

**1999 DRAFTING REQUEST**

**Assembly Amendment (AA-ASA1-AB133)**

Received: **06/28/99**

Received By: **kahlepj**

Wanted: **Soon**

Identical to LRB:

For: **Senate Democratic Caucus**

By/Representing: **Walter**

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:**

Language for the custody and physical placement amendment that is the substitute amendment to SB 107

**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 06/29/99	gilfokm 06/29/99		_____			
/1			haueca 06/29/99	_____	lrb_docadmin 06/29/99		

FE Sent For:

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1/?	kahlepj	1-6-99 RG	ch 6/29	?/ksh 6/29			

FE Sent For:

<END>

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MEMORANDUM

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**DATE:** 6/21/99  
**TO:** Pam Kahler, LRB Drafting Attorney  
**FROM:** Dan Rossmiller  
**RE:** Newly Updated Request for a Substitute Amendment to Senate Bill 107

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**Background**

This memo takes the place of the earlier two memos I sent you.

LRB 2884/P2dn (with modifications as suggested by the State Bar of Wisconsin Family Law Section in the June 8, 1999 memorandum) should continue to serve as the base on which to build the requested substitute amendment. In the following paragraphs, I outline the changes to be made to the modified LRB 2884/P2dn. If you have any questions, please feel free to contact me.

✓ **Legal Custody**

No changes to proposal as drafted.

✓ **Physical Placement**

Change:

1. Provide that the court shall presume that any proposal with respect to physical placement that has been voluntarily agreed to by the parties is in the best interest of the child.

Add a provision to s. 767.24 (4) (a), Stats., or to s. 767.24(5)(a), Stats (as amended by the State Bar Family Law Section language) that "the court shall presume that any proposal with respect to physical placement that has been voluntarily agreed to by the parties is in the best interest of the child."

Changes to Factors Listed under s. 767.24 (5), Stats.:

- ✓ 1. Amend s. 767.24 (5) (a) so it reads as follows:

"The wishes of the child's parent or parents as shown by any stipulation, proposed parenting plan or legal custody/physical placement proposal submitted to the court."

- ✓ 2. Create a new s. 767.24 (5) (am) (or whatever designation is appropriate) to read as follows:

*NWS sub(5)?*

"The need for regularly occurring and meaningful periods of physical placement to provide predictability and stability for the child."

✓ 3. Amend proposed s. 767.24 (5) (cm) so it reads as follows:

"The amount and quality of time that each parent has spent with the child in the past, necessary changes to each parent's custodial roles brought about by the divorce, and any reasonable life-style changes that a parent proposes to make to be able to spend time with the child in the future.

✓ 4. Create a new factor in 767.24 (5) (maybe as (dm) ) as follows:

**"The right of the child to spend the same periods of time or substantial periods of time with each parent."**

**(Note to Pam: This is a change from the previous memo to you.)**

✓ **Guardians Ad Litem**

No changes to proposal as drafted.

✓ **Application of the Changes in 767.24 (4) (a) to Temporary Orders and to Revisions of Custody and Placement Orders**

It appears that the modifications to LRB 2884/P2dn suggested by the State Bar in its June 8, 1999 memo would make the changes in the factors under s. 767.24 (5) applicable to revisions of legal custody and physical placement orders. That memo, however, is silent with respect to the applicability of important changes to the language that are being made in s. 767.24 (4) (a). The language below is intended to address this issue.

Changes:

Incorporate the following modifications:

✓ 1. Amend s. 767.23 (1) (a), Stats. to read:

"Upon request of one party, granting legal custody of the minor children to the parties jointly, to one party solely or to a relative or agency specified under s. 767.24 (3), consistent with s. 767.24. The court or family court commissioner may order joint legal custody without the agreement of the other party and without the finds required under s. 767.24 (2) (b) 2. This order may not have a binding effect on a final custody determination."

✓ 2. Amend s. 767.23 (1) (am), Stats. to read:

"Upon request of one party, granting periods of physical placement to a party consistent with s. 767.24. The court or family court commissioner shall make a determination under this paragraph within 30 days after the request for a temporary order regarding periods of physical placement is filed."

✓ 3. Incorporate the following provision:

When making revisions (in all actions to revise legal custody and physical placement) under s. 767.325, the factors under s. 767.24 (5) shall be applied, and the revisions shall be made in a manner consistent with s. 767.24.

### **Parenting Plan**

✓ Create new language to provide that no contested initial determination on the issue of legal custody or physical placement may be tried until a parenting plan has been filed by the party seeking legal custody (joint or sole) or disputing the other parent's plan for primary or alternate placement. The language should require the plan to be filed before a pretrial conference is allowed.

(The intent here is that not every couple with an agreement would also have to file a plan but that an initial determination by a trial court of contested custody issues should not proceed or be scheduled for a final hearing unless the disputing parents have done the work of preparing a parenting plan.)

✓ The parenting plan should provide the following information/address the following questions:

Where does the parent live and intend to live for the next two years?

What placement is the parent seeking?

Where does the parent work and during what hours?

Who will provide an necessary third-party child care and who will pay for it?

Where will the child go to school?

Who will the child's doctor be?

Will the child have a religious commitment; if so what is it?

Who will pay for the child's medical care—insurance and uninsured medical expenses?

Who will make decisions about education, medical care, choice of child care providers and extracurricular activities? How does the parent propose to resolve disagreements if the order is for joint decision making but the parents have a major dispute?

What will the child support, family support, maintenance or other income transfer be?

✓ In post-judgment modification actions, the court may require any person seeking to substantially modify an existing order to file a plan before the court hears evidence on the motion.

### **Separation Adjustment Class**

✓ Create new language to allow the courts to require parties to a divorce or paternity action attend a court-approved class regarding child development, family dynamics and how parental separation affects a child's development and what parents can do to make raising a child in a separated situation less stressful for the child.

✓ (The language should be drafted so that it doesn't allow a respondent who doesn't want a divorce to delay the divorce by refusing to attend the class. Perhaps this could be effectuated by providing that the party who refuses to attend cannot have his/her custody or placement motion heard. There could be a waiver for indigent parents or a provision for paying the fee for parents who are indigent.)

### **Enforcement of Placement Orders**

(This memo assumes that the change from "may" to "shall" at page 12, line 20, regarding awarding of costs and attorney fees will be incorporated to LRB 2884/P2dn as indicated in the June 8, 1999 memo from the State Bar.)

### ✓ Moving a Child

Change:

In s. 767.327 (5), Stats., to add a new factor that the court may consider, in determining whether to grant a modification of legal custody and physical placement or whether to issue an order prohibiting the move "the child's adjustment to the home, school, religion and community." (The wording of this factor would be the same as the factor in s. 767.24 (5) (d), Stats.)

**(Note to Pam: This is a change from the previous memo to you. I had inadvertently included the words "shall consider" in the third line of the above paragraph.)**

### ✓ Paternity

✓ Incorporate provisions of State Bar of Wisconsin Family Law Section's draft entitled "DRAFT-Paternity Revisions Discussed 6/11/99"

### ✓ Legislative Council Studies—Non-Statutory Provisions

✓ 1. Provide for a Legislative Council Study on the "Reform of the Guardian Ad Litem System in Actions Affecting the Family." The study should examine:

- The appointment of guardians ad litem, including the questions of whether: a) the appointment of guardians ad litem should be mandatory in all cases where the legal custody or physical placement of the child is contested; and b) non-attorney professionals such as child psychologists, child psychiatrists, or child therapists with specialized training and expertise regarding the emotional and developmental phases and needs of children should be allowed to serve as guardians ad litem.
- The role of guardians ad litem;
- The supervision of guardians ad litem;
- The training of guardians ad litem; and
- The compensation of guardians ad litem.

The study committee should include legislators, attorneys, judges and court commissioners, mental health professionals and lay persons and should be charged with creating recommendations and a petition to the Supreme Court for reform of the guardian ad litem system.

✓ 2. Provide for a Legislative Council Study on the "Reform of Paternity Law."

The study committee should examine all aspects of paternity law, including determinations of child support, legal custody, periods of physical placement and other related issues. As one of its primary purposes, the study committee should compare paternity laws with marital laws to see where they could or should be harmonized.

**DRAFT - Paternity Revisions Discussed 6/11/99**

767.25 Child support.

(lm) Upon request by a party, the court may modify the amount of child support payments determined under sub. (lj) if, after considering the following factors, the court finds by the greater weight of the credible evidence that use of the percentage standard is unfair to the child or to any of the parties:

- (a) The financial resources of the child.
- AM (b) The financial resources of both parents ~~(as determined under s. 767.255.)~~
- (bj) Maintenance received by either party.
- (bp) The needs of each party in order to support himself or herself at a level equal to or greater than that established under 42 U.S.C. § 9902 (2).
- (bz) The needs of any person, other than the child, whom either party is legally obligated to support
- AM (C) *In marital cases*, the standard of living the child would have enjoyed had the marriage not ended in annulment, divorce or legal separation.
- (d) The desirability that the custodian remain in the home as a full-time parent
- (e) The cost of day care if the custodian works outside the home, or the value of custodial services performed by the custodian if the custodian remains in the home
- (ej) The award of substantial periods of physical placement to both parents
- \* (em) Extraordinary travel expenses incurred in exercising the right to periods of physical placement (under S. 767.24.) *paternity?*
- (f) The physical, mental and emotional health needs of the child, including any costs for health insurance (as provided for under sub. (4m).) *paternity*
- (g) The child's educational needs.
- (h) The tax consequences to each party.
- (hm) The best interests of the child.
- (hs) The earning capacity of each parent, based on each parent's education, training and work experience and the availability of work in or near the parent's community.

only this sub?  
AM  
(i) Any other factors which the court in each case determines are relevant

in  
long term  
family actions

AM  
(6) A party ordered to pay child support under this section shall pay simple interest at the rate of ~~1.5%~~ 1% per month on any amount that is in arrears that is equal to or greater than the amount of child support due in one month. If the party no longer has a current obligation to pay child support, interest at the rate of ~~1.5%~~ 1% per month shall accrue on the total amount of child support in arrears, if any.

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

**767.51 Paternity judgment**

(3) A judgment or order determining paternity shall contain all of the following provisions;

- (a) An adjudication of the paternity of the child.
- (b) A determination of the custody and physical placement of the child with each party pursuant to s. 767.24 *amend 767.24(1)*
- (c) An order requiring either or both of the parents to contribute to 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 pursuant to s. 767.25. *amend 767.25(1)(intro.)*
- (d) A determination as to which parent shall have the right to claim the child as an exemption for purposes of state income tax returns pursuant to s. 767.25(1)(b) and for the purposes of federal income tax returns to the extent permitted by federal law. *Should need*
- (e) The father to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth, based upon the father's ability to pay or contribute to such expenses. *(not use father/mother)*
- (f) Either party to pay or contribute to the costs of genetic tests, guardian ad litem fees, and other costs. Contributions to the costs of genetic tests shall be paid to the county which paid for the genetic tests. *767.48(5)??*

anyway  
to make  
gender neutral

*767.48(5)??  
is in 767.51(3) now*

*key*

too many x-refs + delete (3m) ?

(g) Either party to pay or contribute to the attorney fees of the other.

(4) Sec. 767.25 (1) through (4) and (6) and (7) apply to all support judgments and orders under s. 767.51

(5) In no event shall there be liability for past support prior to the birth of the child. Liability for past support shall be limited to the period after the date of filing an action under s. 767.51 unless a party can show any one of the following and, after the inducement for delay has ceased to operate, the party has not unreasonably delayed filing:

additional

(a) Duress or threats.

(b) Actions, promises, or representations by the father upon which the mother relied, which caused the mother to delay filing.

(c) Actions taken by the father to evade paternity proceedings.

- delete present statutes 767.51(4) through (5p) -  
amend (6)

why keep (3m) + not use 767.25 (4m)?

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

(1) Access to the record of any pending court ~~or past~~ proceeding involving the paternity of the same child shall be allowed to all of the following: (a) through (c) follow in the statutes.

(2) The clerk of circuit court shall provide information from court records to the department under s.59.40 (2) (p)

(3) Subject to s.767. 19, the records of any past proceeding in which paternity was established are open to public inspection under ss.19.31 to 19.39

**767.62**

**(4) ORDERS WHEN PATERNITY ACKNOWLEDGED.**

(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 shall make an order that contains the following provisions:

(1) A determination of the custody and physical placement of the child with each party pursuant to S. 767.24.

✓ (2) *An order requiring either or both of the parents to contribute to 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 pursuant to s. 767.25.*

✓ (3) *A determination as to which parent shall have the right to claim the child as an exemption for purposes of state income tax returns pursuant to s. 767.25 (1) (b) and for the purposes of federal income tax returns to the extent permitted by federal law.*

✓ (4) *The father to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth, based upon the father's ability to pay or contribute to such expenses.*

✓ (5) *Either party to pay or contribute to guardian ad litem fees and other costs.*

✓ (6) *Either party to pay or contribute to the attorney fees of the other.*

(b) and (c) - these provisions remain the same -

✓ (e) *Sec. 767.25 (1) through (4) and (6) and (7) apply to all support judgments and orders under 3. 767.62.*

(f) *In no event shall there be liability for past support prior to the birth of the child., Liability for past support shall be limited to the period after the date of filing an action under 5. 767.62, unless a party can show any one of the following, and, after the inducement for delay has ceased to operate, the party has not unreasonably delayed filing:*

(1) *Duress or threats.*

(2) *Actions, promises, or representations by the father; upon relied, which caused the mother to delay filing.*

(3) *Actions taken by the father to evade paternity proceedings.*

- delete present statutes 767.62 (d) through (g) -

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MEMORANDUM

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**DATE:** 6/24/99  
**TO:** Interested Persons  
**FROM:** Dan Rossmiller, Chief of Staff  
Office of State Senator Gary R. George  
**RE:** Substitute Amendment to Senate Bill 107

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**Background**

The proposed substitute amendment includes provisions suggested by the State Bar of Wisconsin Family Law Section, the Wisconsin Family Court Commissioner's Association, and various divorced parents' advocacy groups, among others. It stems from a proposal initially put forward by the State Bar's Family Law Section and subsequently modified as the result of consultations with various groups and individuals. In concept, the provisions of the substitute amendment have been agreed to by representatives of the Family Law Section; however, drafting has not yet been completed at the time of this writing. This memo outlines an understanding as to the changes to current law that are to be made by the substitute amendment.

**Legal Custody**

The substitute amendment changes how legal custody is determined in an annulment, divorce, legal separation or custody action and requires paternity orders to determine (legal custody and placement.) Under the substitute amendment, the court must base its decision on the best interest of the child (as under current law) after considering the specified factors, but the court must presume that joint legal custody is in the child's best interest.

The court may give sole legal custody to one party only if both parties agree to it or if at least one party requests it and the court finds two or more of the following: 1) that one party is not capable of performing parental duties and responsibilities or does not wish to have an active role in raising the child; 2) that one or more conditions exist that would substantially interfere with the exercise of joint custody; or 3) that the parties will not be able to cooperate in future decision making required for joint legal custody.

Evidence of abuse of the child or interspousal battery or domestic abuse still creates a rebuttable presumption that the parties will not be able to cooperate in future decision making, but the substitute amendment removes the language specifying that the presumption may be rebutted by clear and convincing evidence that the abuse will not interfere with the parties' ability to cooperate, leaving it to the judge to determine what evidence rebuts the presumption.

In addition, the substitute amendment provides that the court may not give sole custody to a party who unreasonably refuses to cooperate with the other party.

## **Physical Placement**

Under the substitute amendment, the court, when allocating physical placement, still considers the same factors that the court considers for a legal custody determination; however, the court is required to “set a placement schedule that allows the child to have regularly occurring, meaningful periods of physical placement with each parent and that maximizes the amount of time that a child may spend with each parent, taking into account geographic separation and accommodations for different households.”

The bill adds the following factors for the court to consider: 1) the age of the child and the child’s developmental and educational needs at different ages; 2) the cooperation and communication between the parties and whether a party unreasonably refuses to cooperate or communicate; 3) the amount and quality of time that each parent has spent with the child in the past, necessary changes to each parent’s custodial roles brought about by the divorce, and any reasonable life-style changes that a parent proposes to make to be able to spend time with the child in the future; 4) the need for regularly occurring and meaningful periods of physical placement to provide predictability and stability for the child; 5) the right of the child to spend the same periods of time or substantial periods of time with each parent.

The bill also amends the existing factor for the court to consider in s. 767.24 (5) (a), Stats., to read as follows: “The wishes of the child’s parent or parents as shown by any stipulation, proposed parenting plan or legal custody/physical placement proposal submitted to the court.”

The substitute amendment encourages the parties to reach a voluntary agreement with respect to physical placement by providing that the court shall presume that any proposal with respect to physical placement that has been voluntarily agreed to by the parties is in the best interest of the child.

## **Guardians Ad Litem**

The substitute amendment provides that the court is not required to appoint a guardian ad litem under certain circumstances in actions to revise or modify legal custody or physical placement. The court is not required to appoint a guardian ad litem if the legal custody or physical placement is contested in an action affecting the family to modify legal custody or physical placement if: a) the modification sought would not substantially alter the amount of time that a parent could spend with his or her child and b) if the court determines that the either the facts or circumstances make the likely determination so clear that the appointment of a guardian ad litem would not assist the court or that a party seeks the appointment of a guardian ad litem solely for a tactical purpose or for delay.

## **Application of the Changes in 767.24 to Temporary Orders and to Revisions of Custody and Temporary Orders**

The substitute amendment requires that all temporary orders regarding legal custody or physical placement and all revisions of legal custody and physical placement orders be consistent with 767.24, Stats., and further requires that the factors under s. 767.24 (5), Stats., be applied in all actions to establish temporary orders regarding legal custody or physical placement and in all actions to revise legal custody and physical placement orders. (See sections above for a discussion of the changes to the factors the court must consider and to the changes affecting the setting of physical placement schedules.)

A judge or family court commissioner may make a temporary order before a guardian ad litem is appointed or before a guardian ad litem has made a recommendation to the court, if the court determines that the temporary order is in the best interest of the child.

### **Parenting Plans**

The substitute amendment creates new language to provide that no contested initial determination on the issue of legal custody or physical placement may be tried until a parenting plan has been filed by the party seeking legal custody (joint or sole) or disputing the other parent's plan for primary or alternate placement. The plan must be filed before a pretrial conference is allowed.

(The intent here is that not every couple with an agreement would also have to file a plan but that an initial determination by a trial court of contested custody issues should not proceed or be scheduled for a final hearing unless the disputing parents have done the work of preparing a parenting plan.)

The parenting plan must provide the following information/address the following questions:

- Where does the parent live and intend to live for the next two years?
- What placement is the parent seeking?
- Where does the parent work and during what hours?
- Who will provide an necessary third-party child care and who will pay for it?
- Where will the child go to school?
- Who will the child's doctor be?
- Will the child have a religious commitment; if so what is it?
- Who will pay for the child's medical care—insurance and uninsured medical expenses?
- Who will make decisions about education, medical care, choice of child care providers and extracurricular activities? How does the parent propose to resolve disagreements if the order is for joint decision making but the parents have a major dispute?
- What will the child support, family support, maintenance or other income transfer be?

The substitute amendment also provides that in post-judgment modification actions, the court may require any person seeking to substantially modify an existing order to file a plan before the court hears evidence on the motion.

### **Separation Adjustment Class**

The substitute amendment creates new language to allow the courts to require parties to a divorce or paternity action attend a court-approved class regarding child development, family dynamics and how parental separation affects a child's development and what parents can do to make raising a child in a separated situation less stressful for the child.

(The final language has not yet been drafted on this but the intent it that it be drafted so that it will not permit a respondent who doesn't want a divorce to delay the divorce by refusing to attend the class. One suggestion is that this could be effectuated by providing that the party who refuses to attend cannot have his/her custody or placement motion heard. A waiver for indigent parents or a provision for paying the fee for parents who are indigent are options being considered for inclusion in the final draft.)

## **Enforcement of Placement Orders**

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

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

At the conclusion of the hearing, if the judge or family court commissioner finds that the respondent has intentionally and unreasonably denied or interfered with one or more of the petitioner's periods of physical placement, the judge or family court commissioner may do any of the following: 1) issue an order granting additional periods of physical placement to replace those denied or interfered with; 2) issue an order specifying times for the exercise of periods of physical placement if the original order or judgment does not specify times; 3) find the respondent in contempt of court; or 4) grant an injunction ordering the respondent to strictly comply with the judgment or order relating to the award of physical placement. The judge or family court commissioner may not modify an original order of legal custody or physical placement in an action to enforce a physical placement order.

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

Under the substitute amendment, any injunction issued ordering the respondent to strictly comply with the judgment or order relating to the award of physical placement is effective for not more than two years. The court or family court commissioner, upon request by the petitioner, must order the sheriff to assist the petitioner to execute or serve the injunction. Within 24 hours after the petitioner's request, the clerk of court must send a copy of the injunction to the sheriff or to any other local law enforcement agency that is the central repository for orders and that has jurisdiction over the respondent's residence. If the respondent resides outside of Wisconsin, the clerk of court must send a copy of the injunction to the sheriff of the county in which the court is located. The sheriff must make available to other law enforcement agencies information on the existence and status of any injunction issued. The substitute amendment also provides that a law enforcement officer may arrest and take a person into custody if the petitioner presents a law enforcement officer with a copy of the injunction and the law enforcement officer has probable cause to believe that the person against whom the injunction is issued has violated the injunction.

A violation of the injunction is punishable by a fine of not more than \$10,000 or imprisonment for not more than two years or both.

Under the substitute amendment, in all actions to enforce a physical placement order judge or family court commissioner shall order the party who does not prevail to pay a reasonable amount to the prevailing party for the cost of maintaining an action and for attorney fees.

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

### **Moving a Child**

The substitute amendment adds (in s. 767.327 (5), Stats.) a new factor that the court may consider, in determining whether to grant a modification of legal custody and physical placement or whether to issue an order prohibiting the move. The court may consider “the child’s adjustment to the home, school, religion and community.” (The wording of this factor would be the same as the factor in s. 767.24 (5) (d), Stats.)

### **Child Support**

The substitute amendment reduces the interest rate on child support arrearages from the current 1.5% per month to 1% per month. The substitute amendment also makes a number of changes regarding child support in paternity cases. These changes are described in the section below.

### **Paternity**

The substitute amendment requires that temporary orders issued as the result of a genetic testing contain certain provisions which currently are optional and further requires that such orders provide for the custody and physical placement of the child. Under the substitute amendment, if at any time during the pendency of an action to establish the paternity of a child, genetic tests show that the alleged father’s percentage is 99.0% or higher, on the motion of a party, the court or family court commissioner must make just and reasonable temporary orders for the payment of child support, assigning responsibility for and directing the manner of payment of the child’s health care expenses and for custody and placement of the child.

The substitute amendment establishes new requirements regarding what must be contained in a paternity judgment or order or an order when paternity is acknowledged. In the case of a judgment or order determining paternity under s. 767.51, the judgment or order must contain the following: (a) an adjudication of the paternity of the child; (b) a determination of the custody and physical placement of the child with each party pursuant to s. 767.24; (c) an order requiring either or both of the parents to contribute to 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 pursuant to s. 767.25; (d) a determination as to which parent shall have the right to claim the child as a exemption for purposes of state income tax returns and for the purposes of federal income tax returns to the extent permitted by federal law; (e) provisions that the father pay or contribute to the reasonable expenses related to the mother’s pregnancy and the child’s birth, based upon the father’s ability to pay or contribute to such expenses; (f) provisions that either

party pay or contribute to the costs of genetic tests, guardian ad litem fees, and other costs; (Contributions to the costs of genetic tests shall be paid to the county which paid for the genetic tests.) and (g) provisions that the either party pay or contribute to the attorney fees of the other.

In the case of a voluntary acknowledgement of paternity, 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 shall make an order that contains the following: (a) a determination of the custody and physical placement of the child with each party pursuant to s. 767.24; (b) an order requiring either or both of the parents to contribute to 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 pursuant to s. 767.25; (c) a determination as to which parent shall have the right to claim the child as a exemption for purposes of state income tax returns and for the purposes of federal income tax returns to the extent permitted by federal law; (d) provisions that the father pay or contribute to the reasonable expenses related to the mother's pregnancy and the child's birth, based upon the father's ability to pay or contribute to such expenses; (e) provisions that either party pay or contribute to guardian ad litem fees, and other costs; and (f) provisions that the either party pay or contribute to the attorney fees of the other.

The substitute amendment repeals current sections 767.51 (4) through (5p), Stats., which relate specifically to the determination of child support payments in paternity orders or judgments under s. 767.51. The substitute amendment also repeals current sections 767.62 (4) (d) through (g), Stats., which relate specifically to the determination of child support payments in orders when paternity is acknowledged under s. 767.62. Under the substitute amendment, child support would be determined by applying the provisions in 767.25 regarding child support to all support judgments and orders in paternity cases under 767.51 or orders when paternity is acknowledged under s. 767.62. Currently, the provisions in 767.25 regarding child support are applicable only to judgments of annulment, divorce or legal separation, orders or judgments for child support or for period family support payments, child support stipulations or actions to compel support. The substitute amendment makes the provisions in 767.25, with the exception of s. 767.25(5), Stats., applicable to all support judgments and orders issued under s. 767.51 or orders issued under s. 767.62. (Note: s. 767.25 (5), Stats., limits liability for past support to the period after the birth of the child.)

Under the substitute amendment, liability for past support in paternity actions shall be limited to the period after the date of filing an action under ss. 767.51 or 767.62 unless a party can show any one of the following: (a) duress or threats; (b) actions, promises or representations by the father upon which the mother relied, which caused the mother to delay filing; or (c) actions taken by the father to evade paternity proceedings and, after the inducement for delay has ceased to operate, the party has not unreasonably delayed filing. The substitute amendment provides that in no event shall there be liability for past support prior to the birth of the child.

#### **Legislative Council Studies—Non-Statutory Provisions**

1. The substitute amendment provides for a Legislative Council Study on the "Reform of the Guardian Ad Litem System in Actions Affecting the Family" to examine the following topics:

--The appointment of guardians ad litem, including the questions of whether: a) the appointment of guardians ad litem should be mandatory in all cases where the legal custody or physical placement of the child is contested; and b) non-attorney professionals such as child psychologists,

---

child psychiatrists, or child therapists with specialized training and expertise regarding the emotional and developmental phases and needs of children should be allowed to serve as guardians ad litem.

--The role of guardians ad litem;

--The supervision of guardians ad litem;

--The training of guardians ad litem; and

--The compensation of guardians ad litem.

The study committee shall include legislators, attorneys, judges and court commissioners, mental health professionals and lay persons and will be charged with creating recommendations and a petition to the Supreme Court for reform of the guardian ad litem system.

2. The substitute amendment also provides for a Legislative Council Study on the "Reform of Paternity Law."

The study committee should examine all aspects of paternity law, including determinations of child support, legal custody, periods of physical placement and other related issues. As one of its primary purposes, the study committee should compare paternity laws with marital laws to see where they could or should be harmonized.

#### **Delayed Effective Date**

These provisions would take effect six months after the bill is signed into law. This is intended to allow judges, family court commissioners and attorneys to familiarize themselves with the new law and to develop courses as well as forms and other materials to implement the new provisions.

1999

Date (time) needed today

LRB b 1453 / 1

CAUCUS BUDGET AMENDMENT  
[ONLY FOR CAUCUS]

DK : Kg :

See form AMENDMENTS — COMPONENTS & ITEMS.

CAUCUS AMENDMENT  
TO ASSEMBLY SUBSTITUTE AMENDMENT 1  
TO 1999 ASSEMBLY BILL 133

>>FOR CAUCUS SUPERAMENDMENT — NOT FOR INTRODUCTION<<

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

#. Page 414, line 21: after that line insert:

Insert 5-1

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

WFO:  
~~NOTE~~  
cut components.

**BILL**

placement of a child is contested in an action affecting the family to modify legal custody or physical placement if the modification sought would not substantially alter the amount of time that a parent could spend with his or her child and if the court determines either that the facts or circumstances make the likely determination so clear that the appointment of a guardian ad litem would not assist the court or that a party seeks the appointment of a guardian ad litem solely for a tactical purpose or for delay.

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

Insert  
5-1

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

# Page 1409, line 4: after that line insert:

①

SECTION ~~7~~<sup>305/n</sup> 767.045 (1) (a) 2. of the statutes is amended to read:

2

767.045 (1) (a) 2. The Except as provided in par. (am). the legal custody or

3

physical placement of the child is contested.

4

SECTION ~~2~~<sup>305/no</sup> 767.045 (1) (am) of the statutes is created to read:

5

767.045 (1) (am) The court is not required to appoint a guardian ad litem under

6

par. (a) 2. if all of the following apply:

7

1. Legal custody or physical placement is contested in an action to modify legal

8

custody or physical placement under s. 767.325 or 767.327.

9

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

10

11

3. The court determines any of the following:

12

a. That the appointment of a guardian ad litem will not assist the court in the

13

determination regarding legal custody or physical placement because the facts or circumstances of the case make the likely determination clear.

14

15

b. That a party seeks the appointment of a guardian ad litem solely for a tactical

16

purpose, or for the sole purpose of delay, and not for a purpose that is in the best

17

interest of the child.

BILL

1

SECTION <sup>3051p</sup> 767.045 (1) (e) of the statutes is created to read:

2

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

3

SECTION <sup>3054cd</sup> 767.11 (12) (b) of the statutes is amended to read:

4

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

5

SECTION <sup>3054cg</sup> 767.23 (1) (a) of the statutes is amended to read:

6

767.23 (1) (a) Subject to s. 767.477, upon request of one party, granting legal custody of the minor children to the parties jointly, to one party solely or to a relative or agency specified under s. 767.24 (3). The court or family court commissioner may order joint sole legal custody without the agreement of the other party and without the findings required under s. 767.24 (2) (b) 2. This order may not have a binding effect on a final custody determination.

7

in a manner consistent with  
s. 767.24, except that the

Insert 6-6

81-9-18

BILL

Insert 7-1 → 3054ck

① SECTION 5. 767.23 (1n) of the statutes is amended to read:

2 767.23 (1n) Before making any temporary order under sub. (1), the court or  
3 family court commissioner shall consider those factors ~~which~~ that the court is  
4 required by this chapter to consider before entering a final judgment on the same  
5 subject matter. In making a determination under sub. (1) (a) or (am), the court or  
6 family court commissioner shall consider the factors under s. 767.24 (5). If the court  
7 or family court commissioner makes a temporary child support order that deviates  
8 from the amount of support that would be required by using the percentage standard  
9 established by the department under s. 49.22 (9), the court or family court  
10 commissioner shall comply with the requirements of s. 767.25 (1n). A temporary  
11 order under sub. (1) may be based upon the written stipulation of the parties, subject  
12 to the approval of the court or the family court commissioner. Temporary orders  
13 made by the family court commissioner may be reviewed by the court as provided in  
14 s. 767.13 (6).

Insert 7-14

⑮ SECTION 5. 767.24 (2) (a) of the statutes is amended to read:

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

⑲ SECTION 5. 767.24 (2) (am) of the statutes is created to read:

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

⑳ SECTION 5. 767.24 (2) (b) of the statutes is amended to read:

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

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

**BILL**

1           2. The parties do not agree to joint sole legal custody with the same party, but  
2     at least one party requests joint sole legal custody and the court specifically finds all  
3     2 or more of the following:

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

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

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

18           SECTION ~~10.~~ <sup>3054CQ</sup> 767.24 (2) (c) of the statutes is created to read:

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

22           SECTION ~~11.~~ <sup>3054CV</sup> 767.24 (4) (a) of the statutes is <sup>remembered 767.24(4)(a) 1. and</sup> amended to read:

23           767.24 (4) (a) <sup>1.</sup> Except as provided under par. (b), if the court orders sole or joint  
24     legal custody under sub. (2), the court shall allocate periods of physical placement  
25     between the parties in accordance with this subsection. <sup>412.</sup> In determining the

**BILL**

Insert 7-6

changes to the parents' custodial roles made necessary by the divorce

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

7

SECTION ~~7~~. 767.24 (5) (intro.) of the statutes is amended to read:

3054 cu

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

16

SECTION ~~7~~. 767.24 (5) (a) of the statutes is amended to read:

3054 cv

17

767.24 (5) (a) The wishes of the child's parent or parents, as shown by

any

18

stipulation between the parties ~~proposal~~ proposal submitted to the court at trial.

19

SECTION ~~14~~. 767.24 (5) (cm) of the statutes is created to read:

3054 cx

20

767.24 (5) (cm) The amount and quality of time that each parent has spent with

21

the child in the past and any reasonable life-style changes that a parent proposes

22

to make to be able to spend time with the child in the future.

23

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

3054 cy

24

767.24 (5) (dm) The age of the child and the child's developmental and

25

educational needs at different ages.

Insert 9-18

any proposed parenting plan or any legal custody or physical placement

**BILL**

*Insert 10-1* →

*3054d*

① SECTION ~~16~~. 767.24 (5) (fm) of the statutes is created to read:

2 767.24 (5) (fm) The cooperation and communication between the parties and  
3 whether either party unreasonably refuses to cooperate or communicate with the  
4 other party.

*3054dc*

⑤ SECTION ~~17~~. 767.24 (5) (g) of the statutes is amended to read:

6 767.24 (5) (g) Whether each party can support the other party's relationship  
7 with the child, including encouraging and facilitating frequent and continuing  
8 contact with the child, or whether one party is likely to unreasonably interfere with  
9 the child's continuing relationship with the other party.

*3054dd*

⑩ SECTION ~~18~~. 767.24 (5) (jm) of the statutes is created to read:

11 767.24 (5) (jm) The reports of appropriate professionals if admitted into  
12 evidence.

*3054de*

⑬ SECTION ~~19~~. 767.242 of the statutes is created to read:

14 **767.242 Enforcement of physical placement orders. (1) DEFINITIONS.** In  
15 this section:

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

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

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

**BILL**

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

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

5           (c) The parent has incurred a financial loss or expenses as a result of the other  
6 parent's intentional failure to exercise one or more periods of physical placement  
7 under an order allocating specific times for the exercise of periods of physical  
8 placement.

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

10           1. The name of the petitioner and that the petitioner has been awarded periods  
11 of physical placement.

12           2. The name of the respondent.

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

14           (b) The petition shall request the imposition of a remedy or any combination  
15 of remedies under sub. (5) (b). This paragraph does not prohibit a judge or family  
16 court commissioner from imposing a remedy under sub. (5) (b) if the remedy was not  
17 requested in the petition.

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

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

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

24           **(4) SERVICE ON RESPONDENT; RESPONSE.** Upon the filing of a petition under sub.  
25 (3), the petitioner shall serve a copy of the petition upon the respondent. The

**BILL**

1 respondent may respond to the petition either in writing before or at the hearing  
2 under sub. (5) (a) or orally at that hearing.

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

10 (b) At the conclusion of the hearing, the judge or family court commissioner  
11 may do any of the following:

12 1. If the judge or family court commissioner finds that the respondent has  
13 intentionally and unreasonably denied the petitioner one or more periods of physical  
14 placement or that the respondent has intentionally and unreasonably interfered  
15 with one or more of the petitioner's periods of physical placement, do one or more of  
16 the following:

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

19 b. If the underlying order or judgment relating to periods of physical placement  
20 does not provide for specific times for the exercise of periods of physical placement,  
21 issue an order specifying the times for the exercise of periods of physical placement.

22 c. Find the respondent in contempt of court under ch. 785.

23 d. Grant an injunction ordering the respondent to strictly comply with the  
24 judgment or order relating to the award of physical placement. In determining  
25 whether to issue an injunction, the judge or family court commissioner shall consider

**BILL**

1 whether alternative remedies requested by the petitioner would be as effective in  
2 obtaining compliance with the order or judgment relating to physical placement.

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

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

13 (d) The judge or family court commissioner shall award the prevailing party  
14 a reasonable amount for the cost of maintaining an action under this section and for  
15 attorney fees.

16 (e) An injunction issued under par. (b) 1. d. is effective according to its terms,  
17 for the period of time that the petitioner requests, but not more than 2 years.

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

21 (b) Within 24 hours after a request by the petitioner, the clerk of the circuit  
22 court shall send a copy of an injunction issued under sub. (5) (b) 1. d. to the sheriff  
23 or to any other local law enforcement agency that is the central repository for orders  
24 and that has jurisdiction over the respondent's residence. If the respondent does not

**BILL**

1 reside in this state, the clerk shall send a copy of the injunction to the sheriff of the  
2 county in which the circuit court is located.

3 (c) The sheriff or other appropriate local law enforcement agency under par. (b)  
4 shall make available to other law enforcement agencies, through a verification  
5 system, information on the existence and status of any injunction issued under sub.  
6 (5) (b) 1. d. The information need not be maintained after the injunction is no longer  
7 in effect.

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

10 (a) A petitioner under this section presents the law enforcement officer with a  
11 copy of an injunction issued under sub. (5) (b) 1. d. or the law enforcement officer  
12 determines that such an injunction exists through communication with appropriate  
13 authorities.

14 (b) The law enforcement officer has probable cause to believe that the person  
15 has violated the injunction issued under sub. (5) (b) 1. d.

16 (8) PENALTY. Whoever intentionally violates an injunction issued under sub.  
17 (5) (b) 1. d. may be fined not more than \$10,000 or imprisoned for not more than 2  
18 years or both.

*Insert 14-18*

19 SECTION ~~20~~ 767.325 (2m) of the statutes is created to read:

20 767.325 (2m) MODIFICATION OF PERIODS OF PHYSICAL PLACEMENT FOR FAILURE TO  
21 EXERCISE PHYSICAL PLACEMENT. Notwithstanding subs. (1) and (2), upon petition,  
22 motion or order to show cause by a party, a court may modify an order of physical  
23 placement at any time with respect to periods of physical placement if it finds that  
24 a parent has repeatedly and unreasonably failed to exercise periods of physical

*3065CJ*

**BILL**

3065CK

1 placement awarded under an order of physical placement that allocates specific  
2 times for the exercise of periods of physical placement.

3 **SECTION 21.** 767.325 (5m) of the statutes is created to read:

4 767.325 (5m) FACTORS TO CONSIDER. In all actions to modify legal custody or  
5 physical placement orders, the court shall consider the factors under s. 767.24 (5) ~~and~~

6 ~~making its determination~~ and shall make its determination  
7 <sup>3065CK</sup> in a manner consistent with s. 767.24  
8 **SECTION 22.** 767.327 (4) of the statutes is amended to read:

9 767.327 (4) GUARDIAN AD LITEM; PROMPT HEARING. After a petition, motion or  
10 order to show cause is filed under sub. (3), the court shall appoint a guardian ad litem,  
11 unless s. 767.045 (1) (am) applies, and shall hold a hearing as soon as possible.

12 **SECTION 23. Initial applicability.**

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

16 **SECTION 24. Effective date.**

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

(END)

Insert 15-6

Insert 15-10

Insert 15-17

1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBb1453/?ins  
PJK.....

INSERT 5-1

① " SECTION ~~20.921~~ <sup>645L</sup> 20.921 (2) (a) of the statutes is amended to read:

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

NOTE: 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). NOTE:

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 (2) (d); 1987  
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).

⑩ " SECTION ~~66.184~~ <sup>1617r</sup> 66.184 of the statutes is amended to read:

11 **66.184 Self-insured health plans.** If a city, including a 1st class city, or a  
12 village provides health care benefits under its home rule power, or if a town provides  
13 health care benefits, to its officers and employes on a self-insured basis, the  
14 self-insured plan shall comply with ss. 49.493 (3) (d), 631.89, 631.90, 631.93 (2),  
15 632.746 (10) (a) 2. and (b) 2., 632.747 (3), 632.85, 632.853, 632.855, 632.87 (4) and (5),  
16 632.895 (9) to (13), 632.896, and 767.25 (4m) (d), ~~767.51 (3m) (d) and 767.62 (4) (b)~~  
17 4. "

History: 1989 a. 201, 359; 1991 a. 39, 269; 1993 a. 246, 450, 481, 491; 1995 a. 289; 1997 a. 27, 135, 191, 237.

⑪ " SECTION ~~102.27~~ <sup>2002c</sup> 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),  
20 301.12 (14) (e), 767.23 (1) (L), 767.25 (4m) (c), or 767.265 (1), ~~767.51 (3m) (e) or 767.62~~ <sup>or (2m) ← plain</sup>  
21 (4) (b) 3. "

History: 1981 c. 20, 391; 1983 a. 27, 192; 1985 a. 83; 1989 a. 64; 1993 a. 481; 1997 a. 191, 237.

⑫ " SECTION ~~120.13~~ <sup>2124r</sup> 120.13 (2) (g) of the statutes is amended to read:

#. Page 1079, line 11: after that line insert:  
#. Page 785, line 13: after that line insert:  
#. Page 1121, line 18: after that line insert:

#. Page 1402, line 19: after that line insert:

1 120.13 (2) (g) Every self-insured plan under par. (b) shall comply with ss.  
2 49.493 (3) (d), 631.89, 631.90, 631.93 (2), 632.746 (10) (a) 2. and (b) 2., 632.747 (3),  
3 632.85, 632.853, 632.855, 632.87 (4) and (5), 632.895 (9) to (13), 632.896, and 767.25  
4 (4m) (d), ~~767.51 (3m) (d) and 767.62 (4) (b) 4.~~ )

4

History: 1973 c. 94, 290; 1975 c. 115, 321; 1977 c. 206, 211, 418, 429; 1979 c. 20, 202, 221, 301, 355; 1981 c. 96, 314, 335; 1983 a. 27, 193, 207, 339, 370, 518, 538; 1985 a. 29 ss. 1725e to 1726m, 1731; 1985 a. 101, 135, 211; 1985 a. 218 ss. 12, 13, 22; 1985 a. 332; 1987 a. 88, 187; 1989 a. 31, 201, 336, 359; 1991 a. 39, 226, 269; 1993 a. 16, 27, 284, 334, 399, 450, 481, 491; 1995 a. 27 ss. 4024, 9126 (19), 9145 (1); 1995 a. 29, 32, 33, 65, 75, 225, 235, 289, 439; 1997 a. 27, 155, 164, 191, 237, 335.

3025r

5

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

6 565.30 (5m) WITHHOLDING OF CHILD SUPPORT, SPOUSAL SUPPORT, MAINTENANCE OR  
7 FAMILY SUPPORT. The administrator shall report to the department of workforce  
8 development the name, address and social security number of each winner of a  
9 lottery prize that is payable in instalments. Upon receipt of the report, the  
10 department of workforce development shall certify to the administrator whether any  
11 payee named in the report is obligated to provide child support, spousal support,  
12 maintenance or family support under s. 767.02 (1) (f) or (g), 767.10, 767.23, 767.25,  
13 767.26, 767.261, 767.458 (3), 767.465 (2m), 767.477, 767.51 (3), 767.62 (4) (a) or  
14 948.22 (7) or ch. 769 and the amount required to be withheld from the lottery prize  
15 under s. 767.265. The administrator shall withhold the certified amount from each  
16 payment made to the winner and remit the certified amount to the department of  
17 workforce development. )

17

3044L

History: 1987 a. 119, 399; 1989 a. 31; 1989 a. 56 s. 259; 1989 a. 359; 1991 a. 269; 1993 a. 16, 481; 1995 a. 27 ss. 6981j, 6981k, 9126 (19); 1995 a. 225, 404; 1997 a. 3, 27, 35; 1997 a. 148 ss. 3 to 5; 1997 a. 191.

18

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

19 632.897 (10) (a) 3. The fact that the group member or insured does not claim  
20 the child as an exemption for federal income tax purposes under 26 USC 151 (c) (1)  
21 (B), or as an exemption for state income tax purposes under s. 71.07 (8) (b) or under  
22 the laws of another state, if a court order under s. 767.25 (4m), ~~767.51 (3m) or 767.62~~

22

#. Page 1406, line 3: after that line insert:

1 (4) ~~(b)~~ or the laws of another state assigns responsibility for the child's health care  
2 expenses to the group member or insured. )) -

History: 1979 c. 285, 355; 1981 c. 41; 1983 a. 27, 274; 1985 a. 29; 1987 a. 287, 413; 1989 a. 31; 1993 a. 481; 1995 a. 27 s. 9126 (19); 1995 a. 201; 1997 a. 27, 191, 237.  
(END OF INSERT 5-1)

NOW GO TO BASE DRAFT (LRB-2884/1)

INSERT 6-6

#. Page 1409, line 12: after that line insert:

3 SECTION ~~7~~ <sup>3051r</sup> 767.078 (1) (a) 1. of the statutes is amended to read:

4 767.078 (1) (a) 1. Is an action for modification of a child support order under  
5 s. 767.32 or an action in which an order for child support is required under s. 767.25

6 (1), 767.51 (3) or 767.62 (4) ~~(a)~~. ))

History: 1987 a. 27; 1991 a. 39; 1993 a. 16; 1995 a. 27 ss. 7098, 7098e, 9130 (4); 1995 a. 289, 404; 1997 a. 105, 191.

7 (( SECTION ~~7~~ <sup>3054c</sup> 767.078 (2) of the statutes is amended to read:

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

History: 1987 a. 27; 1991 a. 39; 1993 a. 16; 1995 a. 27 ss. 7098, 7098e, 9130 (4); 1995 a. 289, 404; 1997 a. 105, 191  
(END OF INSERT 6-6)

INSERT 6-18

12 SECTION ~~7~~ <sup>3054ce</sup> 767.115 (title) of the statutes is amended to read:

13 767.115 (title) Educational program in action programs and classes in  
14 actions affecting the family.

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

15 SECTION ~~7~~ <sup>3054cf</sup> 767.115 (4) of the statutes is created to read:

16 767.115 (4) (a) At any time during the pendency of a divorce or paternity action,  
17 the court or family court commissioner may order the parties to attend a class that  
18 is approved by the court or family court commissioner and that addresses such issues

1 as child development, family dynamics, how parental separation affects a <sup>g</sup>child's  
2 development and what parents can do to make raising a child in a separated  
3 situation less stressful for the child.

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

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

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

(END OF INSERT 6-18)

INSERT 7-1

13 <sup>3054ch</sup> SECTION ~~3~~. 767.23 (1) (am) of the statutes is amended to read:  
14 767.23 (1) (am) ~~Upon~~ Subject to s. 767.477, upon the request of a party,  
15 granting periods of physical placement to a party in a manner consistent with s.  
16 767.24. The court or family court commissioner shall make a determination under  
17 this paragraph within 30 days after the request for a temporary order regarding  
18 periods of physical placement is filed.

19 <sup>3054ci</sup> SECTION ~~4~~. 767.23 (1) (c) of the statutes is amended to read:  
20 767.23 (1) (c) ~~Requiring~~ Subject to s. 767.477, requiring either party or both  
21 parties to make payments for the support of minor children, which payment amounts  
22 may be expressed as a percentage of parental income or as a fixed sum, or as a

1 combination of both in the alternative by requiring payment of the greater or lesser  
2 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.

3 SECTION ~~7~~<sup>3054cj</sup>. 767.23 (1) (k) of the statutes is amended to read:

4 767.23 (1) (k) Requiring Subject to s. 767.477, requiring either party or both  
5 parties to maintain minor children as beneficiaries on a health insurance policy or  
6 plan.

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 INSERT 7-1)

INSERT 7-14

7 SECTION ~~7~~<sup>3054cL</sup>. 767.24 (1) of the statutes is amended to read:

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

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.

13 SECTION ~~7~~<sup>3054cm</sup>. 767.24 (1m) of the statutes is created to read:

14 767.24 (1m) PARENTING PLAN. In an action for annulment, divorce or legal  
15 separation, an action to determine paternity or an action under s. 767.02 (1) (e) or  
16 767.62 (3) in which legal custody or physical placement is contested, a party seeking  
17 sole or joint legal custody or periods of physical placement shall file a parenting plan  
18 with the court before any pretrial conference may be held. A parenting plan shall  
19 provide information about the following questions:

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

1 (b) Where the parent lives currently and where the parent intends to live  
2 during the next 2 years.

3 (c) Where the parent works and the hours of employment.

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

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

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

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

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

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

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

14 (k) What child support, family support, maintenance or other income transfer  
15 there will be.

(END OF INSERT 7-14)

INSERT 9-6

16 SECTION ~~7~~ <sup>3054CS</sup> 767.24 (4) (a) 3. of the statutes is created to read:  
17 767.24 (4) (a) 3. Notwithstanding subd. 2. and sub. (5), the court shall presume  
18 that any proposal submitted to the court with respect to periods of physical  
19 placement that has been voluntarily agreed to by the parties is in the child's best  
20 interest.

21 SECTION ~~7~~ <sup>3054CT</sup> 767.24 (4) (c) of the statutes is amended to read:

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

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.

(END OF INSERT 9-6)

INSERT 9-18

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

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

(END OF INSERT 9-18)

INSERT 10-1

3054 CZ  
7 SECTION 7. 767.24 (5) (em) of the statutes is created to read:

8           767.24 (5) (em) The need for regularly occurring and meaningful periods of  
9           physical placement to provide predictability and stability for the child.

(END OF INSERT 10-1)

INSERT 14-18

3054 df  
10 SECTION 7. 767.25 (1) (intro.) of the statutes is amended to read:

11           767.25 (1) (intro.) Whenever the court approves a stipulation for child support  
12           under s. 767.10, enters a judgment of annulment, divorce or legal separation, or  
13           enters an order or a judgment in a paternity action or in an action under s. 767.02  
14           (1) (f) or (j) ~~or~~, 767.08 or 767.62 (3), the court shall do all of the following:

History: 1971 c. 157; 1977 c. 29, 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.25; 1981 c. 20; 1983 a. 27; 1985 a. 29; 1987 a. 27, 37, 355, 413; 1989 a. 31, 212; 1991 a. 39; 1993 a. 481; 1995 a. 27 ss. 7101, 7102, 9126 (19); 1995 a. 201, 279, 404; 1997 a. 27, 35, 191; s. 13.93 (2) (c).

3054 dg  
15 SECTION 7. 767.25 (1m) (b) of the statutes is amended to read:

16           767.25 (1m) (b) The financial resources of both parents ~~as determined under~~  
17           ~~s. 767.255.~~

History: 1971 c. 157; 1977 c. 29, 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.25; 1981 c. 20; 1983 a. 27; 1985 a. 29; 1987 a. 27, 37, 355, 413; 1989 a. 31, 212; 1991 a. 39; 1993 a. 481; 1995 a. 27 ss. 7101, 7102, 9126 (19); 1995 a. 201, 279, 404; 1997 a. 27, 35, 191; s. 13.93 (2) (c).

3054dh

1

~~SECTION 767.25~~ 767.25 (1m) (c) of the statutes is amended to read:

2  
3  
4

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

3054di

History: 1971 c. 157; 1977 c. 29, 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.25; 1981 c. 20; 1983 a. 27; 1985 a. 29; 1987 a. 27, 37, 355, 413; 1989 a. 31, 212; 1991 a. 39; 1993 a. 481; 1995 a. 27 ss. 7101, 7102, 9126 (19); 1995 a. 201, 279, 404; 1997 a. 27, 35, 191; s. 13.93 (2) (c).

5

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

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767.25 (4m) (b) In addition to ordering child support for a child under sub. (1), the court shall specifically assign responsibility for and direct the manner of payment of the child's health care expenses. In assigning responsibility for a child's health care expenses, the court shall consider whether a child is covered under a parent's health insurance policy or plan at the time the court approves a stipulation for child support under s. 767.10, enters a judgment of annulment, divorce or legal separation, or enters an order or a judgment in a paternity action or in an action under s. 767.02 (1) (f) or (j) ~~or~~, 767.08 or 767.62 (3), the availability of health insurance to each parent through an employer or other organization, the extent of coverage available to a child and the costs to the parent for the coverage of the child. A parent may be required to initiate or continue health care insurance coverage for a child under this subsection. If a parent is required to do so, he or she shall provide copies of necessary program or policy identification to the custodial parent and is liable for any health care costs for which he or she receives direct payment from an insurer. This subsection shall not be construed to limit the authority of the court to enter or modify support orders containing provisions for payment of medical expenses, medical costs, or insurance premiums which are in addition to and not inconsistent with this subsection.

History: 1971 c. 157; 1977 c. 29, 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.25; 1981 c. 20; 1983 a. 27; 1985 a. 29; 1987 a. 27, 37, 355, 413; 1989 a. 31, 212; 1991 a. 39; 1993 a. 481; 1995 a. 27 ss. 7101, 7102, 9126 (19); 1995 a. 201, 279, 404; 1997 a. 27, 35, 191; s. 13.93 (2) (c).

3054dj

1

SECTION ~~767.25~~ 767.25 (5) of the statutes is amended to read:

2

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

3

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

History: 1971 c. 157; 1977 c. 29, 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.25; 1981 c. 20; 1983 a. 27; 1985 a. 29; 1987 a. 27, 37, 355, 413; 1989 a. 31, 212; 1991 a. 39; 1993 a. 481; 1995 a. 27 ss. 7101, 7102, 9126 (19); 1995 a. 201, 279, 404; 1997 a. 27, 35, 191; s. 13.93 (2) (c).

4

SECTION ~~767.25~~ 767.25 (6) (intro.) of the statutes is amended to read:

5

767.25 (6) (intro.) A party ordered to pay child support under this section shall

6

pay simple interest at the rate of ~~1.5%~~ 1% per month on any amount in arrears that

7

is equal to or greater than the amount of child support due in one month. If the party

8

no longer has a current obligation to pay child support, interest at the rate of ~~1.5%~~

9

1% per month shall accrue on the total amount of child support in arrears, if any.

10

Interest under this subsection is in lieu of interest computed under s. 807.01 (4),

11

814.04 (4) or 815.05 (8) and is paid to the department or its designee under s. 767.29.

12

Except as provided in s. 767.29 (1m), the department or its designee, whichever is

13

appropriate, shall apply all payments received for child support as follows:

NOTE: NOTE: Sub. (6) (intro.) is shown as repealed and recreated eff. 1-4-99 by 1997 Wis. Act 191. Prior to 1-4-99 it reads:NOTE:

14

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

15

16

17

18

(a) First, to payment of child support due within the calendar month during which the payment is received.

3054dL

History: 1971 c. 157; 1977 c. 29, 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.25; 1981 c. 20; 1983 a. 27; 1985 a. 29; 1987 a. 27, 37, 355, 413; 1989 a. 31, 212; 1991 a. 39; 1993 a. 481; 1995 a. 27 ss. 7101, 7102, 9126 (19); 1995 a. 201, 279, 404; 1997 a. 27, 35, 191; s. 13.93 (2) (c).

20

SECTION ~~767.253~~ 767.253 of the statutes is amended to read:

21

767.253 Seek-work orders. In an action for modification of a child support

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order under s. 767.32 or an action in which an order for child support is required

23

under s. 767.25 (1), 767.51 (3) or 767.62 (4) (a), the court may order either or both

24

parents of the child to seek employment or participate in an employment or training

25

program.

3054dm

History: 1989 a. 212; 1997 a. 191.

26

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

as amended by 1997 Wisconsin Act 191, Section 398,

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

History: 1991 a. 313; 1995 a. 27; 1997 a. 191.

5 SECTION 767.261 (intro.) of the statutes is amended to read:

6 767.261 Family support. (intro.) The court may make a financial order  
 7 designated "family support" as a substitute for child support orders under s. 767.25  
 8 and maintenance payment orders under s. 767.26. A party ordered to pay family  
 9 support under this section shall pay simple interest at the rate of ~~1.5%~~ 1% per month  
 10 on any amount in arrears that is equal to or greater than the amount of child support  
 11 due in one month. If the party no longer has a current obligation to pay child support,  
 12 interest at the rate of ~~1.5%~~ 1% per month shall accrue on the total amount of child  
 13 support in arrears, if any. Interest under this section is in lieu of interest computed  
 14 under s. 807.01 (4), 814.04 (4) or 815.05 (8) and is paid to the department or its  
 15 designee under s. 767.29. Except as provided in s. 767.29 (1m), the department or  
 16 its designee, whichever is appropriate, shall apply all payments received for family  
 17 support as follows: )

NOTE: NOTE: Section 767.261 (intro.) is shown as repealed and recreated eff. 1-4-99 by 1997 Wis. Act 191. Prior to 1-4-99 it reads: NOTE:

18 767.261 Family support. The court may make a financial order designated "family support" as a substitute for child support orders under s. 767.25 and maintenance  
 19 payment orders under s. 767.26. A party ordered to pay family support under this section shall pay simple interest at the rate of 1.5% per month on any amount in  
 20 arrears that is equal to or greater than the amount of child support due in one month. If the party no longer has a current obligation to pay child support, interest at  
 21 the rate of 1.5% per month shall accrue on the total amount of child support in arrears, if any. Interest under this section is in lieu of interest computed under s. 807.01  
 22 (4), 814.04 (4) or 815.05 (8) and is paid to the clerk of court or support collection designee under s. 767.29. Except as provided in s. 767.29 (1m), the clerk of court or  
 support collection designee, whichever is appropriate, shall apply all payments received for family support as follows:

History: 1977 c. 105; 1979 c. 32 ss. 50-52 (4); Stats. 1979 s. 767.261; 1983 a. 27; 1985 a. 29; 1993 a. 481; 1995 a. 279; 1997 a. 27, 191; s. 13.93 (2) (c).

24 SECTION 767.265 (1) of the statutes is amended to read:

25 767.265 (1) Each order for child support under this chapter, for maintenance  
 26 payments under s. 767.23 or 767.26, for family support under this chapter, for costs  
 27 ordered under s. 767.51 (3) or 767.62 (4) (a), for support by a spouse under s. 767.02  
 28 (1) (f) or for the annual receiving and disbursing fee under s. 767.29 (1) (g), each order for a revision

#. Page 1410, line 5: after that line insert:

as affected by 1997 Wisconsin Act 191, Section 403,  
 as affected by 1997 Wisconsin Act 191, Section 411,  
 and 1999 Wisconsin Act 11, (this order),

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

NOTE: NOTE: Sub. (1) is shown as repealed and recreated eff. 1-4-99 by 1997 Wis. Act 191. Prior to 1-4-99 it reads:NOTE:

12 (1) Each order for child support under this chapter, for maintenance payments under s. 767.23 or 767.26, for family support under this chapter, for costs ordered  
 13 under s. 767.51 (3) or 767.62 (4) (a), for support by a spouse under s. 767.02 (1) (f) or for maintenance payments under s. 767.02 (1) (g), each order for a revision in a  
 14 judgment or order with respect to child support, maintenance or family support payments under s. 767.32, each stipulation approved by the court or the family court  
 15 commissioner for child support under this chapter and each order for child or spousal support entered under s. 948.22 (7) constitutes an assignment of all commissions,  
 16 earnings, salaries, wages, pension benefits, benefits under ch. 102 or 108, lottery prizes that are payable in instalments and other money due or to be due in the future  
 17 to the clerk of court or support collection designee of the county where the action is filed. The assignment shall be for an amount sufficient to ensure payment under  
 18 the order or stipulation and to pay any arrearages due at a periodic rate not to exceed 50% of the amount of support due under the order or stipulation so long as the  
 19 addition of the amount toward arrearages does not leave the party at an income below the poverty line established under 42 USC 9902 (2).

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  
 20 27, 191.

20 " SECTION 767.265 (3h) of the statutes is amended to read:

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

#. Page 1413, line 24: after that line insert:

3061c

as amended by 1997 Wisconsin Act 191, section 415,

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

3061cd

NOTE: NOTE: Sub. (3h) is shown as repealed and recreated eff. 1-4-99 by 1997 Wis. Act 191. Prior to 1-4-99 it reads:NOTE:

800  
1453  
1008

(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.

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.

16

SECTION ~~29~~. 767.265 (4) of the statutes is amended to read:

17

767.265 (4) A withholding assignment or order under this section or s. 767.23

18

(1) (L), or 767.25 (4m) (c), 767.51 (3m) (c) or 767.62 (4) (b) 3. has priority over any other

19

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.

20

SECTION ~~29~~. 767.265 (6) (a) of the statutes is amended to read:

21

767.265 (6) (a) Except as provided in sub. (3m), if after receipt of notice of

22

assignment the person from whom the payer receives money fails to withhold the

23

money or send the money to the department or its designee or the appropriate health

24

care insurer, provider or plan as provided in this section or s. 767.23 (1) (L), or 767.25

25

(4m) (c), ~~767.51 (3m) (c) or 767.62 (4) (b) 3.~~, the person may be proceeded against

26

under the principal action under ch. 785 for contempt of court or may be proceeded

27

against under ch. 778 and be required to forfeit not less than \$50 nor more than an

3061ce

1, as affected by 1997 Wisconsin Act 191, section 420,

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

NOTE: NOTE: Par. (a) is shown as repealed and recreated eff. 1-4-99 by 1997 Wis. Act 191. Prior to 1-4-99 it reads:NOTE:

contract

(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), 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.

8 SECTION 767.265 (6) (b) of the statutes is amended to read:

9 767.265 (6) (b) If an employer who receives an assignment under this section  
10 or s. 767.23 (1) (L), or 767.25 (4m) (c), ~~767.51 (3m) (c) or 767.62 (4) (b) 3.~~ fails to notify  
11 the department or its designee, whichever is appropriate, within 10 days after an  
12 employe is terminated or otherwise temporarily or permanently leaves employment,  
13 the employer may be proceeded against under the principal action under ch. 785 for  
14 contempt of court.

NOTE: NOTE: Par. (b) is shown as repealed and recreated eff. 1-4-99 by 1997 Wis. Act 191. Prior to 1-4-99 it reads:NOTE:

15  
16  
17

(b) If an employer who receives 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. 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.

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.

18 SECTION 767.265 (6) (c) of the statutes is amended to read:

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

3061cf

3061cg

as offered by 1997 Wisconsin Act 191, Section 422

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.

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.

→ 3061 ch

3 SECTION ~~767.267~~ 767.267 (1) of the statutes is amended to read:

4 767.267 (1) If the court or the family court commissioner determines that  
5 income withholding under s. 767.265 is inapplicable, ineffective or insufficient to  
6 ensure payment under an order or stipulation specified in s. 767.265 (1), or that  
7 income withholding under s. 767.25 (4m) (c) or ~~767.51 (3m) (c)~~ is inapplicable,  
8 ineffective or insufficient to ensure payment of a child's health care expenses,  
9 including payment of health insurance premiums, ordered under s. 767.25 (4m) or  
10 767.51 (3m), the court or family court commissioner may require the payer to identify  
11 or establish a deposit account, owned in whole or in part by the payer, that allows for  
12 periodic transfers of funds and to file with the financial institution at which the  
13 account is located an authorization for transfer from the account to the department  
14 or its designee, whichever is appropriate. The authorization shall be provided on a  
15 standard form approved by the court and shall specify the frequency and the amount  
16 of transfer, sufficient to meet the payer's obligation under the order or stipulation,  
17 as required by the court or family court commissioner. The authorization shall  
18 include the payer's consent for the financial institution or an officer, employe or agent  
19 of the financial institution to disclose information to the court, family court  
20 commissioner, county child support agency under s. 59.53 (5), department or  
21 department's designee regarding the account for which the payer has executed the  
22 authorization for transfer. ))

as affected by 1997 Wisconsin Act 27,

NOTE: NOTE: Sub. (1) is shown as amended eff. 1-4-99 by 1997 Wis. Act 27. Prior to 1-4-99 it reads:NOTE:

23 (1) If the court or the family court commissioner determines that income withholding under s. 767.265 is inapplicable, ineffective or insufficient to ensure payment  
24 under an order or stipulation specified in s. 767.265 (1), or that income withholding under s. 767.25 (4m) (c) or 767.51 (3m) (c) is inapplicable, ineffective or insufficient  
25 to ensure payment of a child's health care expenses, including payment of health insurance premiums, ordered under s. 767.25 (4m) or 767.51 (3m), the court or family  
26 court commissioner may require the payer to identify or establish a deposit account, owned in whole or in part by the payer, that allows for periodic transfers of funds

→ # Page 1415, line 19: after that line insert:

3065c

1 and to file with the financial institution at which the account is located an authorization for transfer from the account to the clerk of court or support collection designee, whichever is appropriate. The authorization shall be provided on a standard form approved by the court and shall specify the frequency and the amount of transfer, sufficient to meet the payer's obligation under the order or stipulation, as required by the court or family court commissioner. The authorization shall include the payer's consent for the financial institution or an officer, employe or agent of the financial institution to disclose information to the court, family court commissioner, clerk of court or support collection designee regarding the account for which the payer has executed the authorization for transfer.

History: 1993 a. 481; 1995 a. 279; 1997 a. 27.

6 SECTION 767.29 (1m) (intro.) of the statutes is amended to read:

7 767.29 (1m) (intro.) Notwithstanding ss. 767.25 (6), and 767.261, 767.51 (5p)  
8 and 767.62 (4) (g), if the department or its designee receives support or maintenance  
9 money that exceeds the amount due in the month in which it is received and that the  
10 department or its designee determines is for support or maintenance due in a  
11 succeeding month, the department or its designee may hold the amount of  
12 overpayment that does not exceed the amount due in the next month for  
13 disbursement in the next month if any of the following applies:

NOTE: NOTE: Sub. (1m) (intro.) is shown as repealed and recreated eff. 1-4-99 by 1997 Wis. Act 191. Prior to 1-4-99 it reads:NOTE:

14 (1m) Notwithstanding ss. 767.25 (6), 767.261, 767.51 (5p) and 767.62 (4) (g), if the clerk of court or support collection designee receives support or maintenance money  
15 that exceeds the amount due in the month in which it is received and that the clerk or support collection designee determines is for support or maintenance due in a  
16 succeeding month, the clerk or support collection designee may hold the amount of overpayment that does not exceed the amount due in the next month for disbursement  
17 in the next month if any of the following applies:

History: 1971 c. 41 s. 12; Sup. Ct. Order, 67 W (2d) 585, 775 (1975); 1975 c. 82, 200; 1975 c. 401 s. 4; 1977 c. 103 s. 59; 1977 c. 271, 418, 447; 1979 c. 32 ss. 50, 92 (4); 1979 c. 257 s. 17; Stats. 1979 s. 767.29; 1981 c. 28 s. 2202 (20) (m); 1983 a. 27, 302; 1985 a. 29, 176; 1991 a. 39; 1993 a. 481; 1995 a. 27 ss. 7104tm, 9126 (19), 9130 (4); 1995 a. 77, 279, 289, 404; 1997 a. 27, 35, 105, 194, 252.

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

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

3065ce

History: 1987 a. 413; 1993 a. 16, 48; 1995 a. 27 ss. 7105 to 7109, 9130 (4); 1995 a. 404; 1997 a. 191.

26 SECTION 767.295 (2) (c) of the statutes is amended to read:

27 767.295 (2) (c) If the court enters an order under par. (a), it shall order the  
28 parent to pay child support equal to the amount determined by applying the  
29 percentage standard established under s. 49.22 (9) to the income a person would earn

repealed by 1997 Wisconsin Act 191, Section 427,

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

History: 1987 a. 413; 1993 a. 16, 481; 1995 a. 27 ss. 7105 to 7109, 9130 (4); 1995 a. 404; 1997 a. 191.

10

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

11  
12  
13  
14  
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17  
18  
19  
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21  
22

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

History: 1987 a. 413; 1993 a. 16, 481; 1995 a. 27 ss. 7105 to 7109, 9130 (4); 1995 a. 404; 1997 a. 191.

23

~~SECTION 23.~~ 767.303 (1) of the statutes is amended to read:

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

Enacted 17-12-10

→ 3065ch

NOTE: NOTE: Sub. (1) is shown below as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c), eff. 5-1-2000 or the date stated in the notice published by the secretary of transportation in the Wisconsin Administrative Register under s. 85.515, whichever is earlier. NOTE:

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

History: 1995 a. 401; 1997 a. 84, 191; s. 13.93 (2) (c).

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

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

→ 3065ci

History: 1971 c. 220; 1977 c. 105 ss. 38, 48, 49; 1977 c. 418; 1979 c. 32 ss. 50, 92 (4); Stats. 1979 s. 767.32; 1981 c. 20 s. 2202 (20) (m); 1981 c. 314 s. 146; 1983 a. 27; 1985 a. 176; 1987 a. 27, 355, 413; 1989 a. 212; 1991 a. 39; 1993 a. 16, 481, 491; 1995 a. 27 s. 9126 (19); 1995 a. 77, 201, 225, 279, 289, 404, 417; 1997 a. 27, 35, 105, 191, 237, 273.

27 SECTION 767.32 (2m) of the statutes is amended to read:

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

History: 1971 c. 220; 1977 c. 105 ss. 38, 48, 49; 1977 c. 418; 1979 c. 32 ss. 50, 92 (4); Stats. 1979 s. 767.32; 1981 c. 20 s. 2202 (20) (m); 1981 c. 314 s. 146; 1983 a. 27; 1985 a. 176; 1987 a. 27, 355, 413; 1989 a. 212; 1991 a. 39; 1993 a. 16, 481, 491; 1995 a. 27 s. 9126 (19); 1995 a. 77, 201, 225, 279, 289, 404, 417; 1997 a. 27, 35, 105, 191, 237, 273.

(END OF INSERT 14-8)

INSERT 15-6

6           **SECTION ~~22~~ 767.325 (6m)** of the statutes is created to read:

7           **767.325 (6m) PARENTING PLAN.** In any action to modify a legal custody or  
 8 physical placement order under sub. (1), the court may require the party seeking the  
 9 modification to file with the court a parenting plan under s. 767.24 (1m) before any  
 10 hearing is held.

(END OF INSERT 15-6)

INSERT 15-10

11           **SECTION ~~7~~ 767.327 (5m)** of the statutes is created to read:

12           **767.327 (5m) DISCRETIONARY FACTORS TO CONSIDER.** In making a determination  
 13 under sub. (3), the court may consider the child's adjustment to the home, school,  
 14 religion and community.

15           **SECTION ~~7~~ 767.45 (7)** of the statutes is amended to read:

16           **767.45 (7)** The clerk of court shall provide without charge, to each person  
 17 bringing an action under this section, except to the state under sub. (1) (g) or (6m),  
 18 a document setting forth the percentage standard established by the department

1 under s. 49.22 (9) and listing the factors which a court may consider under s. ~~767.51~~

2 ~~(5) 767.25 (1m).~~ → 3065cp

History: 1979 c. 352; 1981 c. 20 s. 2202 (20) (m); 1983 a. 447; 1985 a. 29; 1987 a. 27, 355, 399, 413; 1989 a. 31, 212; 1993 a. 326, 481; 1995 a. 27 s. 9126 (19); 1995 a. 68, 100, 201, 275, 404; 1997 a. 191.

3 SECTION ~~22~~. 767.455 (6) of the statutes is amended to read:

4 767.455 (6) DOCUMENT. The summons served on the respondent shall be  
5 accompanied by a document, provided without charge by the clerk of court, setting  
6 forth the percentage standard established by the department under s. 49.22 (9) and  
7 listing the factors which a court may consider under s. ~~767.51 (5)~~ 767.25 (1m).

History: 1979 c. 352; 1981 c. 314; 1983 a. 447; 1985 a. 29; 1987 a. 27, 413; Sup. Ct. Order, 171 W (2d) xix (1992); 1993 a. 16, 481; 1995 a. 27 ss. 7112, 7113b, 9126 (19); 1995 a. 100, 404, 417; 1997 a. 35, 191, 250.

8 SECTION ~~22~~. 767.477 (1) of the statutes is amended to read:

9 767.477 (1) At any time during the pendency of an action to establish the  
10 paternity of a child, if genetic tests show that the alleged father is not excluded and  
11 that the statistical probability of the alleged father's parentage is 99.0% or higher,  
12 on the motion of a party, the court shall make an appropriate temporary order orders  
13 for the payment of child support ~~and may make a temporary order~~, assigning  
14 responsibility for and directing the manner of payment of the child's health care  
15 expenses and for the custody and physical placement of the child.

History: 1997 a. 191.

16 SECTION ~~22~~. 767.477 (2) of the statutes is amended to read:

17 767.477 (2) Before making any temporary order under sub. (1), the court shall  
18 consider those factors that the court is required ~~under s. 767.51~~ to consider when  
19 granting a final judgment on the same subject matter. If the court makes a  
20 temporary child support order that deviates from the amount of support that would  
21 be required by using the percentage standard established by the department under  
22 s. 49.22 (9), the court shall comply with the requirements of s. ~~767.51 (5d)~~ 767.25 (1n).

History: 1997 a. 191.

23 SECTION ~~22~~. 767.51 (3) of the statutes is repealed and recreated to read:

1 767.51 (3) A judgment or order determining paternity shall contain all of the  
2 following provisions:

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

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

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

11 (d) A determination as to which parent, if eligible, shall have the right to claim  
12 the child as <sup>an</sup> exemption for federal tax purposes under 26 USC 151 (c) (1) (B), or as  
13 an exemption for state tax purposes under s. 71.07 (8) (b).

14 (e) An order requiring either or both parties to pay or contribute to the  
15 reasonable expenses of the pregnancy and the child's birth, based on the parties'  
16 ability to pay or contribute to those expenses.

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

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

21 SECTION ~~767.51~~ <sup>3065ct</sup> 767.51 (3m) of the statutes is repealed.

22 SECTION ~~767.51~~ <sup>3065cu</sup> 767.51 (3r) of the statutes is repealed.

23 SECTION ~~767.51~~ <sup>3065cv</sup> 767.51 (4) of the statutes is repealed and recreated to read:

24 767.51 (4) (a) Subject to par. (b), liability for past support of the child shall be  
25 limited to support for the period after the day on which the action is commenced

*as affected by 1997 Wisconsin act 27)*

1 under s. 767.45, unless a party shows, to the satisfaction of the court, all of the  
2 following:

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

5 a. Duress or threats.

6 b. Actions, promises or representations by the other party upon which the party  
7 relied.

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

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

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

13 SECTION ~~767.51~~ <sup>3065cw</sup> (4g) of the statutes is repealed.

14 SECTION ~~767.51~~ <sup>3065cx</sup> (4m) of the statutes is repealed.

15 SECTION ~~767.51~~ <sup>3065cy</sup> (5) of the statutes is repealed.

16 SECTION ~~767.51~~ <sup>3065d</sup> (5d) of the statutes is repealed.

17 SECTION ~~767.51~~ <sup>3065dd</sup> (5p) of the statutes is repealed.

18 SECTION ~~767.53~~ <sup>3065de</sup> (intro.) of the statutes is amended to read:

*as effected by 1997 Wisconsin act 11,*

19 **767.53 Paternity hearings and records; confidentiality.** (intro.) Any  
20 hearing, discovery proceeding or trial relating to paternity determination shall be  
21 closed to any person other than those necessary to the action or proceeding. Any  
22 record of the pending proceedings shall be placed in a closed file, except that:

23 History: 1979 c. 352; 1983 a. 447; 1985 a. 29; 1995 a. 27 s. 9126 (19); 1995 a. 201, 275, 404; 1997 a. 80, 252.  
SECTION ~~767.53~~ <sup>3065df</sup> (1) (intro.) of the statutes is amended to read:

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

History: 1979 c. 352; 1983 a. 447; 1985 a. 29; 1995 a. 27 s. 9126 (19); 1995 a. 201, 275, 404; 1997 a. 80, 252.

3 SECTION ~~767.53~~ <sup>3065dg</sup> (3) of the statutes is created to read:

4 767.53 (3) Subject to s. 767.19, the records of any past proceeding in which  
5 paternity was established are open to public inspection.

6 SECTION ~~767.62~~ <sup>3065dh</sup> (4) of the statutes ~~is created~~ <sup>is amended</sup> to read:

7 767.62 (4) ORDERS WHEN PATERNITY ACKNOWLEDGED. In an action under sub. (3)

8 (a), if the persons who signed and filed the statement acknowledging paternity as  
9 parents of the child had notice of the hearing, the court or family court commissioner  
10 shall make an order that contains all of the following provisions:

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

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

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

21 (d) An order requiring either or both parties to pay or contribute to the  
22 reasonable expenses of the pregnancy and the child's birth, based on the parties'  
23 ability to pay or contribute to those expenses.

*change  
action  
component*

*as affected by 1997  
Wisconsin Act  
191, is repealed  
and recreated*

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

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

5 SECTION ~~7~~. 767.62 (4m) of the statutes is created to read:

3065 di

6 767.62 (4m) LIABILITY FOR PAST SUPPORT. (a) Subject to par. (b), liability for past  
7 support of the child shall be limited to support for the period after the day on which  
8 the action is commenced under sub. (3) (a), unless a party shows, to the satisfaction  
9 of the court, all of the following:

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

- 12 a. Duress or threats.
- 13 b. Actions, promises or representations by the other party upon which the party
- 14 relied.
- 15 c. Actions taken by the other party to evade proceedings under sub. (3) (a).

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

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

20 "SECTION ~~7~~. 802.12 (3) (d) 1. of the statutes is amended to read:

3085c

21 802.12 (3) (d) 1. Custody and physical placement under s. 767.24, 767.458 (3),  
22 767.51 (3) or 767.62 (4) (a).

3085d

History: Sup. Ct. Order No. 93-13, 180 W. (2d) xv; 1995 a. 225; 1997 a. 191.

23 SECTION ~~7~~. 802.12 (3) (d) 3. of the statutes is amended to read:

#. Page 1425, line 7: after that line insert:

1 802.12 (3) (d) 3. Child support under s. 767.25, 767.458 (3), 767.51 or 767.62

2 (4) (a). )

History: Sup. Ct. Order No. 93-13, 180 W (2d) xv, 1995 a. 225; 1997 a. 191.

#. Page 1426, line 12: after that line insert:  
SECTION 808.075 (4) (d) 11. of the statutes is amended to read:

4 808.075 (4) (d) 11. Enforcement or modification of assignments under s. 767.25

5 (4m); or 767.265, 767.51 (3m) or 767.62 (4) (b) 3.)

History: Sup. Ct. Order, 146 W (2d) xiii (1988); 1989 a. 86; 1993 a. 16, 46, 479, 481; 1995 a. 38, 73, 77, 275; 1997 a. 35, 191, 292, 296, 334.

#. Page 1439, line 11: after that line insert:  
SECTION 948.22 (7) (bm) of the statutes is amended to read:

7 948.22 (7) (bm) Upon request, the court may modify the amount of child or

8 spousal support payments determined under par. (b) 2. if, after considering the

9 factors listed in s. 767.25 (1m) or 767.51 (5), regardless of the fact that the action is

10 not one for a determination of paternity or an action specified in s. 767.25 (1), the

11 court finds, by the greater weight of the credible evidence, that the use of the

12 percentage standard is unfair to the child or to either of the child's parents.)

History: 1985 a. 29, 56; 1987 a. 332 s. 33; Stats. 1987 s. 948.22; 1989 a. 31, 212; 1993 a. 274, 481; 1995 a. 289; 1997 a. 35, 191, 252.

13 1. Page 1566, line 17: after that line insert:

14 "(4y) STUDY ON THE GUARDIAN AD LITEM SYSTEM.

15 (a) The joint legislative council is requested to establish a committee to study

16 reforming the guardian ad litem system as it applies to actions affecting the family.

17 The committee shall include legislators, attorneys, judges, court commissioners,

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

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

20 1. The appointment of guardians ad litem, including whether the appointment

21 of a guardian ad litem should be required in every case in which legal custody or

22 physical placement of a child is contested and whether professionals with specialized

23 training and expertise in the emotional and developmental phases and needs of

1 children, such as child psychologists, child psychiatrists and child therapists, should  
2 be appointed to act as guardians ad litem.

3 2. The role of the guardian ad litem.

4 3. Supervision of guardians ad litem.

5 4. Training of guardians ad litem.

6 5. Compensation of guardians ad litem.

7 (b) The committee shall prepare a report with its recommendations and shall  
8 petition the supreme court to consider rules for the reform of the guardian ad litem  
9 system on the basis of the recommendations.”.

(END OF INSERT 15-10)

*If a committee is established,*

**BILL**

3065CK

1 placement awarded under an order of physical placement that allocates specific  
2 times for the exercise of periods of physical placement.

3 **SECTION 21.** 767.325 (5m) of the statutes is created to read:

4 767.325 (5m) FACTORS TO CONSIDER. In all actions to modify legal custody or  
5 physical placement orders, the court shall consider the factors under s. 767.24 (5) ~~and~~

6 ~~making its determination~~ and shall make its determination  
7 in a manner consistent with s. 767.24

8 **SECTION 22.** 767.327 (4) of the statutes is amended to read:

9 767.327 (4) GUARDIAN AD LITEM; PROMPT HEARING. After a petition, motion or  
10 order to show cause is filed under sub. (3), the court shall appoint a guardian ad litem,  
11 unless s. 767.045 (1) (am) applies, and shall hold a hearing as soon as possible.

12 **SECTION 23. Initial applicability.**

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

16 **SECTION 24. Effective date.**

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

(END)

Insert 15-6

Insert 15-10

Insert 15-17

Insert 15-17

#. Page 1603, line 18: after that line insert:

(a3)

(b) SECTION 2002c

"(940) CUSTODY AND PHYSICAL PLACEMENT IN ACTIONS AFFECTING THE FAMILY. The

treatment of sections 20.921(2)(a), 66.184,

102.27(2)(a), 120.13(2)(g), 565.30(5m), 632.897

(10)(a) 3., 767.045(1)(a) 2. and (e), 767.078(1)

(a) 1. and (2), 767.11(12)(b), 767.115 (title) and

(4), 767.23(1)(a), (am), (c) and (k), 767.23(1n),

767.24(1) and (1m), 767.24(2)(a), (am), (b) and (c), (4)

(c) and (5) (intro.), (a), (cm), (dm), (em), (fm), (g) and

(jm), 767.242, 767.25(1) (intro.), (1m) (b) and (c),

(4m) (b), (5) and (6) (intro.), 767.253, 767.254(2)

(intro.), 767.261 (intro.), 767.265(1) (by SECTION

3055c), (3h), (4) and (b) (a), (b) and (c), 767.267(1),

767.29(1m) (intro.), 767.295(2)(a) (intro.) and (c),

767.303(1), 767.32(1)(b) 4. and (2m), 767.325(2m),

(5m) and (6m), 767.327(4) and (5m), 767.45(7),

767.455(6), 767.477(1) and (2), 767.51(3), (3m),

(3r), (4), (4g), (4m), (5), (5d) and (5p), 767.53 (intro.),

(1) (intro.) and (3), 767.62(4) and (4m), 802.12

(3)(d) 1. and 3., 808.075(4)(d) 11. and 948.22(7)(6m)

of the statutes, the renumbering and amendment of

section 767.24(4)(a) of the statutes and the creation of section

767.24(4)(a) 3. of the statutes

first apply to actions affecting the family, including actions to enforce or modify a judgment or order in an action affecting the family previously granted, that are commenced on the effective date of this subsection."

(b) SECTION 3065cf



2012

Aug. 15-17 contd

#. Page 1617, line 6: after that line insert:

(CS)  
(b) SECTION 2002c

(CS)  
“(7)(d) CUSTODY AND PHYSICAL PLACEMENT IN ACTIONS AFFECTING THE FAMILY.” The

(by SECTION 3065c)

re-treatment of sections 20.921(2)(a), 66.184, 102.27(2)(a), 120.13(2)(g), 565.30(5m), 632.897(10)(a) 3., 767.045(1)(a) 2. and (c), 767.078(1)(a) 1. and (2), 767.11(12)(b), 767.115 (title) and (4), 767.23(1)(a), (am), (c) and (k), 767.23(1n), 767.24(1) and (1m), 767.24(2)(a), (am), (b) and (c), (4)(c) and (5) (intro.), (a), (cm), (dm), (em), (fm), (g) and (jm), 767.242, 767.25(1) (intro.), (1m) (b) and (c), (4m) (b), (5) and (6) (intro.), 767.253, 767.254(2) (intro.), 767.261 (intro.), 767.265(1) (by SECTION 3055c), (3h), (4) and (b) (a), (b) and (c), 767.267(1), 767.29(1m) (intro.), 767.295(2)(a) (intro.) and (c), 767.303(1), 767.32(1)(b) 4. and (2m), 767.325(2m), (5m) and (6m), 767.327(4) and (5m), 767.45(7), 767.455(6), 767.477(1) and (2), 767.51(3), (3m), (3r), (4), (4g), (4m), (5), (5d) and (5p), 767.53 (intro.), (1) (intro.) and (3), 767.62(4) and (4m), 802.12(3)(d) 1. and 3., 808.075(4)(d) 11. and 948.22(7)(bm)

of the statutes, the renumbering and amendment of section 767.24(4)(a) of the statutes, the creation of section 767.24(4)(a) 3. and SECTION 9357(9y) of this act ~~first apply to actions affecting the family~~, ~~and~~ take effect on the first day of the 7th month beginning after publication. ~~7/10~~

~~(CS) (b) (18-17)~~ (CS)

¶ (b) The treatment of section 767.303(1) (by SECTION 3065c) of the statutes takes effect on the date stated in the notice published by the secretary ~~of the~~

(over)

206509 August 17-12 ins

Section #. 767.303 (1) of the statutes is amended to read:

, as affected by 1997 Wisconsin act 84 and 1999 Wisconsin Act.... (this act),

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

~~NOTE: Sub. (1) is shown below as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c), eff. 5-1-2000 or the date stated in the notice published by the secretary of transportation in the Wisconsin Administrative Register under s. 85.515, whichever is earlier.~~

767.303

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

History: 1995 a. 401; 1997 a. 84, 191; s. 13.93 (2) (c).

(end of ins 17-12 ins)