13          **SECTION 26.** 767.087 (1) (c) of the statutes is amended to read:

14          767.087 (1) (c) Unless the action is one under s. 767.02 (1) (g) or (h), without  
15 the consent of the other party ~~or an order of the court or family court commissioner,~~  
16 establishing a residence ~~with for~~ a minor child of the parties outside the state or more  
17 ~~than 150 miles from the residence of the other party within the state school district~~  
18 ~~in which the child resided on the 180th day before the commencement of the action,~~  
19 ~~or since birth if the child is less than 6 months old, or other school district agreed upon~~  
20 ~~by the parties,~~ removing a minor child of the parties from the state for ~~more than 90~~  
21 ~~14~~ consecutive days ~~or more without the written approval of the other party or~~  
22 ~~concealing a minor child of the parties from the other party.~~

23          **SECTION 27.** 767.087 (2) of the statutes is amended to read:

1           767.087 (2) The prohibitions under sub. (1) shall apply until the action is  
2 dismissed, ~~or until a final judgment in the action is entered or until the court or~~  
3 ~~family court commissioner orders otherwise.~~

4           **SECTION 28.** 767.087 (3) (b) of the statutes is amended to read:

5           767.087 (3) (b) An act in violation of sub. (1) (c) is not a contempt of court if the  
6 court finds ~~that the action was taken to protect a party or~~ by clear and convincing  
7 evidence that the party took the action to protect a minor child of the parties from  
8 physical abuse ~~by the other party and that there was no reasonable opportunity~~  
9 ~~under the circumstances for the party and that the party obtained or made a~~  
10 reasonable attempt to obtain an order ~~under sub. (2)~~ authorizing the action.

11           **SECTION 29.** 767.10 (1) of the statutes is amended to read:

12           767.10 (1) The parties in an action for an annulment, divorce or legal  
13 separation may, ~~subject to the approval of the court,~~ stipulate for a division of  
14 property, for maintenance payments, for the support of children, for periodic family  
15 support payments under s. 767.261 or for legal custody and physical placement, in  
16 case a divorce or legal separation is granted or a marriage annulled.

17           **SECTION 30.** 767.11 (8) (b) (intro.) of the statutes is amended to read:

18           767.11 (8) (b) (intro.) A court ~~may, in its discretion,~~ shall hold a trial or hearing  
19 without requiring attendance at the session under par. (a) if the court finds that  
20 attending the session will cause undue hardship or would endanger the health or  
21 safety of one of the parties. In making its determination of whether attendance at  
22 the session would endanger the health or safety of one of the parties, the court shall  
23 consider ~~evidence~~ all of the following:

24           **SECTION 31.** 767.11 (8) (b) 1. of the statutes is amended to read:

1           767.11 (8) (b) 1. ~~That~~ Whether a party engaged in has been convicted of a crime  
2 involving abuse, as defined in s. 813.122 (1) (a) 48.02 (1), of the child, as defined in  
3 s. 48.02 (2).

4           **SECTION 32.** 767.11 (8) (b) 2. of the statutes is amended to read:

5           767.11 (8) (b) 2. Interspousal Whether a party has been convicted of battery as  
6 described under s. 940.19 or 940.20 (1m) or domestic abuse as defined in s. 813.12  
7 (1) (a) against the other party.

8           **SECTION 33.** 767.11 (8) (b) 3. of the statutes is repealed.

9           **SECTION 34.** 767.11 (8) (b) 4. of the statutes is amended to read:

10           767.11 (8) (b) 4. Any other clear and convincing evidence indicating that a  
11 party's health or safety will be endangered by attending the session.

12           **SECTION 35.** 767.11 (9) (intro.) and (b) of the statutes are consolidated,  
13 renumbered 767.11 (9) and amended to read:

14           767.11 (9) PROHIBITED ISSUES IN MEDIATION. If mediation is provided by a  
15 mediator assigned under sub. (6), no issue relating to property division, maintenance  
16 or child support may be considered during the mediation unless ~~all of the following~~  
17 ~~apply: (b) The~~ the parties agree in writing to consider the property division,  
18 maintenance or child support issue.

19           **SECTION 36.** 767.11 (9) (a) of the statutes is repealed.

20           **SECTION 37.** 767.11 (10) (intro.) of the statutes is amended to read:

21           767.11 (10) POWERS AND DUTIES OF MEDIATOR. (intro.) A mediator assigned  
22 under sub. (6) shall ~~be guided by the best interest of the child and may~~ do any of the  
23 following, at his or her discretion:

24           **SECTION 38.** 767.11 (10) (a) of the statutes is amended to read:

1           767.11 (10) (a) Include the counsel of ~~any party or any appointed~~ both parties  
2 and any guardian ad litem appointed under s. 48.235 in the mediation.

3           **SECTION 39.** 767.11 (10) (b) of the statutes is amended to read:

4           767.11 (10) (b) Interview any child of the parties, with ~~or without a party~~  
5 neither of the parties present or with both of the parties present.

6           **SECTION 40.** 767.11 (10) (e) (intro.) and 4. of the statutes are consolidated,  
7 renumbered 767.11 (10) (e) and amended to read:

8           767.11 (10) (e) Terminate mediation if a party does not cooperate ~~or if mediation~~  
9 ~~is not appropriate~~ or if any of the following facts exist: ~~4. Other evidence which~~  
10 ~~indicates one of the parties' that the health or safety of one of the parties will be~~  
11 ~~endangered if mediation is not terminated.~~

12           **SECTION 41.** 767.11 (10) (e) 1. to 3. of the statutes are repealed.

13           **SECTION 42.** 767.11 (12) (a) and (b) of the statutes are amended to read:

14           767.11 (12) (a) Any agreement which resolves issues of legal custody or periods  
15 of physical placement between the parties reached as a result of mediation under this  
16 section shall be prepared in writing, reviewed by the attorney, if any, for each party  
17 and by any ~~appointed~~ guardian ad litem appointed under s. 48.235, and submitted  
18 to the court to be included in the court order as a stipulation. Any reviewing attorney  
19 or guardian ad litem shall certify on the mediation agreement that he or she reviewed  
20 it ~~and the guardian ad litem, if any, shall comment on the agreement based on the~~  
21 ~~best interest of the child. The mediator shall certify, that the written mediation~~  
22 ~~agreement is in the best interest of the child based on the information presented to~~  
23 ~~the mediator and that it accurately reflects the agreement made between the parties.~~  
24 The court ~~may approve or reject the agreement, based on the best interest of the~~  
25 ~~child. The court shall state in writing its reasons for rejecting an agreement shall~~

1 approve the agreement if the court finds that the agreement is knowingly and  
2 voluntarily made. If the court as a matter of law finds that any aspect of the  
3 agreement is unconscionable, the court shall reject the unconscionable aspect or so  
4 limit the application of the unconscionable aspect as to avoid any unconscionable  
5 result.

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

16 **SECTION 43.** 767.11 (14) (a) 1. of the statutes is amended to read:

17 767.11 (14) (a) 1. The conditions of ~~the child's~~ each parent's home.

18 **SECTION 44.** 767.11 (14) (a) 2. of the statutes is amended to read:

19 767.11 (14) (a) 2. Each party's performance of parental duties and  
20 responsibilities relating to the basic care of the child.

21 **SECTION 45.** 767.11 (14) (a) 3. of the statutes is repealed.

22 **SECTION 46.** 767.11 (14) (b) of the statutes is amended to read:

23 767.11 (14) (b) The person or entity investigating the parties under par. (a)  
24 shall complete the investigation and submit the results to the court. The court shall  
25 make the results available to both parties. The report shall be a part of the record

1 in the action ~~unless the court orders otherwise.~~ The report shall not be considered  
2 as a recommendation as to legal custody or physical placement but as evidence  
3 relating to the condition of each parent's home and the ability of each parent to  
4 provide basic care for the child and may be considered by the court for the purpose  
5 of determining whether to order the filing of a petition under s. 48.25 (1) to initiate  
6 proceedings under s. 48.13.

7 **SECTION 47.** 767.115 (1) (a) of the statutes is amended to read:

8 767.115 (1) (a) At any time during the pendency of an action affecting the family  
9 in which a minor child is involved and in which the court or family court  
10 commissioner determines that it is appropriate ~~and in the best interest of the child,~~  
11 the court or family court commissioner, on its own motion, may order the parties to  
12 attend a program specified by the court or family court commissioner concerning the  
13 effects on a child of a ~~dissolution of the marriage~~ break in the family relationship.

14 **SECTION 48.** 767.115 (1) (b) of the statutes is amended to read:

15 767.115 (1) (b) At any time during the pendency of an action to determine the  
16 paternity of a child, or an action affecting the family for which the underlying action  
17 was an action to determine the paternity of a child, if the court or family court  
18 commissioner determines that it is appropriate ~~and in the best interest of the child,~~  
19 the court or family court commissioner, on its own motion, may order either or both  
20 of the parties to attend a program specified by the court or family court commissioner  
21 providing training in parenting or coparenting skills, or both.

22 **SECTION 49.** 767.115 (1m) of the statutes is amended to read:

23 767.115 (1m) A program under sub. (1) shall be educational rather than  
24 therapeutic in nature ~~and may not exceed a total of 4 hours in length.~~ The parties  
25 shall be responsible for the cost, if any, of attendance at the program. ~~The court or~~



1 family court commissioner may specifically assign responsibility for payment of any  
2 cost. No facts or information obtained in the course of the program, and no report  
3 resulting from the program, is admissible in any action or proceeding.

4 **SECTION 50.** 767.14 of the statutes is amended to read:

5 **767.14 Service on and appearance by family court commissioner.** In  
6 any action affecting the family, each party shall, either within 20 days after making  
7 service on the opposite party of any petition or pleading or before filing such petition  
8 or pleading in court, serve a copy of the same upon the family court commissioner of  
9 the county in which the action is begun, whether such action is contested or not. No  
10 judgment in any such action shall be granted unless this section is complied with  
11 except when otherwise ordered by the court. Such commissioner ~~may~~ shall appear  
12 in an action under this chapter ~~when appropriate, and shall appear~~ when requested  
13 by the court or by a party.

14 **SECTION 51.** 767.23 (1) (intro.) of the statutes is amended to read:

15 767.23 (1) (intro.) Except as provided in ch. 822, in every action affecting the  
16 family, ~~including a paternity action after paternity has been adjudicated,~~ the court  
17 or family court commissioner ~~may~~ shall, during the pendency thereof, make just and  
18 reasonable temporary orders concerning the following matters:

19 **SECTION 52.** 767.23 (1) (a) of the statutes is amended to read:

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

1           **SECTION 53.** 767.23 (1) (am) of the statutes is repealed and recreated to read:

2           767.23 (1) (am) Granting equal periods of physical placement to the parties  
3 unless the parties agree to a different physical placement allocation or unless a  
4 conflicting order under s. 48.345 or subch. VI of ch. 938 is in effect.

5           **SECTION 54.** 767.23 (1) (bm) of the statutes is repealed.

6           **SECTION 55.** 767.23 (1) (c) of the statutes is renumbered 767.23 (1c) (a) and  
7 amended to read:

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

13           **SECTION 56.** 767.23 (1) (d) of the statutes is renumbered 767.23 (1c) (b).

14           **SECTION 57.** 767.23 (1) (e) of the statutes is renumbered 767.23 (1c) (c).

15           **SECTION 58.** 767.23 (1) (f) of the statutes is renumbered 767.23 (1c) (d).

16           **SECTION 59.** 767.23 (1) (g) of the statutes is renumbered 767.23 (1c) (e).

17           **SECTION 60.** 767.23 (1) (h) of the statutes is renumbered 767.23 (1c) (f).

18           **SECTION 61.** 767.23 (1) (i) of the statutes is renumbered 767.23 (1c) (g).

19           **SECTION 62.** 767.23 (1) (k) of the statutes is renumbered 767.23 (1c) (h).

20           **SECTION 63.** 767.23 (1) (L) of the statutes is renumbered 767.23 (1c) (i) and  
21 amended to read:

22           767.23 (1c) (i) ~~Requiring~~ Subject to s. 767.477, requiring either party or both  
23 parties to execute an assignment of income for payment of health care expenses of  
24 minor children.

25           **SECTION 64.** 767.23 (1c) (intro.) of the statutes is created to read:

1           767.23 (1c) (intro.) In every action affecting the family, the court or family court  
2 commissioner may, during the pendency thereof, make just and reasonable  
3 temporary orders concerning the following matters:

4           **SECTION 65.** 767.23 (1n) of the statutes is amended to read:

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

17           **SECTION 66.** 767.23 (2) of the statutes is amended to read:

18           767.23 (2) Notice of motion for an order or order to show cause under sub. (1)  
19 ~~or (1c)~~ may be served at the time the action is commenced or at any time thereafter  
20 and shall be accompanied by an affidavit stating the basis for the request for relief.

21           **SECTION 67.** 767.24 (1) of the statutes is amended to read:

22           767.24 (1) GENERAL PROVISIONS. In rendering a judgment of annulment, divorce  
23 or legal separation, or in rendering a judgment in an action under s. 767.02 (1) (e),  
24 the there are rebuttable presumptions that both parents are fit and have the ability  
25 to rear their children, that both parents are qualified to decide what is best for their

1 children and that joint legal custody and equal periods of physical placement are  
2 fundamental rights of each parent and child. The court shall make such provisions  
3 ~~as it deems just and reasonable~~ concerning the legal custody and physical placement  
4 of any minor child of the parties, as are provided in this section.

5 **SECTION 68.** 767.24 (2) (a) of the statutes is renumbered 767.24 (2) (a) (intro.)  
6 and amended to read:

7 767.24 (2) (a) (intro.) ~~Subject to par. (b), based on the best interest of the child~~  
8 ~~and after considering the factors under sub. (5), the~~ The court may give joint legal  
9 ~~custody or sole legal custody of a minor child.~~ to one parent if either of the following  
10 applies:

11 **SECTION 69.** 767.24 (2) (a) 1. and 2. of the statutes are created to read:

12 767.24 (2) (a) 1. Both parties agree to sole legal custody with one parent.

13 2. The parental rights of one parent have been terminated under subch. VIII  
14 of ch. 48.

15 **SECTION 70.** 767.24 (2) (b) of the statutes is repealed and recreated to read:

16 767.24 (2) (b) The court shall give joint legal custody if one or both parties  
17 request joint legal custody.

18 **SECTION 71.** 767.24 (3) of the statutes is repealed.

19 **SECTION 72.** 767.24 (4) (a) of the statutes is amended to read:

20 767.24 (4) (a) ~~Except as provided under par. (b), if~~ If the court orders sole legal  
21 custody because the parties agree to it under sub. (2)(a) 1. or joint legal custody under  
22 sub. (2) (b), the court shall allocate periods of physical placement between the parties  
23 in accordance with this subsection. ~~In determining the allocation of periods of~~  
24 ~~physical placement, the court shall consider each case on the basis of the factors in~~  
25 ~~sub. (5).~~

1           **SECTION 73.** 767.24 (4) (b) of the statutes is repealed and recreated to read:

2           767.24 (4) (b) The court shall approve any written schedule for physical  
3 placement that the parties agree to and submit to the court. If the parties do not  
4 agree on a placement schedule, the court shall require each party to submit a  
5 placement proposal. The court shall approve the proposal submitted that sets forth  
6 the most equal allocation of periods of physical placement between the parties. If  
7 neither party proposes substantially equal periods of physical placement and each  
8 party proposes that he or she be awarded physical placement for the greater period  
9 of time, the court shall allocate equal alternating periods of physical placement  
10 between the parties and shall require that the parties annually alternate spending  
11 all of the following with the child:

- 12           1. New Year's Day.
- 13           2. Easter.
- 14           3. Memorial Day.
- 15           4. Independence Day (July 4).
- 16           5. Labor Day.
- 17           6. Thanksgiving Day.
- 18           7. Christmas Eve.
- 19           8. Christmas Day.
- 20           9. New Year's Eve.
- 21           10. The child's birthday.

22           **SECTION 74.** 767.24 (4) (cm) of the statutes is repealed.

23           **SECTION 75.** 767.24 (4) (d) of the statutes is amended to read:

1           767.24 (4) (d) ~~If the~~ The court grants periods of physical placement to more than  
2 one parent, it shall order a parent with legal custody and physical placement rights  
3 to provide the notice required under s. 767.327 (1) (2).

4           **SECTION 76.** 767.24 (5) of the statutes is repealed.

5           **SECTION 77.** 767.24 (6) (a) and (am) of the statutes are repealed.

6           **SECTION 78.** 767.24 (6) (b) of the statutes is amended to read:

7           767.24 (6) (b) ~~Notwithstanding s. 767.001 (1s), in making an order of~~ If the  
8 court awards joint legal custody, the court may give one party parties may stipulate  
9 that one party has the sole power to make specified decisions, while both parties  
10 retain equal rights and responsibilities for other decisions. The court shall  
11 incorporate the terms of the stipulation into the final judgment or order.

12           **SECTION 79.** 767.24 (6) (bm) of the statutes is created to read:

13           767.24 (6) (bm) If the court awards joint legal custody, the parties may stipulate  
14 to the primary care physicians for a minor child, and the court shall incorporate the  
15 terms of the stipulation into the final judgment or order. If the parties do not agree  
16 on the primary care physicians, the court may specify the primary care physicians  
17 for a minor child after considering the child's present health care and health  
18 insurance arrangements and any orders made by the court under s. 767.25 (4m).

19           **SECTION 80.** 767.24 (6) (c) of the statutes is amended to read:

20           767.24 (6) (c) ~~In making an order of joint legal custody and periods of physical~~  
21 ~~placement, the~~ The court may specify one parent as the primary caretaker of the  
22 child and one home as the primary home of the child, for the purpose of determining  
23 eligibility for aid under s. 49.19 or benefits under ss. 49.141 to 49.161 or for any other  
24 purpose the court considers appropriate only if both parents are dependent persons,  
25 as defined in s. 49.01 (2).

1           **SECTION 81.** 767.245 (1) of the statutes is amended to read:

2           767.245 (1) Except as provided in sub. (2m), upon petition by a grandparent,  
3           greatgrandparent, stepparent or person who has maintained a relationship similar  
4           to a parent-child relationship with the child, the court may grant reasonable  
5           visitation rights to that person if the parents have notice of the hearing and if the  
6           court determines ~~that~~ by a preponderance of the evidence that the visitation is in the  
7           ~~best interest of the child~~ not harmful to the child or to the child's relationship with  
8           either of the child's parents.

9           **SECTION 82.** 767.245 (2) of the statutes is repealed.

10          **SECTION 83.** 767.245 (3) (intro.) of the statutes is amended to read:

11          767.245 (3) (intro.) The court may grant reasonable visitation rights, with  
12          respect to a child, to a grandparent of the child if the child's parents have notice of  
13          the hearing and the court determines, by a preponderance of the evidence, all of the  
14          following:

15          **SECTION 84.** 767.245 (3) (f) of the statutes is amended to read:

16          767.245 (3) (f) The visitation is ~~in the best interest of the child~~ not harmful to  
17          the child or to the child's relationship with either of the child's parents.

18          **SECTION 85.** 767.245 (3m) (c) of the statutes is amended to read:

19          767.245 (3m) (c) If a party or ~~the~~ any guardian ad litem appointed under s.  
20          48.235 refuses to accept a recommendation under this subsection, the action shall be  
21          set for trial.

22          **SECTION 86.** 767.25 (1m) (hm) of the statutes is repealed.

23          **SECTION 87.** 767.25 (2) of the statutes is amended to read:

24          767.25 (2) The court may ~~protect and promote the best interests of the minor~~  
25          ~~children by setting~~ set aside a portion of the child support which either party is

1 ordered to pay in a separate fund or trust for the support, education and welfare of  
2 such children.

3 **SECTION 88.** 767.255 (1) of the statutes is amended to read:

4 767.255 (1) Upon every judgment of annulment, divorce or legal separation, or  
5 in rendering a judgment in an action under s. 767.02 (1) (h), the court shall divide  
6 the property of the parties and divest and transfer the title of any such property  
7 accordingly. A certified copy of the portion of the judgment that affects title to real  
8 estate shall be recorded in the office of the register of deeds of the county in which  
9 the lands so affected are situated. The court may ~~protect and promote the best~~  
10 ~~interests of the children by setting set~~ aside a portion of the property of the parties  
11 in a separate fund or trust for the support, maintenance, education and general  
12 welfare of any minor children of the parties.

13 **SECTION 89.** 767.265 (3h) of the statutes is amended to read:

14 767.265 (3h) A person who receives notice of assignment under this section or  
15 s. ~~767.23 (1) (L) (1c) (i)~~, 767.25 (4m) (c), 767.51 (3m) (c) or 767.62 (4) (b) 3. or similar  
16 laws of another state shall withhold the amount specified in the notice from any  
17 money that person pays to the payer later than one week after receipt of notice of  
18 assignment. Within 5 days after the day the person pays money to the payer, the  
19 person shall send the amount withheld to the clerk of court or support collection  
20 designee, whichever is appropriate, of the jurisdiction providing notice or, in the case  
21 of an amount ordered withheld for health care expenses, to the appropriate health  
22 care insurer, provider or plan. With each payment sent to the clerk of court or support  
23 collection designee, the person from whom the payer receives money shall report to  
24 the clerk or support collection designee the payer's gross income or other gross  
25 amount from which the payment was withheld. Except as provided in sub. (3m), for



1 each payment sent to the clerk of court or support collection designee, the person  
2 from whom the payer receives money shall receive an amount equal to the person's  
3 necessary disbursements, not to exceed \$3, which shall be deducted from the money  
4 to be paid to the payer. Section 241.09 does not apply to assignments under this  
5 section.

6 **SECTION 90.** 767.265 (3h) of the statutes, as affected by 1997 Wisconsin Act 191,  
7 section 416, and 1999 Wisconsin Act ... (this act), is repealed and recreated to read:

8 767.265 (3h) A person who receives notice of assignment under this section or  
9 s. 767.23 (1c) (i), 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 clerk of court or support collection  
14 designee, whichever is appropriate, of the jurisdiction providing notice or, in the case  
15 of an amount ordered withheld for health care expenses, to the appropriate health  
16 care insurer, provider or plan. With each payment sent to the clerk of court or support  
17 collection designee, the person from whom the payer receives money shall report to  
18 the clerk or support collection designee the payer's gross income or other gross  
19 amount from which the payment was withheld. Except as provided in sub. (3m), for  
20 each payment sent to the clerk of court or support collection designee, the person  
21 from whom the payer receives money shall receive an amount equal to the person's  
22 necessary disbursements, not to exceed \$3, which shall be deducted from the money  
23 to be paid to the payer. Section 241.09 does not apply to assignments under this  
24 section.

25 **SECTION 91.** 767.265 (4) of the statutes is amended to read:

Insert 28-24 ✓

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

4     **SECTION 92.** 767.265 (6) (a) of the statutes is amended to read:

5           767.265 (6) (a) Except as provided in sub. (3m), if after receipt of notice of  
6     assignment the person from whom the payer receives money fails to withhold the  
7     money or send the money to the clerk of court or support collection designee or the  
8     appropriate health care insurer, provider or plan as provided in this section or s.  
9     767.23 ~~(1)(L)~~ (1c)(i), 767.25 (4m) (c), 767.51 (3m) (c) or 767.62 (4) (b) 3., the person  
10    may be proceeded against under the principal action under ch. 785 for contempt of  
11    court or may be proceeded against under ch. 778 and be required to forfeit not less  
12    than \$50 nor more than an amount, if the amount exceeds \$50, that is equal to 1%  
13    of the amount not withheld or sent.

14           **SECTION 93.** 767.265 (6) (a) of the statutes, as affected by 1997 Wisconsin Act  
15    191, section 420, and 1999 Wisconsin Act.... (this act), is repealed and recreated to  
16    read:

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

1 SECTION 94. 767.265 (6) (b) of the statutes is amended to read:

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

8 SECTION 95. 767.265 (6) (b), of the statutes, as affected by 1997 Wisconsin Act  
9 191, section 422, and 1999 Wisconsin Act .... (this act), is repealed and recreated to  
10 read:

11 767.265 (6) (b) If an employer who receives an assignment under this section  
12 or s. 767.23 (1c) (i), 767.25 (4m) (c), 767.51 (3m) (c) or 767.62 (4) (b) 3. fails to notify  
13 the clerk of court or support collection designee, whichever is appropriate, within 10  
14 days after an employe is terminated or otherwise temporarily or permanently leaves  
15 employment, the employer may be proceeded against under the principal action  
16 under ch. 785 for contempt of court.

Insert 30-16 ✓

17 SECTION 96. 767.265 (6) (c) of the statutes is amended to read:

18 767.265 (6) (c) No employer may use an assignment under this section or s.  
19 767.23 (1) (L) (1c) (i), 767.25 (4m) (c), 767.51 (3m) (c) or 767.62 (4) (b) 3. as a basis for  
20 the denial of employment to a person, the discharge of an employe or any disciplinary  
21 action against an employe. An employer who denies employment or discharges or  
22 disciplines an employe in violation of this paragraph may be fined not more than  
23 \$500 and may be required to make full restitution to the aggrieved person, including  
24 reinstatement and back pay. Except as provided in this paragraph, restitution shall

1 be in accordance with s. 973.20. An aggrieved person may apply to the district  
2 attorney or to the department for enforcement of this paragraph.

3 **SECTION 97.** 767.325 (1) of the statutes is repealed and recreated to read:

4 **767.325 (1) MODIFICATIONS.** (a) The court shall modify an order of physical  
5 placement in a way that alters the time a parent may spend with his or her child or  
6 an order of legal custody if any of the following applies:

7 1. A parent requests a modification and the current order is not in conformity  
8 with s. 767.24.

9 2. The parental rights of a parent have been terminated under subch. VIII of  
10 ch. 48.

11 3. The parties agree to a modification.

12 (b) A modification under this subsection shall be consistent with s. 767.24.

13 **SECTION 98.** 767.325 (2) of the statutes is repealed.

14 **SECTION 99.** 767.325 (3) of the statutes is repealed.

15 **SECTION 100.** 767.325 (4) of the statutes is repealed.

16 **SECTION 101.** 767.327 of the statutes is repealed and recreated to read:

17 **767.327 Moving the child's residence outside the school district and**  
18 **other removals.** (1) Except as provided in sub. (5), if both parents of a child in an  
19 action affecting the family are awarded physical placement rights to the child,  
20 neither parent may establish a legal residence for the child outside the school district  
21 in which the child resided on the 180th day before the commencement of the action  
22 affecting the family, or since birth if the child is less than 6 months old, or other school  
23 district agreed upon by the parties.

24 (2) (a) A parent specified in sub. (1) who wishes to establish his or her legal  
25 residence outside the state or at any location within the state that is at a distance

1 of 150 miles or more from the school district in which the child resided on the 180th  
2 day before the commencement of the action affecting the family, or since birth if the  
3 child is less than 6 months old, or other school district agreed upon by the parties,  
4 shall provide not less than 60 days' written notice to the other parent, with a copy  
5 to the court, of his or her intent regarding changing his or her legal residence.

6 (b) The parent shall send the notice under par. (a) by certified mail. The notice  
7 shall state the parent's proposed action, including the specific date and location of  
8 the move, and that the other parent may request a modification to the physical  
9 placement order as provided in sub. (3).

10 (3) If the proposed move under sub. (2) would make it difficult or impractical  
11 for the parties to comply with the physical placement order and at the same time for  
12 the child to remain in the same school district, either party may file a petition, motion  
13 or order to show cause for modification of the physical placement order.

14 (4) (a) If after a notice under sub. (2) has been sent or a petition, motion or order  
15 to show cause under sub. (3) has been filed the parties agree to a modification of the  
16 physical placement order or to a change in the child's school district and file a  
17 stipulation with the court, the court shall approve the agreement and incorporate the  
18 terms of the stipulation into a revised order.

19 (b) If the parties do not agree to a modification after a petition, motion or order  
20 to show cause under sub. (3) has been filed, the court may modify the physical  
21 placement order, subject to all of the following:

22 1. The parent not proposing the move shall be awarded periods of physical  
23 placement that include weekdays and weeknights when school is in session, at least  
24 one weekend per month, at least 4 weeks during the summer months when school  
25 is not in session and alternating holidays.

1           2. The parent proposing the move shall be awarded the maximum amount of  
2 physical placement that is reasonable under the circumstances.

3           3. The parent proposing the move shall be responsible for the transportation  
4 costs of exercising his or her physical placement rights.

5           (5) The court may allow a parent specified in sub. (1) to establish a legal  
6 residence for the child outside the school district in which the child resided on the  
7 180th day before the commencement of the action affecting the family, or since birth  
8 if the child is less than 6 months old, or other school district agreed upon by the  
9 parties, if all of the following apply:

10           (a) The parent desiring to establish a different legal residence for the child files  
11 a petition, motion or order to show cause for that purpose.

12           (b) The other parent has notice of the hearing on the petition, motion or order  
13 to show cause.

14           (c) The parent desiring to establish a different legal residence for the child  
15 shows by clear and convincing evidence that, for a period of at least one year, the  
16 other parent has exercised his or her physical placement rights for less than 10% of  
17 the amount of time that he or she was awarded by the court.

18           (6) Notwithstanding sub. (1), if both parents specified in sub. (1) wish to  
19 establish their legal residences or a legal residence for the child outside the current  
20 school district of the child and do not agree on a new school district for the child, the  
21 court may designate one of the new legal residences of the parents as the child's legal  
22 residence for the purpose of establishing a new school district for the child. In  
23 making the determination under this subsection, the court shall specify as the child's  
24 legal residence the location that the court determines will maximize the amount of  
25 time that each parent may spend with the child.

1           (7) Notwithstanding sub. (1), if a parent specified in sub. (1) has established  
2 his or her legal residence outside the state or at a location within the state that is at  
3 a distance of 150 miles or more from the child's current school district, the court may  
4 allow the parent whose legal residence is in the child's current school district to  
5 establish a legal residence for the child outside the child's current school district if  
6 the move does not increase the distance between the child and the other parent and  
7 the other parent does not wish to move back to the child's current school district.

8           (8) Unless the parents agree otherwise, a parent with legal custody and  
9 physical placement rights shall notify and obtain the written approval of the other  
10 parent before removing the child from the state for a period of 14 days or more.

11           **SECTION 102.** 767.33 (1m) (a) of the statutes is renumbered 767.33 (1m) and  
12 amended to read:

13           767.33 (1m) ~~Except as provided in par. (b), this~~ This section applies only to an  
14 order under s. 767.23 or 767.25 in which payment is expressed as a fixed sum. It does  
15 not apply to such an order in which payment is expressed as a percentage of parental  
16 income.

17           **SECTION 103.** 767.33 (1m) (b) of the statutes is repealed.

18           **SECTION 104.** 767.45 (1) (d) of the statutes is amended to read:

19           767.45 (1) (d) A man alleged or alleging himself to be the father of the child,  
20 including a man against whom an action was dismissed under s. 767.458 (1m), 1997  
21 stats., or 767.463, 1997 stats., before the effective date of this paragraph .... [revisor  
22 inserts date].

23           **SECTION 105.** 767.45 (1) (i) of the statutes is amended to read:

24           767.45 (1) (i) A guardian ad litem appointed for the child under s. 48.235,  
25 767.045 (1)(e) (2)(a) or 938.235.

1           **SECTION 106.** 767.45 (2) of the statutes is repealed.

2           **SECTION 107.** 767.458 (1) (b) of the statutes is amended to read:

3           767.458 (1) (b) If the respondent is unable to afford counsel due to indigency,  
4           and the petitioner is represented by a government attorney under s. 767.45 (1) (g) or  
5           (6) or the action is commenced on behalf of the child by an attorney appointed under  
6           s. 767.045 ~~(1)(e)~~ (2)(a), counsel shall be appointed for the respondent as provided in  
7           s. 767.52 and ch. 977, unless the respondent knowingly and voluntarily waives the  
8           appointment of counsel;

9           **SECTION 108.** 767.458 (1) (c) of the statutes is amended to read:

10           767.458 (1) (c) ~~Except as provided under sub. (1m) and s. 767.463, the~~ The  
11           respondent may request the administration of genetic tests which either  
12           demonstrate that he is not the father of the child or which demonstrate the  
13           probability that he is or is not the father of the child;

14           **SECTION 109.** 767.458 (1) (d) of the statutes is amended to read:

15           767.458 (1) (d) ~~Except as provided in subs. (1m) and (2) and s. 767.463, the~~ The  
16           court will order genetic tests upon the request of any party; and

17           **SECTION 110.** 767.458 (1m) of the statutes is repealed.

18           **SECTION 111.** 767.46 (2) (c) of the statutes is amended to read:

19           767.46 (2) (c) If the alleged father voluntarily acknowledges paternity of the  
20           child, that he agree to the duty of support, the legal custody of the child, periods of  
21           physical placement of the child and other matters as determined ~~to be in the best~~  
22           interests of the child by the court.

23           **SECTION 112.** 767.46 (4) of the statutes is amended to read:

24           767.46 (4) If a party or the any guardian ad litem appointed under s. 48.235  
25           or 767.475 (1) refuses to accept a recommendation made under this section and



1 genetic tests have not yet been taken, the court shall require the appropriate parties  
2 to submit to genetic tests. After the genetic tests have been taken the court shall  
3 make an appropriate final recommendation.

4 **SECTION 113.** 767.46 (5) of the statutes is amended to read:

5 767.46 (5) If ~~the~~ any guardian ad litem appointed under s. 48.235 or 767.475  
6 (1) or any party refuses to accept any final recommendation, the action shall be set  
7 for trial.

8 **SECTION 114.** 767.463 of the statutes is repealed.

9 **SECTION 115.** 767.465 (2m) (a) of the statutes is amended to read:

10 767.465 (2m) (a) At any time after service of the summons and petition, a  
11 respondent who is the alleged father may, with or without appearance in court ~~and~~  
12 ~~subject to the approval of the court,~~ in writing acknowledge that he has read and  
13 understands the notice under s. 767.455 (5g) and stipulate that he is the father of the  
14 child and for child support payments, legal custody and physical placement. The  
15 court may not approve a stipulation for child support unless it provides for payment  
16 of child support determined in a manner consistent with s. 767.25 or 767.51.

17 **SECTION 116.** 767.475 (1) (a) of the statutes is renumbered 767.475 (1) and  
18 amended to read:

19 767.475 (1) ~~Except as provided in par. (b), the court may appoint a guardian~~  
20 ~~ad litem for the child and~~ The court shall appoint a guardian ad litem for a minor  
21 parent or minor who is alleged to be a parent in a paternity proceeding unless the  
22 minor parent or the minor alleged to be the parent is represented by an attorney.

23 **SECTION 117.** 767.475 (1) (b) of the statutes is repealed.

24 **SECTION 118.** 767.51 (3) of the statutes is amended to read:

1           767.51 (3) A judgment or order determining paternity may contain any other  
2 provision directed against the ~~appropriate party~~ parties to the proceeding,  
3 concerning the duty of support, the legal custody and guardianship of the child,  
4 periods of physical placement, the furnishing of bond or other security for the  
5 payment of the judgment, or any other matter in the best interest of the child. Unless  
6 the court orders otherwise, if there is no presumption of paternity under s. 891.41  
7 (1) the mother shall have sole legal custody of the child. The court shall order either  
8 party or both to pay for the support of any child of the parties who is less than 18 years  
9 old, or any child of the parties who is less than 19 years old if the child is pursuing  
10 an accredited course of instruction leading to the acquisition of a high school diploma  
11 or its equivalent. The judgment or order may direct the father to ~~pay or contribute~~  
12 make an equal contribution to the reasonable expenses of the mother's pregnancy  
13 and confinement during pregnancy and ~~may shall direct either party~~ both parties to  
14 pay or contribute to the costs of genetic tests, attorney fees and other costs.  
15 Contributions to the costs of genetic tests shall be paid to the county which paid for  
16 the genetic tests.

17           **SECTION 119.** 767.51 (4) of the statutes is amended to read:

18           767.51 (4) Support judgments or orders ordinarily shall be for periodic  
19 payments which may vary in amount if appropriate. The payment amount may be  
20 expressed as a percentage of the parent's income or as a fixed sum, or as a  
21 combination of both in the alternative by requiring payment of the greater or lesser  
22 of either a percentage of the parent's income or a fixed sum. The father's liability for  
23 past support of the child shall be limited to support for the period after ~~the birth of~~  
24 the child paternity has been adjudicated.

25           **SECTION 120.** 767.51 (5) (e) of the statutes is amended to read:

1           767.51 (5) (e) The need and capacity of the child for education, including higher  
2 education.

3           **SECTION 121.** 767.51 (5) (i), (im) and (j) of the statutes are repealed.

4           **SECTION 122.** 767.51 (6) of the statutes is amended to read:

5           767.51 (6) Sections 767.24, 767.245, 767.263, 767.265, 767.267, 767.29,  
6 767.293, 767.30, 767.305, 767.31, 767.32 and, 767.325, 767.327 and 767.329, where  
7 applicable, shall apply to a judgment or order under this section.

8           **SECTION 123.** 767.52 (1) of the statutes is amended to read:

9           767.52 (1) At the pretrial hearing, at the trial and in any further proceedings  
10 in any paternity action, any party may be represented by counsel. If the respondent  
11 is indigent and the state is the petitioner under s. 767.45 (1) (g), the petitioner is  
12 represented by a government attorney as provided in s. 767.45 (6) or the action is  
13 commenced on behalf of the child by an attorney appointed under s. 767.045 (1) (e)  
14 (2) (a), counsel shall be appointed for the respondent as provided in ch. 977, and  
15 subject to the limitations under sub. (2m), unless the respondent knowingly and  
16 voluntarily waives the appointment of counsel.

17           **SECTION 124.** 767.53 (3) of the statutes is created to read:

18           767.53 (3) The records of any past proceeding in which paternity was  
19 established are open to public inspection under ss. 19.31 to 19.39.

20           **SECTION 125.** 767.62 (3) (b) of the statutes is amended to read:

21           767.62 (3) (b) ~~Except as provided in s. 767.045, in~~ In an action specified in par.  
22 (a), the court or family court commissioner ~~may appoint a guardian ad litem for the~~  
23 ~~child and~~ shall appoint a guardian ad litem for a party who is a minor, unless the  
24 minor party is represented by an attorney.

25           **SECTION 126.** 767.62 (4) (a) of the statutes is amended to read:

1           767.62 (4) (a) In an action under sub. (3) (a), if the persons who signed and filed  
2 the statement acknowledging paternity as parents of the child had notice of the  
3 hearing, the court or family court commissioner may make an order that contains  
4 any provision directed against the ~~appropriate party~~ parties to the proceeding  
5 concerning the duty of support, the legal custody or guardianship of the child, periods  
6 of physical placement, the furnishing of bond or other security for the payment of  
7 amounts under the order or any other matter ~~in the best interest of the child. Unless~~  
8 ~~the court orders otherwise, if there is no presumption of paternity under s. 891.41~~  
9 ~~(1) the mother shall have sole legal custody of the child.~~ The court or family court  
10 commissioner shall order either party or both to pay for the support of any child of  
11 the parties who is less than 18 years old, or any child of the parties who is less than  
12 19 years old if the child is pursuing an accredited course of instruction leading to the  
13 acquisition of a high school diploma or its equivalent. The order may direct the father  
14 to ~~pay or contribute~~ make an equal contribution to the reasonable expenses of the  
15 mother's pregnancy and confinement during pregnancy and ~~may~~ shall direct either  
16 party both parties to pay or contribute to the costs of attorney fees or other costs.

17           **SECTION 127.** 767.62 (4) (e) 6. of the statutes is amended to read:

18           767.62 (4) (e) 6. The need and capacity of the child for education, ~~including~~  
19 ~~higher education.~~

20           **SECTION 128.** 767.62 (4) (e) 12., 13. and 14. of the statutes are repealed.

21           **SECTION 129.** 769.302 of the statutes is amended to read:

22           **769.302 Action by minor parent.** A minor parent, or a guardian or other  
23 legal representative of a minor parent, may maintain a proceeding on behalf of or for  
24 the benefit of the minor's child. Notwithstanding s. ~~767.045 (1) or 803.01 (3), the~~  
25 ~~court may appoint a guardian ad litem for the minor's child, but the court need not~~

Insert 39-16 ✓

1 appoint a guardian ad litem for a minor parent who maintains such a proceeding  
2 unless the proceeding is one for the determination of parentage, in which case the  
3 court or a family court commissioner shall appoint a guardian ad litem for a minor  
4 parent within this state who maintains such a proceeding or for a minor within this  
5 state who is alleged to be a parent, as provided in s. 767.475 (1).

6 **SECTION 130.** 802.12 (3) (b) of the statutes is amended to read:

7 802.12 (3) (b) If a guardian ad litem has been appointed under s. 48.235, he or  
8 she shall be a party to any settlement alternative regarding custody, physical  
9 placement, visitation rights, support or other interests of the ward.

10 **SECTION 131.** 803.01 (3) (b) 1. of the statutes is amended to read:

11 803.01 (3) (b) 1. The guardian ad litem shall be appointed by a circuit court of  
12 the county where the action is to be commenced or is pending, except that ~~the a~~  
13 guardian ad litem appointed under s. 767.475 (1) shall be appointed by a family court  
14 commissioner of the county in those actions to establish paternity that are before the  
15 family court commissioner and a guardian ad litem appointed under s. 767.62 (3) (b)  
16 shall be appointed by a family court commissioner of the county in those actions  
17 specified in s. 767.62 (3) (a) that are before the family court commissioner.

18 **SECTION 132.** 803.01 (3) (b) 2. of the statutes is amended to read:

19 803.01 (3) (b) 2. When the plaintiff is a minor 14 years of age or over, upon the  
20 plaintiff's application or upon the state's application under s. 767.045 ~~(1)(e)~~ (2)(a);  
21 or if the plaintiff is under that age or is mentally incompetent, upon application of  
22 the plaintiff's guardian or of a relative or friend or upon application of the state under  
23 s. 767.045 ~~(1)(e)~~ (2)(a). If the application is made by a relative, friend or the state,  
24 notice thereof must first be given to the guardian if the plaintiff has one in this state;

1 if the plaintiff has none, then to the person with whom the minor or mentally  
2 incompetent resides or who has the minor or mentally incompetent in custody.

3 **SECTION 133.** 814.61 (1) (c) 1. of the statutes is amended to read:

4 814.61 (1) (c) 1. An action to determine paternity brought by the state or its  
5 delegate under s. 767.45 (1) (g) or (h) or commenced on behalf of the child by an  
6 attorney appointed under s. 767.045 ~~(1)(e)~~ (2)(a).

7 **SECTION 134.** 814.61 (7) (c) of the statutes is amended to read:

8 814.61 (7) (c) Paragraphs (a) and (b) do not apply to a petition or motion filed  
9 by the state or its delegate in connection with an action to determine paternity under  
10 s. 767.45 (1) (g), to a petition or motion filed by an attorney appointed under s.  
11 767.045 ~~(1)(e)~~ (2)(a) in connection with an action to determine paternity when the  
12 circumstances specified in s. 767.045 ~~(1)(e)~~ (2)(a) 1. or 2. apply or to a petition or  
13 motion filed in an action under ch. 769.

14 **SECTION 135.** 891.39 (1) (a) of the statutes is renumbered 891.39 (1) and  
15 amended to read:

16 891.39 (1) Whenever it is established in an action or proceeding that a child was  
17 born to a woman while she was the lawful wife of a specified man, any party asserting  
18 in such action or proceeding that the husband was not the father of the child shall  
19 have the burden of proving that assertion by a clear and *satisfactory preponderance*  
20 of the evidence. In all such actions or proceedings the husband and the wife are  
21 competent to testify as witnesses to the facts. The Except as provided in s. 767.045,  
22 the court or judge in such cases shall appoint a guardian ad litem to appear for and  
23 represent the child whose paternity is questioned. Results of a genetic test, as  
24 defined in s. 767.001 (1m), showing that a man other than the husband is not  
25 excluded as the father of the child and that the statistical probability of the man's

1 parentage is 99.0% or higher constitute a clear and satisfactory preponderance of the  
2 evidence of the assertion under this paragraph, even if the husband is unavailable  
3 to submit to genetic tests, as defined in s. 767.001 (1m).

4 **SECTION 136.** 891.39 (1) (b) of the statutes is repealed.

5 **SECTION 137.** 977.05 (4) (i) 7. of the statutes is amended to read:

6 977.05 (4) (i) 7. Cases involving paternity determinations, as specified under  
7 s. 767.52, in which the state is the petitioner under s. 767.45 (1) (g) or in which the  
8 action is commenced on behalf of the child by an attorney appointed under s. 767.045  
9 ~~(1) (e)~~ (2) (a).

10 **SECTION 138.** 977.05 (6) (b) 1. of the statutes is amended to read:

11 977.05 (6) (b) 1. The action is not brought by the state, its delegate under s.  
12 59.53 (6) (a) or an attorney appointed under s. 767.045 ~~(1) (e)~~ (2) (a).

13 **SECTION 139. Initial applicability.**

14 (1) This act first applies to actions affecting the family, including an action to  
15 enforce or modify a judgment or order in an action affecting the family previously  
16 granted, that are commenced on the effective date of this subsection.

17 **SECTION 140. Effective dates.** This act takes effect on the day after  
18 publication, except as follows:

19 (1) The repeal and recreation of section 767.265 (3h) and (6) (a) and (b) of the  
20 statutes takes effect on the date stated in the notice published by the department of  
21 workforce development in the Wisconsin Administrative Register under section  
22 767.29 (1) (f) of the statutes, or on October 1, 1999, whichever is earlier.

**1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0211/lins  
PJK:jlglp

**INSERT 7-A**

Current law provides that the liability of a man who has signed and filed a statement acknowledging paternity to pay past support is limited to support for the period after the birth of the child. The bill changes this to support for the period after the date on which the statement acknowledging paternity was filed with the state registrar.

**(END OF INSERT 7-A)**



Insert 28-24

1 is ordered to pay in a separate fund or trust for the support, education and welfare  
2 of such children.

3 **SECTION 88.** 767.255 (1) of the statutes is amended to read:

4 767.255 (1) Upon every judgment of annulment, divorce or legal separation, or  
5 in rendering a judgment in an action under s. 767.02 (1) (h), the court shall divide  
6 the property of the parties and divest and transfer the title of any such property  
7 accordingly. A certified copy of the portion of the judgment that affects title to real  
8 estate shall be recorded in the office of the register of deeds of the county in which  
9 the lands so affected are situated. The court may protect and promote the best  
10 interests of the children by setting set aside a portion of the property of the parties  
11 in a separate fund or trust for the support, maintenance, education and general  
12 welfare of any minor children of the parties.

13 **SECTION 89.** 767.265 (3h) of the statutes, as affected by 1997 Wisconsin Act 191,  
14 is amended to read:

15 767.265 (3h) A person who receives notice of assignment under this section or  
16 s. 767.23 (1) (L) (1c) (i), <sup>✓</sup>767.25 (4m) (c), 767.51 (3m) (c) or 767.62 (4) (b) 3. or similar  
17 laws of another state shall withhold the amount specified in the notice from any  
18 money that person pays to the payer later than one week after receipt of notice of  
19 assignment. Within 5 days after the day the person pays money to the payer, the  
20 person shall send the amount withheld to the clerk of court or support collection  
21 designee, whichever is appropriate, of the jurisdiction providing notice or, in the case  
22 of an amount ordered withheld for health care expenses, to the appropriate health  
23 care insurer, provider or plan. With each payment sent to the clerk of court or support  
24 collection designee, the person from whom the payer receives money shall report to  
25 the clerk or support collection designee the payer's gross income or other gross

*Insert 28-24 contd*

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

*(end of ins. 28-24)*

7 **SECTION 90.** 767.265 (4) of the statutes is amended to read:

8 767.265 (4) A withholding assignment or order under this section or s. 767.23  
9 ~~(1)(L)~~ (1c)(i), 767.25(4m)(c), 767.51(3m)(c) or 767.62(4)(b) 3. has priority over any  
10 other assignment, garnishment or similar legal process under state law.

*\*Insert 30-16*

11 **SECTION 91.** 767.265 (6) (a) of the statutes, as affected by 1997 Wisconsin Act  
12 191, is amended to read:

13 767.265 (6) (a) Except as provided in sub. (3m), if after receipt of notice of  
14 assignment the person from whom the payer receives money fails to withhold the  
15 money or send the money to the clerk of court or support collection designee or the  
16 appropriate health care insurer, provider or plan as provided in this section or s.  
17 767.23 ~~(1)(L)~~ (1c)(i), 767.25 (4m) (c), 767.51 (3m) (c) or 767.62 (4) (b) 3., the person  
18 may be proceeded against under the principal action under ch. 785 for contempt of  
19 court or may be proceeded against under ch. 778 and be required to forfeit not less  
20 than \$50 nor more than an amount, if the amount exceeds \$50, that is equal to 1%  
21 of the amount not withheld or sent.

22 **SECTION 92.** 767.265 (6) (b) of the statutes, as affected by 1997 Wisconsin Act  
23 191, is amended to read:

24 767.265 (6) (b) If an employer who receives an assignment under this section  
25 or s. 767.23 ~~(1)(L)~~ (1c)(i), 767.25 (4m) (c), 767.51 (3m) (c) or 767.62 (4) (b) 3. fails to



*Ens. 30-16 cont'd*

1 notify the clerk of court or support collection designee, whichever is appropriate,  
2 within 10 days after an employe is terminated or otherwise temporarily or  
3 permanently leaves employment, the employer may be proceeded against under the  
4 principal action under ch. 785 for contempt of court.

5 **SECTION 93.** 767.265 (6) (c) of the statutes is amended to read:

6 767.265 (6) (c) No employer may use an assignment under this section or s.  
7 767.23 (1) (L) (1c) (i), 767.25 (4m) (c), 767.51 (3m) (c) or 767.62 (4) (b) 3. as a basis for  
8 the denial of employment to a person, the discharge of an employe or any disciplinary  
9 action against an employe. An employer who denies employment or discharges or  
10 disciplines an employe in violation of this paragraph may be fined not more than  
11 \$500 and may be required to make full restitution to the aggrieved person, including  
12 reinstatement and back pay. Except as provided in this paragraph, restitution shall  
13 be in accordance with s. 973.20. An aggrieved person may apply to the district  
14 attorney or to the department for enforcement of this paragraph.

15 **SECTION 94.** 767.325 (1) of the statutes is repealed and recreated to read:

16 767.325 (1) MODIFICATIONS. (a) The court shall modify an order of physical  
17 placement in a way that alters the time a parent may spend with his or her child or  
18 an order of legal custody if any of the following applies:

19 1. A parent requests a modification and the current order is not in conformity  
20 with s. 767.24.

21 2. The parental rights of a parent have been terminated under subch. VIII of  
22 ch. 48.

23 3. The parties agree to a modification.

24 (b) A modification under this subsection shall be consistent with s. 767.24.

25 **SECTION 95.** 767.325 (2) of the statutes is repealed.

*(end of ins 30-16)*

Insert 39-16

Section #. 767.62 (4) (d) 3. of the statutes is amended to read:

767.62 (4) (d) 3. Support orders under par. (a) ordinarily shall be for periodic payments which may vary in amount if appropriate. The payment amount may be expressed as a percentage of the parent's income or as a fixed sum, or as a combination of both in the alternative by requiring payment of the greater or lesser of either a percentage of the parent's income or a fixed sum. The father's liability for past support of the child shall be limited to support for the period after the ~~birth of the child~~

History: 1993 a. 481; 1995 a. 100; 1997 a. 191.

date on which the  
statement acknowledging paternity  
was filed with the state  
registrar under s. 69.15(3)(b) 3<sup>v</sup>

(end of ins. 39-16)



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-0211/1  
PJK:jlgr:ijs

DUE TUES  
A.M.

1999 BILL

Changes on pp. 3 & 23

D-note

1 AN ACT *to repeal* 767.001 (2) (b), 767.11 (8) (b) 3., 767.11 (9) (a), 767.11 (10) (e)  
2 1. to 3., 767.11 (14) (a) 3., 767.23 (1) (bm), 767.24 (3), 767.24 (4) (cm), 767.24 (5),  
3 767.24 (6) (a) and (am), 767.245 (2), 767.25 (1m) (hm), 767.325 (2), 767.325 (3),  
4 767.325 (4), 767.33 (1m) (b), 767.45 (2), 767.458 (1m), 767.463, 767.475 (1) (b),  
5 767.51 (5) (i), (im) and (j), 767.62 (4) (e) 12., 13. and 14. and 891.39 (1) (b); *to*  
6 *renumber* 767.23 (1) (d), 767.23 (1) (e), 767.23 (1) (f), 767.23 (1) (g), 767.23 (1)  
7 (h), 767.23 (1) (i) and 767.23 (1) (k); *to renumber and amend* 767.23 (1) (c),  
8 767.23 (1) (L), 767.24 (2) (a), 767.33 (1m) (a), 767.475 (1) (a) and 891.39 (1) (a);  
9 *to consolidate, renumber and amend* 767.001 (2) (intro.) and (a), 767.11 (9)  
10 (intro.) and (b) and 767.11 (10) (e) (intro.) and 4.; *to amend* 20.921 (2) (a), 49.141  
11 (1) (b), 51.30 (5) (bm), 55.07 (2), 102.27 (2) (a), 115.76 (12), 146.835, 757.48 (1)  
12 (a), 758.19 (5) (a) 2., 767.001 (1s), 767.001 (2m), 767.001 (3), 767.02 (1) (k),  
13 767.05 (1m), 767.081 (2) (a) (intro.), 767.083 (2), 767.085 (1) (a), 767.085 (1) (j)  
14 (intro.), 767.085 (1) (j) 1., 767.085 (1) (j) 2., 767.085 (2) (a), 767.087 (1) (c),

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1 767.087 (2), 767.087 (3) (b), 767.10 (1), 767.11 (8) (b) (intro.), 767.11 (8) (b) 1.,  
2 767.11 (8) (b) 2., 767.11 (8) (b) 4., 767.11 (10) (intro.), 767.11 (10) (a), 767.11 (10)  
3 (b), 767.11 (12) (a) and (b), 767.11 (14) (a) 1., 767.11 (14) (a) 2., 767.11 (14) (b),  
4 767.115 (1) (a), 767.115 (1) (b), 767.115 (1m), 767.14, 767.23 (1) (intro.), 767.23  
5 (1) (a), 767.23 (1n), 767.23 (2), 767.24 (1), 767.24 (4) (a), 767.24 (4) (d), 767.24  
6 (6) (b), 767.24 (6) (c), 767.245 (1), 767.245 (3) (intro.), 767.245 (3) (f), 767.245  
7 (3m) (c), 767.25 (2), 767.255 (1), 767.265 (3h), 767.265 (4), 767.265 (6) (a),  
8 767.265 (6) (b), 767.265 (6) (c), 767.45 (1) (d), 767.45 (1) (i), 767.458 (1) (b),  
9 767.458 (1) (c), 767.458 (1) (d), 767.46 (2) (c), 767.46 (4), 767.46 (5), 767.465 (2m)  
10 (a), 767.51 (3), 767.51 (4), 767.51 (5) (e), 767.51 (6), 767.52 (1), 767.62 (3) (b),  
11 767.62 (4) (a), 767.62 (4) (d) 3., 767.62 (4) (e) 6., 769.302, 802.12 (3) (b), 803.01  
12 (3) (b) 1., 803.01 (3) (b) 2., 814.61 (1) (c) 1., 814.61 (7) (c), 977.05 (4) (i) 7. and  
13 977.05 (6) (b) 1.; **to repeal and recreate** 767.045, 767.23 (1) (am), 767.24 (2)  
14 (b), 767.24 (4) (b), 767.325 (1) and 767.327; and **to create** 767.001 (4m), 767.23  
15 (1c) (intro.), 767.24 (2) (a) 1. and 2., 767.24 (6) (bm) and 767.53 (3) of the  
16 statutes; **relating to:** standards for determining legal custody and physical  
17 placement of children in actions affecting the family, jurisdictional  
18 requirements in actions affecting the family, prohibitions against moving a  
19 child outside of a school district after divorce, standards for modifying custody  
20 and physical placement orders, temporary orders in actions affecting the  
21 family, visitation rights of 3rd parties, prohibiting the appointment of a

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1 guardian ad litem in all but certain actions affecting the family and making  
2 records of paternity proceedings open records.

***Analysis by the Legislative Reference Bureau***

This bill makes a number of changes to the provisions of the statutes that apply to actions affecting the family, the two most common of which are divorce and paternity actions. The changes relate especially to procedure and custody and physical placement determinations, including revisions to custody and physical placement orders, and apply to all actions affecting the family, including paternity actions after paternity has been determined and actions related to custody and physical placement after a statement acknowledging paternity has been filed, unless otherwise indicated.

**CUSTODY AND PHYSICAL PLACEMENT**

Under current law, a court must make a custody determination based on the best interest of the child. The court may grant sole custody to one parent or joint custody to both parents, but the court may grant joint custody only if the parents agree to it or if the court finds that both parents are capable of caring for the child, that no conditions exist that would interfere with the exercise of joint custody and that the parents will be able to cooperate in the future decision making required under an award of joint custody. The court may also find that neither parent is fit and proper to have custody, declare the child to be in need of protection or services and transfer legal custody to a county social services or human services department or licensed child welfare agency. Joint legal custody means that both parents have the right and responsibility to make major decisions concerning the child, and major decisions include decisions regarding consent to marry, consent to obtain a driver's license, authorization for nonemergency health care and the choice of school and religion. Current law provides that in a paternity matter or a statement acknowledging a paternity matter the mother is to have sole legal custody unless the court orders otherwise.

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This bill removes the best interest of the child as the basis for a court's determination regarding custody and provides that there are rebuttable presumptions that both parents are fit and have the ability to rear their children and that joint legal custody and equal periods of physical placement are fundamental rights of each parent and child. A court may order sole legal custody only if the parents agree that one parent should have sole legal custody or if the parental rights of one parent have been terminated. The court must order joint legal custody if ~~the~~ both parents request it. The provision that authorizes the court to transfer legal custody to a county department or licensed child welfare agency is eliminated, as well as the provision related to awarding sole custody to the mother in a paternity matter or a statement acknowledging a paternity matter.

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Under current law, a court must allocate periods of physical placement (the time that a child is actually placed with a parent) after considering a number of factors, such as the wishes of the child and of each parent, the child's interaction and

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interrelationship with each parent, the child's adjustment to the home and community, the mental and physical health of the parties, the availability of child care services and whether either of the parties has a problem with alcohol or drug abuse. A child is entitled to periods of physical placement with each parent unless the court finds that physical placement with a parent would endanger the child's physical, mental or emotional health. The bill removes these provisions and provides that, if the court orders joint legal custody or sole legal custody because the parties have agreed to it, the court must approve any schedule for the allocation of physical placement that the parties agree to and submit to the court in writing. If the parties do not agree, the court must order each party to submit a schedule and the court must order the schedule that sets forth the most equal allocation of physical placement. If neither schedule submitted by the parties is substantially equal and each proposes a greater amount of time for himself or herself, the court must order equal periods and require the parties to alternate spending with the child specified holidays and the child's birthday.

The bill changes the definition of major decisions (those decisions that any parent with legal custody may make) by excluding choice of school and religion and removes from the court the authority to specify any major decisions in addition to the ones specified in the definition. Although the parties may stipulate that one party has the sole power to make specified decisions, the bill removes from the court the authority to give one party that power and limits the court to specifying one parent as the primary caretaker of the child for the purpose of determining eligibility for benefits under the Wisconsin works program (W-2) only if both parents are eligible for public assistance funded by a relief block grant. The court may determine and specify a child's primary provider for health care if the parties do not agree.

**MODIFICATIONS TO CUSTODY AND PHYSICAL PLACEMENT ORDERS**

Under current law, a court may not, within the first two years after the initial order is entered, modify a physical placement order if the modification would substantially alter the amount of time that a parent spends with a child, or modify a custody order, unless the modification is necessary because the current custodial conditions are physically or emotionally harmful to the best interest of the child. After two years after the initial order is entered, a court may modify a custody order, or modify a physical placement order even if the modification would substantially alter the amount of time that a parent spends with a child, if there has been a substantial change in circumstances since the entry of the last order and if the modification is in the child's best interest. The court may modify a physical placement order if the modification does not substantially alter the amount of time that a parent spends with a child or if the parents have substantially equal periods of physical placement and that arrangement becomes impractical on the basis of the best interest of the child. This bill removes those provisions and provides that a court must modify a physical placement order in a way that alters the time a parent spends with a child, and must modify a custody order, if a parent requests a modification and the current order is not in compliance with the statutory provision that specifies the manner in which the court must award custody and physical placement, if a parent's parental rights have been terminated or if the parents agree to a modification.



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Under current law, a parent who has legal custody of and physical placement with a child must provide notice to the other parent if he or she intends to establish his or her legal residence with the child at any location outside the state or at any location within the state at a distance of 150 miles or more from the other parent or if he or she intends to remove the child from the state for more than 90 consecutive days. If the other parent sends a notice of objection, the court or family court commissioner must refer the parties to mediation and appoint a guardian ad litem for the child. The parent proposing the move or removal is prohibited from taking the proposed action until the dispute is resolved, unless the parent obtains a temporary order from the court or family court commissioner allowing the move or removal. If mediation is not successful, the parent objecting to the proposed action may file a petition, motion or order to show cause for modification of legal custody or physical placement, and the matter proceeds to a hearing before the court. The court may modify legal custody or physical placement if the move will result in a substantial change of circumstances since the last order affecting legal custody or physical placement and if modification is in the child's best interest. As an alternative to modification of legal custody or physical placement, the objecting parent may request an order prohibiting the move or the removal of the child. The court must consider whether the proposed action is reasonable; the nature and extent of the child's relationship with the other parent and the disruption to the relationship that the proposed action may cause; and the availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent in making its determination of whether to prohibit the move or the removal of the child. The court may prohibit the move or the removal if it finds that doing so is in the child's best interest. The burden of proof is on the parent objecting to the move or removal. There is a rebuttable presumption that it is in the child's best interest to remain with the parent with whom the child currently resides for the greater period of time, which may be overcome by a showing that the move or the removal is unreasonable and not in the child's best interest.

This bill provides that, if both parents are awarded physical placement with the child in any action affecting the family, neither parent may establish a legal residence for the child that is outside the school district in which the child resided on the 180th day before the commencement of the action affecting the family, or since birth if the child is less than six months old, or other school district agreed upon by the parties. The court may, however, allow a parent to establish a legal residence for the child outside of that school district if the parent shows that for at least one year the other parent has exercised his or her physical placement rights for less than 10% of the amount of time awarded by the court. If one of the parents wishes to establish his or her legal residence outside of the child's school district, that parent must provide at least 60 days' written notice to the other parent. If the proposed move would make it difficult or impractical for the physical placement arrangement to continue and at the same time for the child to remain in the same school district, either parent may request a modification to the physical placement order. The court must approve any modified physical placement schedule that the parents agree to. If the parents do not agree, the court may modify the physical placement schedule

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in such a way that the parent not proposing the move is awarded physical placement with the child during weekdays and weeknights while school is in session, at least one weekend per month, at least four weeks during the summer and alternating holidays. The parent proposing the move must be responsible for transportation costs incurred in exercising his or her physical placement rights and must be awarded the maximum amount of physical placement that is reasonable under the circumstances. If both parents wish to establish their legal residences or a legal residence for the child outside of the child's current school district and do not agree on a new school district, the court may designate one of the parents' new legal residences as the child's legal residence for the purpose of establishing a new school district for the child. The court must choose the legal residence that the court determines will maximize the amount of time that each parent may spend with the child. If one of the parents has already established a legal residence outside of the child's current school district, the court may allow the other parent to establish a legal residence for the child in a different school district if the parent who moved first does not wish to move back to the child's current school district and if the move does not increase the distance from the parent who moved first.

**PATERNITY ACTIONS**

In addition to the changes that the bill makes with respect to actions affecting the family in general, the bill makes some changes that relate to paternity actions alone. Under current law, in a paternity action that is commenced by a man who claims to be the father of a child who was born to a woman while she was married to another man, a party may allege that a judicial determination that a man other than the mother's husband is the child's father is not in the child's best interest. If the judge or family court commissioner agrees that such a determination is not in the child's best interest, no genetic tests may be taken and the action is dismissed. Additionally, at any time in a paternity action, regardless of who commenced it, a judge or family court commissioner may refuse to order genetic tests and dismiss the paternity action on the motion of a party or guardian ad litem if the judge or family court commissioner determines that a paternity determination is not in the child's best interest. The bill eliminates these provisions and provides that a man against whom a paternity action was dismissed, on the basis of one of the eliminated provisions, before the date on which the bill is enacted may commence another paternity action.

Current law provides that the liability of an adjudicated father of a child for past support is limited to support for the period after the birth of the child. The bill changes this to support for the period after the man is adjudicated to be the father.

Current law provides that, with certain exceptions, records of paternity proceedings are closed. The bill provides that the records are open to public inspection if the alleged father was adjudicated to be the father.

**MISCELLANEOUS CHANGES**

The bill makes an important change related to the appointment of a guardian ad litem. Under current law, a court in an action affecting the family must appoint a guardian ad litem for a minor child to represent the interests of the minor child if the court has reason for special concern as to the welfare of the child or if legal custody

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or physical placement is contested. The court must also appoint a guardian ad litem to bring a paternity action on behalf of a minor nonmarital child if the state is barred from commencing a paternity action by a statute of limitations and the child's custodian is receiving benefits under W-2 or an application for legal services has been filed on behalf of the child with the state child support program. The bill retains the requirement that the court appoint a guardian ad litem to bring a paternity action on behalf of a minor nonmarital child under the same circumstances as under current law, but prohibits the court from appointing a guardian ad litem under any other circumstances in an action affecting the family. Under the bill, if the court has reason for special concern as to the welfare of a minor child, the court must order one or both parents to file a petition alleging that the child is in need of protection or services. If the court takes jurisdiction of the child on the basis of that petition, the court may appoint a guardian ad litem for the proceedings related to that petition.

Another important change relates to temporary orders. Under current law, the court or family court commissioner may, upon request, make temporary orders pending the final judgment in an action affecting the family concerning such matters as custody and physical placement of minor children, child support and payment of debts. Under the bill, the court or family court commissioner is required in every action affecting the family to make a temporary order that grants joint legal custody of any minor children to the parties and that grants the parties equal periods of physical placement with any minor children of the parties.

Current law provides that the liability of a man who has signed and filed a statement acknowledging paternity to pay past support is limited to support for the period after the birth of the child. The bill changes this to support for the period after the date on which the statement acknowledging paternity was filed with the state registrar.

The bill makes a number of other miscellaneous changes. Under current law, a divorce action may not be commenced unless at least one of the parties has been a resident of the county in which the action is brought for not less than 30 days. This residency requirement is lengthened to six months. Stipulations under current law are subject to the approval of the court. The bill generally removes this approval requirement and requires the court to incorporate into the appropriate judgment or order any stipulation of the parties. Under current law, the parties to an action affecting the family are prohibited from certain actions during the pendency of the action, including establishing a residence with a minor child of the parties outside the state or more than 150 miles from the residence of the other party within the state, removing a minor child of the parties from the state for more than 90 consecutive days or concealing a minor child of the parties from the other party. The bill instead prohibits any party from establishing a legal residence for a minor child of the parties outside the school district in which the child resided on the 180th day before the commencement of the action, or since birth if the child is less than six months old, or other school district agreed upon by the parties, and from removing a minor child of the parties from the state for 14 consecutive days or more without the written approval of the other party. The bill also makes some changes in the mediation procedure under current law and requires the court to approve any

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agreement that the parties reach as a result of mediation, as long as it is knowingly and voluntarily made and not unconscionable.

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

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

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

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

10           **SECTION 2.** 49.141 (1) (b) of the statutes is amended to read:

11           49.141 (1) (b) “Custodial parent” means, with respect to a dependent child, a  
12 parent who resides with that child and, if there has been a determination of legal  
13 custody with respect to the dependent child, has legal custody of that child. For the  
14 purposes of this paragraph, “legal custody” has the meaning given in s. 767.001 (2)  
15 (a).

16           **SECTION 3.** 51.30 (5) (bm) of the statutes is amended to read:

17           51.30 (5) (bm) *Parents denied physical placement.* A parent who has been  
18 denied periods of physical placement with a child under s. 767.24 ~~(4)(b)~~ or 767.325  
19 ~~(4)~~ may not have the rights of a parent or guardian under pars. (a) and (b) with  
20 respect to access to that child’s court or treatment records.

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1           **SECTION 4.** 55.07 (2) of the statutes is amended to read:

2           55.07 (2) A parent who has been denied periods of physical placement under  
3 s. 767.24 (4)(b) or 767.325 (4) may not have the rights of a parent or guardian with  
4 respect to access to a child's records under this chapter.

5           **SECTION 5.** 102.27 (2) (a) of the statutes is amended to read:

6           102.27 (2) (a) A benefit under this chapter is assignable under s. 46.10 (14) (e),  
7 301.12 (14) (e), 767.23 (1)(L) (1c) (i), 767.25 (4m) (c), 767.265 (1), 767.51 (3m) (c) or  
8 767.62 (4) (b) 3.

9           **SECTION 6.** 115.76 (12) of the statutes is amended to read:

10           115.76 (12) "Parent" means a biological parent; a husband who has consented  
11 to the artificial insemination of his wife under s. 891.40; a male who is presumed to  
12 be the child's father under s. 891.41; a male who has been adjudicated the child's  
13 father under subch. VIII of ch. 48, under ss. 767.45 to 767.51, by final order or  
14 judgment of an Indian tribal court of competent jurisdiction or by final order or  
15 judgment of a court of competent jurisdiction in another state; an adoptive parent;  
16 a legal guardian; a person acting as a parent of a child; a person appointed as a  
17 sustaining parent under s. 48.428; or a person assigned as a surrogate parent under  
18 s. 115.792 (1) (a) 2. "Parent" does not include any person whose parental rights have  
19 been terminated; the state or a county or a child welfare agency if a child was made  
20 a ward of the state or a county or child welfare agency under ch. 880 or if a child has  
21 been placed in the legal custody or guardianship of the state or a county or a child  
22 welfare agency under ch. 48 ~~or ch. 767~~; or an American Indian tribal agency if the  
23 child was made a ward of the agency or placed in the legal custody or guardianship  
24 of the agency.

25           **SECTION 7.** 146.835 of the statutes is amended to read:

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1           **146.835 Parents denied physical placement rights.** A parent who has  
2 been denied periods of physical placement under s. 767.24 (4)(b) or 767.325 (4) may  
3 not have the rights of a parent or guardian under this chapter with respect to access  
4 to that child's patient health care records under s. 146.82 or 146.83.

5           **SECTION 8.** 757.48 (1) (a) of the statutes is amended to read:

6           757.48 (1) (a) Except as provided in s. 879.23 (4), in all matters in which a  
7 guardian ad litem is appointed by the court, the guardian ad litem shall be an  
8 attorney admitted to practice in this state. ~~In order to be appointed as a guardian~~  
9 ~~ad litem under s. 767.045, an attorney shall have completed 3 hours of approved~~  
10 ~~continuing legal education relating to the functions and duties of a guardian ad litem~~  
11 ~~under ch. 767.~~

12           **SECTION 9.** 758.19 (5) (a) 2. of the statutes is amended to read:

13           758.19 (5) (a) 2. Fees for expert witnesses called by the guardian ad litem under  
14 s. 767.045 (6), 1997 stats., if either or both parties are unable to pay those fees.

15           **SECTION 10.** 767.001 (1s) of the statutes is amended to read:

16           767.001 (1s) "Joint legal custody" means the condition under which both  
17 parties share legal custody and neither party's legal custody rights are superior,  
18 except with respect to specified decisions as ~~set forth stipulated by the court or the~~  
19 parties and set forth in the final judgment or order.

20           **SECTION 11.** 767.001 (2) (intro.) and (a) of the statutes are consolidated,  
21 renumbered 767.001 (2) and amended to read:

22           767.001 (2) "Legal custody" means: ~~(a) With, with~~ respect to any person  
23 granted legal custody of a child, ~~other than a county agency or a licensed child welfare~~  
24 ~~agency under par. (b)~~, the right and responsibility to make major decisions

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1 concerning the child, except with respect to specified decisions as ~~set forth~~ stipulated  
2 by the court or the parties and set forth in the final judgment or order.

3 **SECTION 12.** 767.001 (2) (b) of the statutes is repealed.

4 **SECTION 13.** 767.001 (2m) of the statutes is amended to read:

5 767.001 (2m) “Major decisions” ~~includes, but is not limited to,~~ means decisions  
6 regarding consent to marry, consent to enter military service, consent to obtain a  
7 motor vehicle operator’s license, and authorization for nonemergency health care  
8 ~~and choice of school and religion.~~

9 **SECTION 14.** 767.001 (3) of the statutes is amended to read:

10 767.001 (3) “Mediation” means a cooperative process involving the parties and  
11 a mediator, the purpose of which is to help the parties, by applying communication  
12 and dispute resolution skills, define and resolve their own disagreements, ~~with the~~  
13 ~~best interest of the child as the paramount consideration~~ and to encourage the  
14 parties to cooperate in making decisions regarding their minor children, based on the  
15 principle that each parent has an equal right of access to and equal responsibility to  
16 provide care for their minor children.

17 **SECTION 15.** 767.001 (4m) of the statutes is created to read:

18 767.001 (4m) “Nonemergency health care” means routine health care and  
19 includes such care as acute illness care, physical examinations and dental care.

20 **SECTION 16.** 767.02 (1) (k) of the statutes is amended to read:

21 767.02 (1) (k) Concerning periods of physical placement or visitation rights to  
22 children, ~~including an action to prohibit a move with or the removal of a child under~~  
23 ~~s. 767.327 (3) (e).~~

24 **SECTION 17.** 767.045 of the statutes is repealed and recreated to read:

**BILL****767.045 Petition to juvenile court; guardian ad litem. (1)**

1  
2 Notwithstanding s. 803.01 (3) and except as provided in sub. (2), the court may not  
3 appoint a guardian ad litem for a minor child in an action affecting the family. If at  
4 any time during the pendency of an action affecting the family in which a minor child  
5 is involved the court has reason for special concern as to the welfare of the minor  
6 child, the court shall order a parent or the parents to file a petition under s. 48.25 (1)  
7 to initiate proceedings under s. 48.13. If the court takes jurisdiction over the child  
8 under s. 48.13, the court may appoint a guardian ad litem as provided in s. 48.235.

9 (2) (a) The attorney responsible for support enforcement under s. 59.53 (6) (a)  
10 may request that the court or family court commissioner appoint a guardian ad litem  
11 to bring an action or motion on behalf of a minor who is a nonmarital child whose  
12 paternity has not been acknowledged under s. 767.62 (1) or a substantially similar  
13 law of another state or adjudicated for the purpose of determining the paternity of  
14 the child, and the court or family court commissioner shall appoint a guardian ad  
15 litem, if any of the following applies:

16 1. Aid is provided under s. 46.261, 48.57 (3m) or (3n), 49.19 or 49.45 on behalf  
17 of the child, or benefits are provided to the child's custodial parent under ss. 49.141  
18 to 49.161, but the state and its delegate under s. 49.22 (7) are barred by a statute of  
19 limitations from commencing an action under s. 767.45 on behalf of the child.

20 2. An application for legal services has been filed with the child support  
21 program under s. 49.22 on behalf of the child, but the state and its delegate under  
22 s. 49.22 (7) are barred by a statute of limitations from commencing an action under  
23 s. 767.45 on behalf of the child.

24 (b) A guardian ad litem appointed under par. (a) shall bring an action or motion  
25 for the determination of the child's paternity. The appointment of a guardian ad



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1 litem under par. (a) terminates upon the entry of the court's order determining the  
2 existence or nonexistence of paternity.

3 **SECTION 18.** 767.05 (1m) of the statutes is amended to read:

4 767.05 (1m) RESIDENCE. No action under s. 767.02 (1) (a) or (b) may be brought  
5 unless at least one of the parties has been a bona fide resident of the county in which  
6 the action is brought for not less than ~~30 days~~ 6 months next preceding the  
7 commencement of the action, or unless the marriage has been contracted within this  
8 state within one year prior to the commencement of the action. No action under s.  
9 767.02 (1) (c) or (d) may be brought unless at least one of the parties has been a bona  
10 fide resident of the county in which the action is brought for not less than ~~30 days~~  
11 6 months next preceding the commencement of the action. No action under s. 767.02  
12 (1) (c) may be brought unless at least one of the parties has been a bona fide resident  
13 of this state for not less than 6 months next preceding the commencement of the  
14 action.

15 **SECTION 19.** 767.081 (2) (a) (intro.) of the statutes is amended to read:

16 767.081 (2) (a) (intro.) The family court commissioner shall, ~~with or~~ without  
17 charge, provide the party with written information on the following, as appropriate  
18 to the action commenced:

19 **SECTION 20.** 767.083 (2) of the statutes is amended to read:

20 767.083 (2) An order by the court, after consideration of the recommendation  
21 of the family court commissioner, directing an immediate hearing on the petition for  
22 the protection of the health or safety of either of the parties or of any child of the  
23 ~~marriage parties~~ parties or for other emergency reasons consistent with the policies of this  
24 chapter. The court shall upon granting such order specify the grounds therefor.

25 **SECTION 21.** 767.085 (1) (a) of the statutes is amended to read:

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1           767.085 (1) (a) The name and birthdate of the parties, the social security  
2 numbers of the husband and wife parties and their occupations, the date and place  
3 of marriage and the facts relating to the residence of both parties.

4           **SECTION 22.** 767.085 (1) (j) (intro.) of the statutes is amended to read:

5           767.085 (1) (j) (intro.) Unless the action is one under s. 767.02 (1) (g) or (h), that  
6 during the pendency of the action, the parties are prohibited from, and may be held  
7 in contempt of court for, doing any of the following without the consent of the other  
8 party ~~or an order of the court or family court commissioner:~~

9           **SECTION 23.** 767.085 (1) (j) 1. of the statutes is amended to read:

10          767.085 (1) (j) 1. Establishing a residence with for a minor child of the parties  
11 outside the state ~~or more than 150 miles from the residence of the other party within~~  
12 the state school district in which the child resided on the 180th day before the  
13 commencement of the action, or since birth if the child is less than 6 months old, or  
14 other school district agreed upon by the parties.

15          **SECTION 24.** 767.085 (1) (j) 2. of the statutes is amended to read:

16          767.085 (1) (j) 2. Removing a minor child of the parties from the state for ~~more~~  
17 ~~than 90~~ 14 consecutive days or more without the written approval of the other party.

18          **SECTION 25.** 767.085 (2) (a) of the statutes is amended to read:

19          767.085 (2) (a) Either or both of the parties ~~to the marriage~~ may initiate the  
20 action. The party initiating the action or his or her attorney shall sign the petition.  
21 Both parties or their respective attorneys shall sign a joint petition.

22          **SECTION 26.** 767.087 (1) (c) of the statutes is amended to read:

23          767.087 (1) (c) Unless the action is one under s. 767.02 (1) (g) or (h), without  
24 the consent of the other party ~~or an order of the court or family court commissioner,~~  
25 establishing a residence with for a minor child of the parties outside the state ~~or more~~

**BILL**

1 ~~than 150 miles from the residence of the other party within the state~~ school district  
2 in which the child resided on the 180th day before the commencement of the action,  
3 or since birth if the child is less than 6 months old, or other school district agreed upon  
4 by the parties, removing a minor child of the parties from the state for more than 90  
5 14 consecutive days or more without the written approval of the other party or  
6 concealing a minor child of the parties from the other party.

7 **SECTION 27.** 767.087 (2) of the statutes is amended to read:

8 767.087 (2) The prohibitions under sub. (1) shall apply until the action is  
9 dismissed, or until a final judgment in the action is entered ~~or until the court or~~  
10 ~~family court commissioner orders otherwise.~~

11 **SECTION 28.** 767.087 (3) (b) of the statutes is amended to read:

12 767.087 (3) (b) An act in violation of sub. (1) (c) is not a contempt of court if the  
13 court finds ~~that the action was taken to protect a party or~~ by clear and convincing  
14 evidence that the party took the action to protect a minor child of the parties from  
15 physical abuse ~~by the other party and that there was no reasonable opportunity~~  
16 ~~under the circumstances for the party~~ and that the party obtained or made a  
17 reasonable attempt to obtain an order ~~under sub. (2)~~ authorizing the action.

18 **SECTION 29.** 767.10 (1) of the statutes is amended to read:

19 767.10 (1) The parties in an action for an annulment, divorce or legal  
20 separation may, ~~subject to the approval of the court,~~ stipulate for a division of  
21 property, for maintenance payments, for the support of children, for periodic family  
22 support payments under s. 767.261 or for legal custody and physical placement, in  
23 case a divorce or legal separation is granted or a marriage annulled.

24 **SECTION 30.** 767.11 (8) (b) (intro.) of the statutes is amended to read:

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## SECTION 30

1           767.11 (8) (b) (intro.) A court ~~may, in its discretion,~~ shall hold a trial or hearing  
2 without requiring attendance at the session under par. (a) if the court finds that  
3 attending the session will cause undue hardship or would endanger the health or  
4 safety of one of the parties. In making its determination of whether attendance at  
5 the session would endanger the health or safety of one of the parties, the court shall  
6 consider evidence all of the following:

7           **SECTION 31.** 767.11 (8) (b) 1. of the statutes is amended to read:

8           767.11 (8) (b) 1. ~~That~~ Whether a party engaged in has been convicted of a crime  
9 involving abuse, as defined in s. ~~813.122 (1) (a)~~ 48.02 (1), of the child, as defined in  
10 s. 48.02 (2).

11           **SECTION 32.** 767.11 (8) (b) 2. of the statutes is amended to read:

12           767.11 (8) (b) 2. ~~Interspousal~~ Whether a party has been convicted of battery as  
13 described under s. 940.19 or 940.20 (1m) ~~or domestic abuse as defined in s. 813.12~~  
14 ~~(1)(a)~~ against the other party.

15           **SECTION 33.** 767.11 (8) (b) 3. of the statutes is repealed.

16           **SECTION 34.** 767.11 (8) (b) 4. of the statutes is amended to read:

17           767.11 (8) (b) 4. Any other clear and convincing evidence indicating that a  
18 party's health or safety will be endangered by attending the session.

19           **SECTION 35.** 767.11 (9) (intro.) and (b) of the statutes are consolidated,  
20 renumbered 767.11 (9) and amended to read:

21           767.11 (9) PROHIBITED ISSUES IN MEDIATION. If mediation is provided by a  
22 mediator assigned under sub. (6), no issue relating to property division, maintenance  
23 or child support may be considered during the mediation unless ~~all of the following~~  
24 ~~apply:~~ ~~(b)~~ ~~The~~ the parties agree in writing to consider the property division,  
25 maintenance or child support issue.

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1           **SECTION 36.** 767.11 (9) (a) of the statutes is repealed.

2           **SECTION 37.** 767.11 (10) (intro.) of the statutes is amended to read:

3           767.11 (10) POWERS AND DUTIES OF MEDIATOR. (intro.) A mediator assigned  
4 under sub. (6) shall ~~be guided by the best interest of the child and may~~ do any of the  
5 following, at his or her discretion:

6           **SECTION 38.** 767.11 (10) (a) of the statutes is amended to read:

7           767.11 (10) (a) Include the counsel of ~~any party or any appointed~~ both parties  
8 and any guardian ad litem appointed under s. 48.235 in the mediation.

9           **SECTION 39.** 767.11 (10) (b) of the statutes is amended to read:

10          767.11 (10) (b) Interview any child of the parties, with ~~or without a party~~  
11 neither of the parties present or with both of the parties present.

12          **SECTION 40.** 767.11 (10) (e) (intro.) and 4. of the statutes are consolidated,  
13 renumbered 767.11 (10) (e) and amended to read:

14          767.11 (10) (e) Terminate mediation if a party does not cooperate ~~or if mediation~~  
15 ~~is not appropriate or if any of the following facts exist:~~ 4. ~~Other evidence which~~  
16 ~~indicates one of the parties' that the health or safety of one of the parties will be~~  
17 endangered if mediation is not terminated.

18          **SECTION 41.** 767.11 (10) (e) 1. to 3. of the statutes are repealed.

19          **SECTION 42.** 767.11 (12) (a) and (b) of the statutes are amended to read:

20          767.11 (12) (a) Any agreement which resolves issues of legal custody or periods  
21 of physical placement between the parties reached as a result of mediation under this  
22 section shall be prepared in writing, reviewed by the attorney, if any, for each party  
23 and by any ~~appointed~~ guardian ad litem appointed under s. 48.235, and submitted  
24 to the court to be included in the court order as a stipulation. Any reviewing attorney  
25 or guardian ad litem shall certify on the mediation agreement that he or she reviewed

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1 it and the guardian ad litem, if any, shall comment on the agreement based on the  
2 best interest of the child. The mediator shall certify, that the written mediation  
3 agreement is in the best interest of the child based on the information presented to  
4 the mediator and that it accurately reflects the agreement made between the parties.  
5 The court may approve or reject the agreement, based on the best interest of the  
6 child. The court shall state in writing its reasons for rejecting an agreement shall  
7 approve the agreement if the court finds that the agreement is knowingly and  
8 voluntarily made. If the court as a matter of law finds that any aspect of the  
9 agreement is unconscionable, the court shall reject the unconscionable aspect or so  
10 limit the application of the unconscionable aspect as to avoid any unconscionable  
11 result.

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

22 **SECTION 43.** 767.11 (14) (a) 1. of the statutes is amended to read:

23 767.11 (14) (a) 1. The conditions of ~~the child's~~ each parent's home.

24 **SECTION 44.** 767.11 (14) (a) 2. of the statutes is amended to read:

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1           767.11 (14) (a) 2. Each party's performance of parental duties and  
2 responsibilities relating to the basic care of the child.

3           **SECTION 45.** 767.11 (14) (a) 3. of the statutes is repealed.

4           **SECTION 46.** 767.11 (14) (b) of the statutes is amended to read:

5           767.11 (14) (b) The person or entity investigating the parties under par. (a)  
6 shall complete the investigation and submit the results to the court. The court shall  
7 make the results available to both parties. The report shall be a part of the record  
8 in the action unless the court orders otherwise. The report shall not be considered  
9 as a recommendation as to legal custody or physical placement but as evidence  
10 relating to the condition of each parent's home and the ability of each parent to  
11 provide basic care for the child and may be considered by the court for the purpose  
12 of determining whether to order the filing of a petition under s. 48.25 (1) to initiate  
13 proceedings under s. 48.13.

14           **SECTION 47.** 767.115 (1) (a) of the statutes is amended to read:

15           767.115 (1) (a) At any time during the pendency of an action affecting the family  
16 in which a minor child is involved and in which the court or family court  
17 commissioner determines that it is appropriate ~~and in the best interest of the child,~~  
18 the court or family court commissioner, on its own motion, may order the parties to  
19 attend a program specified by the court or family court commissioner concerning the  
20 effects on a child of a ~~dissolution of the marriage~~ break in the family relationship.

21           **SECTION 48.** 767.115 (1) (b) of the statutes is amended to read:

22           767.115 (1) (b) At any time during the pendency of an action to determine the  
23 paternity of a child, or an action affecting the family for which the underlying action  
24 was an action to determine the paternity of a child, if the court or family court  
25 commissioner determines that it is appropriate ~~and in the best interest of the child,~~

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1 the court or family court commissioner, on its own motion, may order either or both  
2 of the parties to attend a program specified by the court or family court commissioner  
3 providing training in parenting or coparenting skills, or both.

4 **SECTION 49.** 767.115 (1m) of the statutes is amended to read:

5 767.115 (1m) A program under sub. (1) shall be educational rather than  
6 therapeutic in nature ~~and may not exceed a total of 4 hours in length.~~ The parties  
7 shall be responsible for the cost, if any, of attendance at the program. ~~The court or~~  
8 ~~family court commissioner may specifically assign responsibility for payment of any~~  
9 ~~cost. No facts or information obtained in the course of the program, and no report~~  
10 ~~resulting from the program, is admissible in any action or proceeding.~~

11 **SECTION 50.** 767.14 of the statutes is amended to read:

12 **767.14 Service on and appearance by family court commissioner.** In  
13 any action affecting the family, each party shall, either within 20 days after making  
14 service on the opposite party of any petition or pleading or before filing such petition  
15 or pleading in court, serve a copy of the same upon the family court commissioner of  
16 the county in which the action is begun, whether such action is contested or not. No  
17 judgment in any such action shall be granted unless this section is complied with  
18 except when otherwise ordered by the court. Such commissioner ~~may~~ shall appear  
19 in an action under this chapter ~~when appropriate; and shall appear~~ when requested  
20 by the court or by a party.

21 **SECTION 51.** 767.23 (1) (intro.) of the statutes is amended to read:

22 767.23 (1) (intro.) Except as provided in ch. 822, in every action affecting the  
23 family, including a paternity action after paternity has been adjudicated, the court  
24 or family court commissioner ~~may~~ shall, during the pendency thereof, make just and  
25 reasonable temporary orders concerning the following matters:



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1           **SECTION 52.** 767.23 (1) (a) of the statutes is amended to read:

2           767.23 (1) (a) ~~Upon request of one party, granting~~ Granting legal custody of the  
3           minor children to the parties jointly, ~~to one party solely or to a relative or agency~~  
4           ~~specified under s. 767.24 (3). The court or family court commissioner may order joint~~  
5           ~~legal custody without the agreement of the other party and without the findings~~  
6           ~~required under s. 767.24 (2) (b) 2. parties.~~ This order may not have a binding effect  
7           on a final custody determination.

8           **SECTION 53.** 767.23 (1) (am) of the statutes is repealed and recreated to read:

9           767.23 (1) (am) Granting equal periods of physical placement to the parties  
10          unless the parties agree to a different physical placement allocation or unless a  
11          conflicting order under s. 48.345 or subch. VI of ch. 938 is in effect.

12          **SECTION 54.** 767.23 (1) (bm) of the statutes is repealed.

13          **SECTION 55.** 767.23 (1) (c) of the statutes is renumbered 767.23 (1c) (a) and  
14          amended to read:

15          767.23 (1c) (a) ~~Requiring~~ Subject to s. 767.477, requiring either party or both  
16          parties to make payments for the support of minor children, which payment amounts  
17          may be expressed as a percentage of parental income or as a fixed sum, or as a  
18          combination of both in the alternative by requiring payment of the greater or lesser  
19          of either a percentage of parental income or a fixed sum.

20          **SECTION 56.** 767.23 (1) (d) of the statutes is renumbered 767.23 (1c) (b).

21          **SECTION 57.** 767.23 (1) (e) of the statutes is renumbered 767.23 (1c) (c).

22          **SECTION 58.** 767.23 (1) (f) of the statutes is renumbered 767.23 (1c) (d).

23          **SECTION 59.** 767.23 (1) (g) of the statutes is renumbered 767.23 (1c) (e).

24          **SECTION 60.** 767.23 (1) (h) of the statutes is renumbered 767.23 (1c) (f).

25          **SECTION 61.** 767.23 (1) (i) of the statutes is renumbered 767.23 (1c) (g).

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1           **SECTION 62.** 767.23 (1) (k) of the statutes is renumbered 767.23 (1c) (h).

2           **SECTION 63.** 767.23 (1) (L) of the statutes is renumbered 767.23 (1c) (i) and  
3 amended to read:

4           767.23 (1c) (i) Requiring Subject to s. 767.477, requiring either party or both  
5 parties to execute an assignment of income for payment of health care expenses of  
6 minor children.

7           **SECTION 64.** 767.23 (1c) (intro.) of the statutes is created to read:

8           767.23 (1c) (intro.) In every action affecting the family, the court or family court  
9 commissioner may, during the pendency thereof, make just and reasonable  
10 temporary orders concerning the following matters:

11           **SECTION 65.** 767.23 (1n) of the statutes is amended to read:

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

24           **SECTION 66.** 767.23 (2) of the statutes is amended to read:

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1           767.23 (2) Notice of motion for an order or order to show cause under sub. (1)  
2 or (1c) may be served at the time the action is commenced or at any time thereafter  
3 and shall be accompanied by an affidavit stating the basis for the request for relief.

4           **SECTION 67.** 767.24 (1) of the statutes is amended to read:

5           767.24 (1) GENERAL PROVISIONS. In rendering a judgment of annulment, divorce  
6 or legal separation, or in rendering a judgment in an action under s. 767.02 (1) (e),  
7 the there are rebuttable presumptions that both parents are fit and have the ability  
8 to rear their children, that both parents are qualified to decide what is best for their  
9 children and that joint legal custody and equal periods of physical placement are  
10 fundamental rights of each parent and child. The court shall make such provisions  
11 as it deems just and reasonable concerning the legal custody and physical placement  
12 of any minor child of the parties, as are provided in this section.

13           **SECTION 68.** 767.24 (2) (a) of the statutes is renumbered 767.24 (2) (a) (intro.)  
14 and amended to read:

15           767.24 (2) (a) (intro.) ~~Subject to par. (b), based on the best interest of the child~~  
16 ~~and after considering the factors under sub. (5), the~~ The court may give joint legal  
17 ~~eustody or sole legal custody of a minor child. to one parent if either of the following~~  
18 applies:

19           **SECTION 69.** 767.24 (2) (a) 1. and 2. of the statutes are created to read:

20           767.24 (2) (a) 1. Both parties agree to sole legal custody with one parent.

21           2. The parental rights of one parent have been terminated under subch. VIII  
22 of ch. 48.

23           **SECTION 70.** 767.24 (2) (b) of the statutes is repealed and recreated to read:  
24           767.24 (2) (b) The court shall give joint legal custody if ~~one or~~ both parties  
25 request joint legal custody.

Insert 23-25 →

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1           **SECTION 71.** 767.24 (3) of the statutes is repealed.

2           **SECTION 72.** 767.24 (4) (a) of the statutes is amended to read:

3           767.24 (4) (a) ~~Except as provided under par. (b), if~~ If the court orders sole legal  
4 custody because the parties agree to it under sub. (2) (a) 1. or joint legal custody under  
5 sub. (2) (b), the court shall allocate periods of physical placement between the parties  
6 in accordance with this subsection. In determining the allocation of periods of  
7 physical placement, the court shall consider each case on the basis of the factors in  
8 sub. (5).

9           **SECTION 73.** 767.24 (4) (b) of the statutes is repealed and recreated to read:

10          767.24 (4) (b) The court shall approve any written schedule for physical  
11 placement that the parties agree to and submit to the court. If the parties do not  
12 agree on a placement schedule, the court shall require each party to submit a  
13 placement proposal. The court shall approve the proposal submitted that sets forth  
14 the most equal allocation of periods of physical placement between the parties. If  
15 neither party proposes substantially equal periods of physical placement and each  
16 party proposes that he or she be awarded physical placement for the greater period  
17 of time, the court shall allocate equal alternating periods of physical placement  
18 between the parties and shall require that the parties annually alternate spending  
19 all of the following with the child:

- 20           1. New Year's Day.
- 21           2. Easter.
- 22           3. Memorial Day.
- 23           4. Independence Day (July 4).
- 24           5. Labor Day.
- 25           6. Thanksgiving Day.

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1           7. Christmas Eve.

2           8. Christmas Day.

3           9. New Year's Eve.

4           10. The child's birthday.

5           **SECTION 74.** 767.24 (4) (cm) of the statutes is repealed.

6           **SECTION 75.** 767.24 (4) (d) of the statutes is amended to read:

7           767.24 (4) (d) ~~If the~~ The court grants periods of physical placement to more than  
8 ~~one parent, it shall order a parent with legal custody and physical placement rights~~  
9 ~~to provide the notice required under s. 767.327 (1) (2).~~

10          **SECTION 76.** 767.24 (5) of the statutes is repealed.

11          **SECTION 77.** 767.24 (6) (a) and (am) of the statutes are repealed.

12          **SECTION 78.** 767.24 (6) (b) of the statutes is amended to read:

13          767.24 (6) (b) ~~Notwithstanding s. 767.001 (1s), in making an order of~~ If the  
14 court awards joint legal custody, the court may give one party parties may stipulate  
15 that one party has the sole power to make specified decisions, while both parties  
16 retain equal rights and responsibilities for other decisions. The court shall  
17 incorporate the terms of the stipulation into the final judgment or order.

18          **SECTION 79.** 767.24 (6) (bm) of the statutes is created to read:

19          767.24 (6) (bm) ~~If the court awards joint legal custody, the parties may stipulate~~  
20 ~~to the primary care physicians for a minor child, and the court shall incorporate the~~  
21 ~~terms of the stipulation into the final judgment or order. If the parties do not agree~~  
22 ~~on the primary care physicians, the court may specify the primary care physicians~~  
23 ~~for a minor child after considering the child's present health care and health~~  
24 ~~insurance arrangements and any orders made by the court under s. 767.25 (4m).~~

25          **SECTION 80.** 767.24 (6) (c) of the statutes is amended to read:

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1           767.24 (6) (c) ~~In making an order of joint legal custody and periods of physical~~  
2 ~~placement, the~~ The court may specify one parent as the primary caretaker of the  
3 child and one home as the primary home of the child, for the purpose of determining  
4 eligibility for aid under s. 49.19 or benefits under ss. 49.141 to 49.161 ~~or for any other~~  
5 ~~purpose the court considers appropriate~~ only if both parents are dependent persons,  
6 as defined in s. 49.01 (2).

7           **SECTION 81.** 767.245 (1) of the statutes is amended to read:

8           767.245 (1) Except as provided in sub. (2m), upon petition by a grandparent,  
9 greatgrandparent, stepparent or person who has maintained a relationship similar  
10 to a parent-child relationship with the child, the court may grant reasonable  
11 visitation rights to that person if the parents have notice of the hearing and if the  
12 court determines ~~that~~ by a preponderance of the evidence that the visitation is in the  
13 best interest of the child not harmful to the child or to the child's relationship with  
14 either of the child's parents.

15           **SECTION 82.** 767.245 (2) of the statutes is repealed.

16           **SECTION 83.** 767.245 (3) (intro.) of the statutes is amended to read:

17           767.245 (3) (intro.) The court may grant reasonable visitation rights, with  
18 respect to a child, to a grandparent of the child if the child's parents have notice of  
19 the hearing and the court determines, by a preponderance of the evidence, all of the  
20 following:

21           **SECTION 84.** 767.245 (3) (f) of the statutes is amended to read:

22           767.245 (3) (f) ~~The visitation is in the best interest of the child~~ not harmful to  
23 the child or to the child's relationship with either of the child's parents.

24           **SECTION 85.** 767.245 (3m) (c) of the statutes is amended to read:

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1           767.245 (3m) (c) If a party or ~~the~~ any guardian ad litem appointed under s.  
2 48.235 refuses to accept a recommendation under this subsection, the action shall be  
3 set for trial.

4           **SECTION 86.** 767.25 (1m) (hm) of the statutes is repealed.

5           **SECTION 87.** 767.25 (2) of the statutes is amended to read:

6           767.25 (2) The court may ~~protect and promote the best interests of the minor~~  
7 ~~children by setting~~ set aside a portion of the child support which either party is  
8 ordered to pay in a separate fund or trust for the support, education and welfare of  
9 such children.

10          **SECTION 88.** 767.255 (1) of the statutes is amended to read:

11          767.255 (1) Upon every judgment of annulment, divorce or legal separation, or  
12 in rendering a judgment in an action under s. 767.02 (1) (h), the court shall divide  
13 the property of the parties and divest and transfer the title of any such property  
14 accordingly. A certified copy of the portion of the judgment that affects title to real  
15 estate shall be recorded in the office of the register of deeds of the county in which  
16 the lands so affected are situated. The court may ~~protect and promote the best~~  
17 ~~interests of the children by setting~~ set aside a portion of the property of the parties  
18 in a separate fund or trust for the support, maintenance, education and general  
19 welfare of any minor children of the parties.

20          **SECTION 89.** 767.265 (3h) of the statutes, as affected by 1997 Wisconsin Act 191,  
21 is amended to read:

22          767.265 (3h) A person who receives notice of assignment under this section or  
23 s. 767.23 (1) (L) (1c) (i), 767.25 (4m) (c), 767.51 (3m) (c) or 767.62 (4) (b) 3. or similar  
24 laws of another state shall withhold the amount specified in the notice from any  
25 money that person pays to the payer later than one week after receipt of notice of

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1 assignment. Within 5 days after the day the person pays money to the payer, the  
2 person shall send the amount withheld to the clerk of court or support collection  
3 designee, whichever is appropriate, of the jurisdiction providing notice or, in the case  
4 of an amount ordered withheld for health care expenses, to the appropriate health  
5 care insurer, provider or plan. With each payment sent to the clerk of court or support  
6 collection designee, the person from whom the payer receives money shall report to  
7 the clerk or support collection designee the payer's gross income or other gross  
8 amount from which the payment was withheld. Except as provided in sub. (3m), for  
9 each payment sent to the clerk of court or support collection designee, the person  
10 from whom the payer receives money shall receive an amount equal to the person's  
11 necessary disbursements, not to exceed \$3, which shall be deducted from the money  
12 to be paid to the payer. Section 241.09 does not apply to assignments under this  
13 section.

14 **SECTION 90.** 767.265 (4) of the statutes is amended to read:

15 767.265 (4) A withholding assignment or order under this section or s. 767.23  
16 ~~(1)(L)~~ (1c)(i), 767.25 (4m) (c), 767.51 (3m) (c) or 767.62 (4) (b) 3. has priority over any  
17 other assignment, garnishment or similar legal process under state law.

18 **SECTION 91.** 767.265 (6) (a) of the statutes, as affected by 1997 Wisconsin Act  
19 191, is amended to read:

20 767.265 (6) (a) Except as provided in sub. (3m), if after receipt of notice of  
21 assignment the person from whom the payer receives money fails to withhold the  
22 money or send the money to the clerk of court or support collection designee or the  
23 appropriate health care insurer, provider or plan as provided in this section or s.  
24 767.23 ~~(1)(L)~~ (1c)(i), 767.25 (4m) (c), 767.51 (3m) (c) or 767.62 (4) (b) 3., the person  
25 may be proceeded against under the principal action under ch. 785 for contempt of



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1 court or may be proceeded against under ch. 778 and be required to forfeit not less  
2 than \$50 nor more than an amount, if the amount exceeds \$50, that is equal to 1%  
3 of the amount not withheld or sent.

4 **SECTION 92.** 767.265 (6) (b) of the statutes, as affected by 1997 Wisconsin Act  
5 191, is amended to read:

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

12 **SECTION 93.** 767.265 (6) (c) of the statutes is amended to read:

13 767.265 (6) (c) No employer may use an assignment under this section or s.  
14 767.23 (1)(L) (1c) (i), 767.25 (4m) (c), 767.51 (3m) (c) or 767.62 (4) (b) 3. as a basis for  
15 the denial of employment to a person, the discharge of an employe or any disciplinary  
16 action against an employe. An employer who denies employment or discharges or  
17 disciplines an employe in violation of this paragraph may be fined not more than  
18 \$500 and may be required to make full restitution to the aggrieved person, including  
19 reinstatement and back pay. Except as provided in this paragraph, restitution shall  
20 be in accordance with s. 973.20. An aggrieved person may apply to the district  
21 attorney or to the department for enforcement of this paragraph.

22 **SECTION 94.** 767.325 (1) of the statutes is repealed and recreated to read:

23 767.325 (1) MODIFICATIONS. (a) The court shall modify an order of physical  
24 placement in a way that alters the time a parent may spend with his or her child or  
25 an order of legal custody if any of the following applies:

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1           1. A parent requests a modification and the current order is not in conformity  
2 with s. 767.24.

3           2. The parental rights of a parent have been terminated under subch. VIII of  
4 ch. 48.

5           3. The parties agree to a modification.

6           (b) A modification under this subsection shall be consistent with s. 767.24.

7           **SECTION 95.** 767.325 (2) of the statutes is repealed.

8           **SECTION 96.** 767.325 (3) of the statutes is repealed.

9           **SECTION 97.** 767.325 (4) of the statutes is repealed.

10          **SECTION 98.** 767.327 of the statutes is repealed and recreated to read:

11           **767.327 Moving the child's residence outside the school district and**  
12 **other removals.** (1) Except as provided in sub. (5), if both parents of a child in an  
13 action affecting the family are awarded physical placement rights to the child,  
14 neither parent may establish a legal residence for the child outside the school district  
15 in which the child resided on the 180th day before the commencement of the action  
16 affecting the family, or since birth if the child is less than 6 months old, or other school  
17 district agreed upon by the parties.

18           (2) (a) A parent specified in sub. (1) who wishes to establish his or her legal  
19 residence outside the state or at any location within the state that is at a distance  
20 of 150 miles or more from the school district in which the child resided on the 180th  
21 day before the commencement of the action affecting the family, or since birth if the  
22 child is less than 6 months old, or other school district agreed upon by the parties,  
23 shall provide not less than 60 days' written notice to the other parent, with a copy  
24 to the court, of his or her intent regarding changing his or her legal residence.

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1           (b) The parent shall send the notice under par. (a) by certified mail. The notice  
2 shall state the parent's proposed action, including the specific date and location of  
3 the move, and that the other parent may request a modification to the physical  
4 placement order as provided in sub. (3).

5           (3) If the proposed move under sub. (2) would make it difficult or impractical  
6 for the parties to comply with the physical placement order and at the same time for  
7 the child to remain in the same school district, either party may file a petition, motion  
8 or order to show cause for modification of the physical placement order.

9           (4) (a) If after a notice under sub. (2) has been sent or a petition, motion or order  
10 to show cause under sub. (3) has been filed the parties agree to a modification of the  
11 physical placement order or to a change in the child's school district and file a  
12 stipulation with the court, the court shall approve the agreement and incorporate the  
13 terms of the stipulation into a revised order.

14           (b) If the parties do not agree to a modification after a petition, motion or order  
15 to show cause under sub. (3) has been filed, the court may modify the physical  
16 placement order, subject to all of the following:

17           1. The parent not proposing the move shall be awarded periods of physical  
18 placement that include weekdays and weeknights when school is in session, at least  
19 one weekend per month, at least 4 weeks during the summer months when school  
20 is not in session and alternating holidays.

21           2. The parent proposing the move shall be awarded the maximum amount of  
22 physical placement that is reasonable under the circumstances.

23           3. The parent proposing the move shall be responsible for the transportation  
24 costs of exercising his or her physical placement rights.

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1           (5) The court may allow a parent specified in sub. (1) to establish a legal  
2 residence for the child outside the school district in which the child resided on the  
3 180th day before the commencement of the action affecting the family, or since birth  
4 if the child is less than 6 months old, or other school district agreed upon by the  
5 parties, if all of the following apply:

6           (a) The parent desiring to establish a different legal residence for the child files  
7 a petition, motion or order to show cause for that purpose.

8           (b) The other parent has notice of the hearing on the petition, motion or order  
9 to show cause.

10          (c) The parent desiring to establish a different legal residence for the child  
11 shows by clear and convincing evidence that, for a period of at least one year, the  
12 other parent has exercised his or her physical placement rights for less than 10% of  
13 the amount of time that he or she was awarded by the court.

14          (6) Notwithstanding sub. (1), if both parents specified in sub. (1) wish to  
15 establish their legal residences or a legal residence for the child outside the current  
16 school district of the child and do not agree on a new school district for the child, the  
17 court may designate one of the new legal residences of the parents as the child's legal  
18 residence for the purpose of establishing a new school district for the child. In  
19 making the determination under this subsection, the court shall specify as the child's  
20 legal residence the location that the court determines will maximize the amount of  
21 time that each parent may spend with the child.

22          (7) Notwithstanding sub. (1), if a parent specified in sub. (1) has established  
23 his or her legal residence outside the state or at a location within the state that is at  
24 a distance of 150 miles or more from the child's current school district, the court may  
25 allow the parent whose legal residence is in the child's current school district to

**BILL**

1 establish a legal residence for the child outside the child's current school district if  
2 the move does not increase the distance between the child and the other parent and  
3 the other parent does not wish to move back to the child's current school district.

4 (8) Unless the parents agree otherwise, a parent with legal custody and  
5 physical placement rights shall notify and obtain the written approval of the other  
6 parent before removing the child from the state for a period of 14 days or more.

7 **SECTION 99.** 767.33 (1m) (a) of the statutes is renumbered 767.33 (1m) and  
8 amended to read:

9 767.33 (1m) ~~Except as provided in par. (b), this~~ This section applies only to an  
10 order under s. 767.23 or 767.25 in which payment is expressed as a fixed sum. It does  
11 not apply to such an order in which payment is expressed as a percentage of parental  
12 income.

13 **SECTION 100.** 767.33 (1m) (b) of the statutes is repealed.

14 **SECTION 101.** 767.45 (1) (d) of the statutes is amended to read:

15 767.45 (1) (d) A man alleged or alleging himself to be the father of the child,  
16 including a man against whom an action was dismissed under s. 767.458 (1m), 1997  
17 stats., or 767.463, 1997 stats., before the effective date of this paragraph .... [revisor  
18 inserts datel.

19 **SECTION 102.** 767.45 (1) (i) of the statutes is amended to read:

20 767.45 (1) (i) A guardian ad litem appointed for the child under s. 48.235,  
21 767.045 (1)(e) (2) (a) or 938.235.

22 **SECTION 103.** 767.45 (2) of the statutes is repealed.

23 **SECTION 104.** 767.458 (1) (b) of the statutes is amended to read:

24 767.458 (1) (b) If the respondent is unable to afford counsel due to indigency,  
25 and the petitioner is represented by a government attorney under s. 767.45 (1) (g) or

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1 (6) or the action is commenced on behalf of the child by an attorney appointed under  
2 s. 767.045 (1) (c) ~~(2) (a)~~, counsel shall be appointed for the respondent as provided in  
3 s. 767.52 and ch. 977, unless the respondent knowingly and voluntarily waives the  
4 appointment of counsel;

5 **SECTION 105.** 767.458 (1) (c) of the statutes is amended to read:

6 767.458 (1) (c) ~~Except as provided under sub. (1m) and s. 767.463, the~~ The  
7 respondent may request the administration of genetic tests which either  
8 demonstrate that he is not the father of the child or which demonstrate the  
9 probability that he is or is not the father of the child;

10 **SECTION 106.** 767.458 (1) (d) of the statutes is amended to read:

11 767.458 (1) (d) ~~Except as provided in subs. (1m) and (2) and s. 767.463, the~~ The  
12 court will order genetic tests upon the request of any party; and

13 **SECTION 107.** 767.458 (1m) of the statutes is repealed.

14 **SECTION 108.** 767.46 (2) (c) of the statutes is amended to read:

15 767.46 (2) (c) If the alleged father voluntarily acknowledges paternity of the  
16 child, that he agree to the duty of support, the legal custody of the child, periods of  
17 physical placement of the child and other matters as determined ~~to be in the best~~  
18 ~~interests of the child~~ by the court.

19 **SECTION 109.** 767.46 (4) of the statutes is amended to read:

20 767.46 (4) If a party or the any guardian ad litem appointed under s. 48.235  
21 or 767.475 (1) refuses to accept a recommendation made under this section and  
22 genetic tests have not yet been taken, the court shall require the appropriate parties  
23 to submit to genetic tests. After the genetic tests have been taken the court shall  
24 make an appropriate final recommendation.

25 **SECTION 110.** 767.46 (5) of the statutes is amended to read:

**BILL**

1           767.46 (5) If ~~the~~ any guardian ad litem appointed under s. 48.235 or 767.475  
2           (1) or any party refuses to accept any final recommendation, the action shall be set  
3           for trial.

4           **SECTION 111.** 767.463 of the statutes is repealed.

5           **SECTION 112.** 767.465 (2m) (a) of the statutes is amended to read:

6           767.465 (2m) (a) At any time after service of the summons and petition, a  
7           respondent who is the alleged father may, with or without appearance in court ~~and~~  
8           ~~subject to the approval of the court,~~ in writing acknowledge that he has read and  
9           understands the notice under s. 767.455 (5g) and stipulate that he is the father of the  
10          child and for child support payments, legal custody and physical placement. The  
11          court may not approve a stipulation for child support unless it provides for payment  
12          of child support determined in a manner consistent with s. 767.25 or 767.51.

13          **SECTION 113.** 767.475 (1) (a) of the statutes is renumbered 767.475 (1) and  
14          amended to read:

15          767.475 (1) ~~Except as provided in par. (b), the court may appoint a guardian~~  
16          ~~ad litem for the child and~~ The court shall appoint a guardian ad litem for a minor  
17          parent or minor who is alleged to be a parent in a paternity proceeding unless the  
18          minor parent or the minor alleged to be the parent is represented by an attorney.

19          **SECTION 114.** 767.475 (1) (b) of the statutes is repealed.

20          **SECTION 115.** 767.51 (3) of the statutes is amended to read:

21          767.51 (3) A judgment or order determining paternity may contain any other  
22          provision directed against the ~~appropriate party~~ parties to the proceeding,  
23          concerning the duty of support, the legal custody and guardianship of the child,  
24          periods of physical placement, the furnishing of bond or other security for the  
25          payment of the judgment, or any other matter ~~in the best interest of the child.~~ Unless

## BILL

## SECTION 115

1 ~~the court orders otherwise, if there is no presumption of paternity under s. 891.41~~  
2 ~~(1) the mother shall have sole legal custody of the child. The court shall order either~~  
3 party or both to pay for the support of any child of the parties who is less than 18 years  
4 old, or any child of the parties who is less than 19 years old if the child is pursuing  
5 an accredited course of instruction leading to the acquisition of a high school diploma  
6 or its equivalent. The judgment or order may direct the father to ~~pay or contribute~~  
7 make an equal contribution to the reasonable expenses of the mother's pregnancy  
8 and confinement during pregnancy and ~~may shall~~ direct ~~either party~~ both parties to  
9 pay or contribute to the costs of genetic tests, attorney fees and other costs.  
10 Contributions to the costs of genetic tests shall be paid to the county which paid for  
11 the genetic tests.

12 **SECTION 116.** 767.51 (4) of the statutes is amended to read:

13 767.51 (4) Support judgments or orders ordinarily shall be for periodic  
14 payments which may vary in amount if appropriate. The payment amount may be  
15 expressed as a percentage of the parent's income or as a fixed sum, or as a  
16 combination of both in the alternative by requiring payment of the greater or lesser  
17 of either a percentage of the parent's income or a fixed sum. The father's liability for  
18 past support of the child shall be limited to support for the period after ~~the birth of~~  
19 ~~the child~~ paternity has been adjudicated.

20 **SECTION 117.** 767.51 (5) (e) of the statutes is amended to read:

21 767.51 (5) (e) The need and capacity of the child for education, ~~including higher~~  
22 ~~education.~~

23 **SECTION 118.** 767.51 (5) (i), (im) and (j) of the statutes are repealed.

24 **SECTION 119.** 767.51 (6) of the statutes is amended to read:



**BILL**

1           767.51 (6) Sections 767.24, 767.245, 767.263, 767.265, 767.267, 767.29,  
2           767.293, 767.30, 767.305, 767.31, 767.32 and 767.325, 767.327 and 767.329, where  
3           applicable, shall apply to a judgment or order under this section.

4           **SECTION 120.** 767.52 (1) of the statutes is amended to read:

5           767.52 (1) At the pretrial hearing, at the trial and in any further proceedings  
6           in any paternity action, any party may be represented by counsel. If the respondent  
7           is indigent and the state is the petitioner under s. 767.45 (1) (g), the petitioner is  
8           represented by a government attorney as provided in s. 767.45 (6) or the action is  
9           commenced on behalf of the child by an attorney appointed under s. 767.045 (1) (e)  
10          (2) (a), counsel shall be appointed for the respondent as provided in ch. 977, and  
11          subject to the limitations under sub. (2m), unless the respondent knowingly and  
12          voluntarily waives the appointment of counsel.

13          **SECTION 121.** 767.53 (3) of the statutes is created to read:

14          767.53 (3) The records of any past proceeding in which paternity was  
15          established are open to public inspection under ss. 19.31 to 19.39.

16          **SECTION 122.** 767.62 (3) (b) of the statutes is amended to read:

17          767.62 (3) (b) ~~Except as provided in s. 767.045, in~~ In an action specified in par.  
18          (a), the court or family court commissioner ~~may appoint a guardian ad litem for the~~  
19          ~~child and~~ shall appoint a guardian ad litem for a party who is a minor, unless the  
20          minor party is represented by an attorney.

21          **SECTION 123.** 767.62 (4) (a) of the statutes is amended to read:

22          767.62 (4) (a) In an action under sub. (3) (a), if the persons who signed and filed  
23          the statement acknowledging paternity as parents of the child had notice of the  
24          hearing, the court or family court commissioner may make an order that contains  
25          any provision directed against the ~~appropriate party~~ parties to the proceeding

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1 concerning the duty of support, the legal custody or guardianship of the child, periods  
2 of physical placement, the furnishing of bond or other security for the payment of  
3 amounts under the order or any other matter ~~in the best interest of the child. Unless~~  
4 ~~the court orders otherwise, if there is no presumption of paternity under s. 891.41~~  
5 ~~(1) the mother shall have sole legal custody of the child.~~ The court or family court  
6 commissioner shall order either party or both to pay for the support of any child of  
7 the parties who is less than 18 years old, or any child of the parties who is less than  
8 19 years old if the child is pursuing an accredited course of instruction leading to the  
9 acquisition of a high school diploma or its equivalent. The order may direct the father  
10 to ~~pay or contribute~~ make an equal contribution to the reasonable expenses of the  
11 mother's pregnancy and confinement during pregnancy and ~~may shall~~ direct either  
12 party both parties to pay or contribute to the costs of attorney fees or other costs.

13 **SECTION 124.** 767.62 (4) (d) 3. of the statutes is amended to read:

14 767.62 (4) (d) 3. Support orders under par. (a) ordinarily shall be for periodic  
15 payments which may vary in amount if appropriate. The payment amount may be  
16 expressed as a percentage of the parent's income or as a fixed sum, or as a  
17 combination of both in the alternative by requiring payment of the greater or lesser  
18 of either a percentage of the parent's income or a fixed sum. The father's liability for  
19 past support of the child shall be limited to support for the period after the ~~birth of~~  
20 ~~the child~~ date on which the statement acknowledging paternity was filed with the  
21 state registrar under s. 69.15 (3) (b) 3.

22 **SECTION 125.** 767.62 (4) (e) 6. of the statutes is amended to read:

23 767.62 (4) (e) 6. The need and capacity of the child for education, ~~including~~  
24 ~~higher education.~~

25 **SECTION 126.** 767.62 (4) (e) 12., 13. and 14. of the statutes are repealed.

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1           **SECTION 127.** 769.302 of the statutes is amended to read:

2           **769.302 Action by minor parent.** A minor parent, or a guardian or other  
3 legal representative of a minor parent, may maintain a proceeding on behalf of or for  
4 the benefit of the minor's child. Notwithstanding s. ~~767.045 (1)~~ or 803.01 (3), the  
5 ~~court may appoint a guardian ad litem for the minor's child, but~~ the court need not  
6 appoint a guardian ad litem for a minor parent who maintains such a proceeding  
7 unless the proceeding is one for the determination of parentage, in which case the  
8 court or a family court commissioner shall appoint a guardian ad litem for a minor  
9 parent within this state who maintains such a proceeding or for a minor within this  
10 state who is alleged to be a parent, as provided in s. 767.475 (1).

11           **SECTION 128.** 802.12 (3) (b) of the statutes is amended to read:

12           802.12 (3) (b) If a guardian ad litem has been appointed under s. 48.235, he or  
13 she shall be a party to any settlement alternative regarding custody, physical  
14 placement, visitation rights, support or other interests of the ward.

15           **SECTION 129.** 803.01 (3) (b) 1. of the statutes is amended to read:

16           803.01 (3) (b) 1. The guardian ad litem shall be appointed by a circuit court of  
17 the county where the action is to be commenced or is pending, except that ~~the a~~  
18 guardian ad litem appointed under s. 767.475 (1) shall be appointed by a family court  
19 commissioner of the county in those actions to establish paternity that are before the  
20 family court commissioner and a guardian ad litem appointed under s. 767.62 (3) (b)  
21 shall be appointed by a family court commissioner of the county in those actions  
22 specified in s. 767.62 (3) (a) that are before the family court commissioner.

23           **SECTION 130.** 803.01 (3) (b) 2. of the statutes is amended to read:

24           803.01 (3) (b) 2. When the plaintiff is a minor 14 years of age or over, upon the  
25 plaintiff's application or upon the state's application under s. 767.045 (1) (c) (2) (a);

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1 or if the plaintiff is under that age or is mentally incompetent, upon application of  
2 the plaintiff's guardian or of a relative or friend or upon application of the state under  
3 s. 767.045 ~~(1)(e)~~ (2)(a). If the application is made by a relative, friend or the state,  
4 notice thereof must first be given to the guardian if the plaintiff has one in this state;  
5 if the plaintiff has none, then to the person with whom the minor or mentally  
6 incompetent resides or who has the minor or mentally incompetent in custody.

7 **SECTION 131.** 814.61 (1) (c) 1. of the statutes is amended to read:

8 814.61 (1) (c) 1. An action to determine paternity brought by the state or its  
9 delegate under s. 767.45 (1) (g) or (h) or commenced on behalf of the child by an  
10 attorney appointed under s. 767.045 ~~(1)(e)~~ (2)(a).

11 **SECTION 132.** 814.61 (7) (c) of the statutes is amended to read:

12 814.61 (7) (c) Paragraphs (a) and (b) do not apply to a petition or motion filed  
13 by the state or its delegate in connection with an action to determine paternity under  
14 s. 767.45 (1) (g), to a petition or motion filed by an attorney appointed under s.  
15 767.045 ~~(1)(e)~~ (2)(a) in connection with an action to determine paternity when the  
16 circumstances specified in s. 767.045 ~~(1)(e)~~ (2)(a) 1. or 2. apply or to a petition or  
17 motion filed in an action under ch. 769.

18 **SECTION 133.** 891.39 (1) (a) of the statutes is renumbered 891.39 (1) and  
19 amended to read:

20 891.39 (1) Whenever it is established in an action or proceeding that a child was  
21 born to a woman while she was the lawful wife of a specified man, any party asserting  
22 in such action or proceeding that the husband was not the father of the child shall  
23 have the burden of proving that assertion by a clear and satisfactory preponderance  
24 of the evidence. In all such actions or proceedings the husband and the wife are  
25 competent to testify as witnesses to the facts. The Except as provided in s. 767.045,

**BILL**

1 the court or judge in such cases shall appoint a guardian ad litem to appear for and  
2 represent the child whose paternity is questioned. Results of a genetic test, as  
3 defined in s. 767.001 (1m), showing that a man other than the husband is not  
4 excluded as the father of the child and that the statistical probability of the man's  
5 parentage is 99.0% or higher constitute a clear and satisfactory preponderance of the  
6 evidence of the assertion under this paragraph, even if the husband is unavailable  
7 to submit to genetic tests, as defined in s. 767.001 (1m).

8 **SECTION 134.** 891.39 (1) (b) of the statutes is repealed.

9 **SECTION 135.** 977.05 (4) (i) 7. of the statutes is amended to read:

10 977.05 (4) (i) 7. Cases involving paternity determinations, as specified under  
11 s. 767.52, in which the state is the petitioner under s. 767.45 (1) (g) or in which the  
12 action is commenced on behalf of the child by an attorney appointed under s. 767.045  
13 ~~(1) (e)~~ (2) (a).

14 **SECTION 136.** 977.05 (6) (b) 1. of the statutes is amended to read:

15 977.05 (6) (b) 1. The action is not brought by the state, its delegate under s.  
16 59.53 (6) (a) or an attorney appointed under s. 767.045 ~~(1) (e)~~ (2) (a).

17 **SECTION 137. Initial applicability.**

18 (1) This act first applies to actions affecting the family, including an action to  
19 enforce or modify a judgment or order in an action affecting the family previously  
20 granted, that are commenced on the effective date of this subsection.

21 (END)

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FROM THE  
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LRB-0211/lins  
PJK:jlg:lp

INSERT 3-A

20 or if one parent requests it and a rebuttable presumption that the parties will not be able to cooperate in the future decision making required is not created or is rebutted. On the issue of whether the parties will not be able to cooperate in the future decision making required, the court may consider only whether a party has been convicted of a crime involving abuse of the child and whether a party has been convicted of battery against the other party. Evidence of conviction of either crime creates a rebuttable presumption that the parties will not be able to cooperate. The presumption is rebutted, however, by clear and convincing evidence that the abuse or battery will not interfere with the parties' ability to cooperate.

(END OF INSERT 3-A)

INSERT 23-25

SECTION 1. 767.24 (2) (b) (intro.) of the statutes is amended to read:

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

History: 1971 c. 149, 157, 211; 1975 c. 39, 122, 200, 283; 1977 c. 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.24; 1981 c. 391; 1985 a. 70, 176; 1987 a. 332 s. 64; 1987 a. 355, 364, 383, 403; 1989 a. 56 s. 259; 1989 a. 359; 1991 a. 32; 1993 a. 213, 446, 481; 1995 a. 77, 100, 275, 289, 343, 375; 1997 a. 35, 191.

SECTION 2. 767.24 (2) (b) 1. of the statutes is amended to read:

767.24 (2) (b) 1. Both parties ~~agree to~~ request joint legal custody.

History: 1971 c. 149, 157, 211; 1975 c. 39, 122, 200, 283; 1977 c. 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.24; 1981 c. 391; 1985 a. 70, 176; 1987 a. 332 s. 64; 1987 a. 355, 364, 383, 403; 1989 a. 56 s. 259; 1989 a. 359; 1991 a. 32; 1993 a. 213, 446, 481; 1995 a. 77, 100, 275, 289, 343, 375; 1997 a. 35, 191.

SECTION 3. 767.24 (2) (b) 2. (intro.) of the statutes is renumbered 767.24 (2) (b)

2. and amended to read:

767.24 (2) (b) 2. ~~The parties do not agree to joint legal custody, but one~~ One party requests joint legal custody and the court ~~specifically finds all of the following:~~ presumption under par. (c) is not created or is rebutted.

History: 1971 c. 149, 157, 211; 1975 c. 39, 122, 200, 283; 1977 c. 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.24; 1981 c. 391; 1985 a. 70, 176; 1987 a. 332 s. 64; 1987 a. 355, 364, 383, 403; 1989 a. 56 s. 259; 1989 a. 359; 1991 a. 32; 1993 a. 213, 446, 481; 1995 a. 77, 100, 275, 289, 343, 375; 1997 a. 35, 191.

SECTION 4. 767.24 (2) (c) of the statutes is created to read:

767.24 (2) (c) If one party requests joint legal custody and the other party objects to joint legal custody, on the objection the court is limited to considering whether a party has been convicted of a crime involving abuse, as defined in s. 48.02

SECTION ; RP, 767.24(2)(b) 2. a. to c.

(1)✓ of the child, as defined in s. 48.02 (2)✓, or whether a party has been convicted of battery, as described under s. 940.19 or 940.20. (1m)✓, against the other party. Evidence of either conviction creates a rebuttable presumption that the parties will not be able to cooperate in the future decision making required. This presumption may be rebutted by clear and convincing evidence that the abuse or battery will not interfere with the parties' ability to cooperate in the future decision making required.

**SECTION 5.** 767.24 (2) (d) <sup>X</sup> of the statutes is created to read:

767.24 (2) (d) If a presumption under par. (c)✓ is created and the court orders joint custody because the presumption is rebutted, the court may request that the parties submit in writing suggestions as to how the parties may reduce possible sources of conflict, contact or physical proximity between the parties. The court may order the parties to comply with any suggestions that the court considers appropriate and necessary.

(END OF INSERT 23-25)

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

LRB-0211/1dn  
PJK:jlg:lp

Dan:

1. As we discussed, the court has no alternative option with respect to awarding joint legal custody if the presumption under s. 767.24 (2) (c) is created and not rebutted. The court also has no alternative option with respect to awarding sole legal custody if each party wants sole custody. The court may not award joint or sole legal custody in either situation.

2. Although the e-mailed language mentioned the capability of performing parental duties and responsibilities and wishing to have an active role in raising the child, I left these out because they are not, under the bill, prerequisites to awarding joint custody. Is this okay?

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



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

LRB-0211/1dn  
PJK:jlg:ijs

February 16, 1999

Dan:

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

**SUBMITTAL  
FORM**

**LEGISLATIVE REFERENCE BUREAU  
Legal Section Telephone: 266-3561  
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

**Date:** 2/16/99

**To:** Senator George

**Relating to LRB drafting number:** LRB-0211

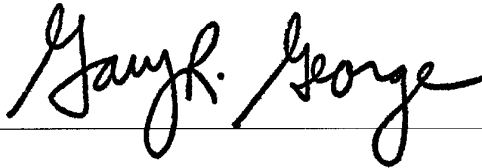
**Topic**

Standards for determining custody and physical placement in actions affecting the family

**Subject(s)**

Dom. Rel. - cust. and plac.

1. **JACKET** the draft for introduction \_\_\_\_\_



in the **Senate**  or the **Assembly** \_\_\_\_\_ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached \_\_\_\_\_.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction \_\_\_\_\_.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Pamela J. Kahler, Senior Legislative Attorney  
Telephone: (608) 266-2682