

BILL HISTORY FOR ASSEMBLY BILL 279 (LRB -1681)

An Act to repeal 767.24 (5) (e); to renumber 767.24 (5) (a), 767.24 (5) (b), 767.24 (5) (c), 767.24 (5) (cm), 767.24 (5) (d), 767.24 (5) (dm), 767.24 (5) (em), 767.24 (5) (f), 767.24 (5) (fm), 767.24 (5) (g), 767.24 (5) (h), 767.24 (5) (i), 767.24 (5) (j), 767.24 (5) (jm) and 767.24 (5) (k); to renumber and amend 767.11 (5) (a), 767.23 (1n) and 767.24 (5) (intro.); to amend 757.48 (1) (a), 767.045 (4), 767.11 (4), 767.11 (8) (c), 767.115 (1) (a), 767.24 (2) (a), 767.24 (2) (am), 767.24 (2) (b) (intro.), 767.24 (2) (c), 767.24 (4) (a) 2. and 767.325 (5m); and to create 767.11 (5) (a) 2., 767.11 (14) (a) 2m., 767.23 (1n) (b) 2., 767.24 (2) (d), 767.24 (5) (am) 7., 767.24 (5) (bm), 767.24 (6) (f) and 767.24 (6) (g) of the statutes; relating to: creating a rebuttable presumption against awarding a parent joint or sole legal custody if the court finds that the parent has engaged in a pattern or serious incident of abuse, requiring a guardian ad litem and a mediator to have training related to domestic violence, and requiring a guardian ad litem to investigate and a mediator to inquire whether a party in an action affecting the family engaged in domestic violence.

2003

04-18. A. Introduced by Representatives Berceau, Friske, Ainsworth, Suder, Loeffelholz, Miller, Boyle, J. Lehman, Sinicki, Wasserman, Shilling, Montgomery, Hines, J. Fitzgerald, Van Roy, Ott, Bies, Jensen, Seratti, Vruwink and Richards; cosponsored by Senators Roessler, Risser, Stepp, Wirch, A. Lasee, Breske, Moore and Robson.

04-18. A. Read first time and referred to committee on Family Law 161

04-29. A. Representative Kreibich added as a coauthor 170

05-15. A. Public hearing held.

09-11. A. Assembly substitute amendment 1 offered by Representatives Berceau and Friske (LRB s0104) 354

09-18. A. Executive action taken.

09-29. A. Report Assembly Substitute Amendment 1 adoption recommended by committee on Family Law, Ayes 6, Noes 0 393

09-29. A. Report passage as amended recommended by committee on Family Law, Ayes 6, Noes 0 393

09-29. A. Referred to committee on Rules 393

09-29. A. Placed on calendar 10-1-2003 by committee on Rules.

10-01. A. Placed at the foot of the eleventh order of business on the calendar of 10-2-2003 405

10-02. A. Representative Sherman added as a coauthor 416

10-02. A. Representative Morris added as a coauthor 416

10-02. A. Read a second time 416

10-02. A. Referred to committee on Judiciary, Ayes 58, Noes 38 416

10-23. A. Rules suspended to withdraw from committee on Judiciary and place on calendar 10-23 450

10-23. A. Assembly substitute amendment 1 adopted 456

10-23. A. Ordered to a third reading 456

10-23. A. Rules suspended 456

10-23. A. Read a third time and passed 456

10-23. A. Ordered immediately messaged 456

10-28. S. Received from Assembly 448

10-28. S. Read first time and referred to committee on Health, Children, Families, Aging and Long Term Care 449

11-24. S. Public hearing held.

11-25. S. Executive action taken.

11-26. S. Report concurrence recommended by committee on Health, Children, Families, Aging and Long Term Care, Ayes 8, Noes 1 497

11-26. S. Available for scheduling.

2004

02-03. S. Placed on calendar 2-4-2004 by committee on Senate Organization.

02-04. S. Senator Darling added as a cosponsor 599

02-04. S. Read a second time 600

02-04. S. Ordered to a third reading 600

02-04. S. Rules suspended 600

02-04. S. Read a third time and concurred in 600

02-04. S. Senator Lassa added as a cosponsor 601

02-04. S. Ordered immediately messaged 601

02-05. A. Received from Senate concurred in.

**2003
ENROLLED BILL**

03en AB-279

ADOPTED DOCUMENTS:

Orig Engr

A
 SubAmtdt 1

03 30/04/2

Amendments to above (if none, write "NONE"): None

Corrections - show date (if none, write "NONE"): None

Topic

Create a rebuttable presumption
against a woman's custody for interspousal
batterer

2/05/04
Date

[Signature]
Enrolling Drafter

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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2003 ASSEMBLY BILL 279**

September 11, 2003 – Offered by Representatives BERCEAU and FRISKE.

1 **AN ACT** *to renumber* 767.11 (6), 767.24 (5) (a), 767.24 (5) (b), 767.24 (5) (c), 767.24
2 (5) (cm), 767.24 (5) (d), 767.24 (5) (dm), 767.24 (5) (em), 767.24 (5) (f), 767.24 (5)
3 (fm), 767.24 (5) (g), 767.24 (5) (h), 767.24 (5) (i), 767.24 (5) (j), 767.24 (5) (jm) and
4 767.24 (5) (k); *to renumber and amend* 767.11 (5) (a), 767.23 (1n), 767.24 (5)
5 (intro.) and 767.24 (5) (e); *to amend* 757.48 (1) (a), 767.045 (4), 767.11 (4),
6 767.11 (8) (a), 767.11 (8) (c), 767.11 (9) (intro.), 767.11 (10) (intro.), 767.115 (1)
7 (a), 767.24 (2) (a), 767.24 (2) (am), 767.24 (2) (b) (intro.), 767.24 (2) (c), 767.24
8 (4) (a) 2. and 767.325 (5m); and *to create* 767.11 (5) (a) 2., 767.11 (6) (b), 767.11
9 (14) (a) 2m., 767.23 (1n) (b) 2., 767.24 (2) (d), 767.24 (5) (bm), 767.24 (6) (f) and
10 767.24 (6) (g) of the statutes; **relating to:** creating a rebuttable presumption
11 against awarding a parent joint or sole legal custody if the court finds that the
12 parent has engaged in a pattern or serious incident of abuse, requiring a
13 guardian ad litem and a mediator to have training related to domestic violence,

1 requiring a guardian ad litem to investigate whether a party in an action
2 affecting the family engaged in domestic violence, and requiring screening for
3 domestic abuse at the initial mediation session.

Analysis by the Legislative Reference Bureau

Under current law, in an action affecting the family, such as a divorce or a paternity action, a court must determine the legal custody of a child based on the best interest of the child. Although the court may grant sole legal custody to one parent or joint legal custody to both parents, the court must presume that joint legal custody is in the child's best interest. The court may grant sole legal custody only if both parents agree to sole legal custody with the same parent or if at least one parent requests sole legal custody and the court finds that: 1) one parent is not capable of performing parental duties or does not wish to have an active role in raising the child; 2) one or more conditions exist that would substantially interfere with the exercise of joint legal custody; or 3) the parties will not be able to cooperate in future decision making. Evidence of child or spousal abuse creates a rebuttable presumption that the parties will not be able to cooperate in future decision making. Current law requires the court to allocate periods of physical placement between the parties if the court orders sole or joint legal custody. The court may deny periods of physical placement with a parent only if the court finds that the physical placement would endanger the child's physical, mental, or emotional health. The statutes list a number of factors that the court must consider in awarding both legal custody and periods of physical placement. Among those factors is whether there is evidence of child or spousal abuse.

This substitute amendment provides that, if a court finds by a preponderance of the evidence that a parent has engaged in a pattern or serious incident of spousal abuse, there is a rebuttable presumption that it is detrimental to the child and contrary to the child's best interest for that parent to have either sole or joint legal custody of the child. This presumption takes precedence over the other rules regarding the determination of legal custody, such as the presumption that joint legal custody is in the child's best interest, and may be rebutted only by a preponderance of evidence that: 1) the abusive party has completed treatment for batterers provided through a certified treatment program or by a certified treatment provider and is not abusing alcohol or any other drug, and 2) it is in the best interest of the child that the abusive party be given joint or sole legal custody based on the statutory factors that the court must consider in awarding custody and physical placement. If the court finds that a party has engaged in a pattern or serious incident of spousal abuse, the court must state in writing in the custody order whether the presumption against awarding custody to the abusive party was rebutted and, if so, what evidence rebutted the presumption and why its findings related to legal custody and physical placement are in the best interest of the child.

The substitute amendment provides that, if the court finds that both parties have engaged in a pattern or serious incident of spousal abuse, for purposes of the presumption the court must attempt to determine which party was the primary physical aggressor. In order to do that, the court must consider a number of specified factors, such as prior acts of domestic violence between the parties, the relative severity of injuries, if any, whether one of the parties acted in self-defense, and whether there has been a pattern of coercive and abusive behavior. If one, but not both, of the parties was convicted of a crime that was an act of domestic abuse, the court must find the party who was convicted to be the primary physical aggressor. If the court determines that neither party was the primary physical aggressor, the presumption against sole or joint legal custody does not apply.

The substitute amendment provides that, if the court grants periods of physical placement to a parent who the court finds has engaged in a pattern or serious incident of spousal abuse, the court must provide for the safety and well-being of the child and for the safety of the other party. The substitute amendment specifies a number of actions that the court must consider, and one or more of which the court must impose, for ensuring the safety of the child and the other party, such as requiring supervised periods of physical placement for the abusive parent, requiring the exchange of the child in a protected setting or in the presence of an appropriate third party who agrees to assume that responsibility, requiring the abusive parent to attend and complete treatment for batterers as a condition of exercising his or her physical placement, and prohibiting an abusive parent with an alcohol or drug abuse problem from consuming alcohol during his or her periods of physical placement and from being under the influence of alcohol or another drug when the parties exchange the child for periods of physical placement.

Under current law, a guardian ad litem (GAL) in an action affecting the family must be an attorney and must have completed three hours of approved continuing legal education relating to a GAL's functions. The substitute amendment requires the continuing legal education to include training on the dynamics of domestic violence and its effects on victims of domestic violence and on children. The substitute amendment requires a GAL in an action affecting the family to investigate whether there is evidence of interspousal battery or domestic abuse and to report to the court on the results of the investigation.

Under current law, unless the court waives the requirement, at least one session of mediation is required in an action affecting the family if legal custody or physical placement is contested. The substitute amendment requires the court or circuit court commissioner to inform the parties that the court may waive the mediation requirement if the court determines that attending a session will cause undue hardship or endanger the health or safety of one of the parties and the bases on which the court may make its determination, including evidence of interspousal battery or domestic abuse. Under current law, a mediator may terminate mediation if there is evidence that a party has engaged in interspousal battery or domestic violence. The substitute amendment requires every mediator to have training on the dynamics of domestic violence and its effects on victims of domestic violence and on children; requires the first mediation session, which is a screening and evaluation

session, to include screening for domestic abuse; and requires any intake form that the parties are required to complete before the start of mediation to ask each party whether either party has engaged in domestic abuse.

Under current law, one of the factors that a court must consider when awarding legal custody and physical placement is the mental and physical health of the persons living in a proposed custodial household. The substitute amendment modifies this factor by requiring the court to consider whether the mental and physical health of the persons living in a proposed custodial household negatively affects the child's intellectual, physical, or emotional well-being. The substitute amendment also provides that, if the court finds that a parent has engaged in interspousal battery or domestic violence, the child's safety and well-being and the safety of the other parent are the paramount concerns when the court is awarding legal custody and physical placement.

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

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

2 757.48 (1) (a) Except as provided in s. 879.23 (4), in all matters in which a
3 guardian ad litem is appointed by the court, the guardian ad litem shall be an
4 attorney admitted to practice in this state. In order to be appointed as a guardian
5 ad litem under s. 767.045, an attorney shall have completed 3 hours of approved
6 continuing legal education ~~relating~~ that relates to the functions and duties of a
7 guardian ad litem under ch. 767 and that includes training on the dynamics of
8 domestic violence and the effects of domestic violence on victims of domestic violence
9 and on children.

10 SECTION 2. 767.045 (4) of the statutes is amended to read:

11 767.045 (4) RESPONSIBILITIES. The guardian ad litem shall be an advocate for
12 the best interests of a minor child as to paternity, legal custody, physical placement,
13 and support. The guardian ad litem shall function independently, in the same
14 manner as an attorney for a party to the action, and shall consider, but shall not be
15 bound by, the wishes of the minor child or the positions of others as to the best

1 interests of the minor child. The guardian ad litem shall consider the factors under
2 s. 767.24 (5) (am), subject to s. 767.24 (5) (bm), and custody studies under s. 767.11
3 (14). The guardian ad litem shall investigate whether there is evidence that either
4 parent has engaged in interspousal battery, as described in s. 940.19 or 940.20 (1m),
5 or domestic abuse, as defined in s. 813.12 (1) (am), and shall report to the court on
6 the results of the investigation. The guardian ad litem shall review and comment
7 to the court on any mediation agreement and stipulation made under s. 767.11 (12)
8 and on any parenting plan filed under s. 767.24 (1m). Unless the child otherwise
9 requests, the guardian ad litem shall communicate to the court the wishes of the
10 child as to the child's legal custody or physical placement under s. 767.24 (5) ~~(b)~~ (am)
11 2. The guardian ad litem has none of the rights or duties of a general guardian.

12 SECTION 3. 767.11 (4) of the statutes is amended to read:

13 767.11 (4) MEDIATOR QUALIFICATIONS. Every mediator assigned under sub. (6)
14 (a) shall have not less than 25 hours of mediation training or not less than 3 years
15 of professional experience in dispute resolution. Every mediator assigned under sub.
16 (6) (a) shall have training on the dynamics of domestic violence and the effects of
17 domestic violence on victims of domestic violence and on children.

18 SECTION 4. 767.11 (5) (a) of the statutes is renumbered 767.11 (5) (a) (intro.) and
19 amended to read:

20 767.11 (5) (a) (intro.) In Except as provided in sub. (8) (b), in any action affecting
21 the family, including a revision of judgment or order under s. 767.32 or 767.325, in
22 which it appears that legal custody or physical placement is contested, the court or
23 circuit court commissioner shall refer the parties to the director of family court
24 counseling services for possible mediation of those contested issues. The court or
25 circuit court commissioner shall inform the parties ~~that~~ of all of the following:

1 **1. That the confidentiality of communications in mediation is waived if the**
2 **parties stipulate under sub. (14) (c) that the person who provided mediation to the**
3 **parties may also conduct the legal custody or physical placement study under sub.**
4 **(14).**

5 **SECTION 5. 767.11 (5) (a) 2. of the statutes is created to read:**

6 **767.11 (5) (a) 2. That the court may waive the requirement to attend at least**
7 **one mediation session if the court determines that attending the session will cause**
8 **undue hardship or would endanger the health or safety of one of the parties and the**
9 **bases on which the court may make its determination.**

10 **SECTION 6. 767.11 (6) of the statutes is renumbered 767.11 (6) (a).**

11 **SECTION 7. 767.11 (6) (b) of the statutes is created to read:**

12 **767.11 (6) (b) Any intake form that the family court counseling services**
13 **requires the parties to complete before commencement of mediation shall ask each**
14 **party whether either of the parties has engaged in interspousal battery, as described**
15 **in s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am).**

16 **SECTION 8. 767.11 (8) (a) of the statutes is amended to read:**

17 **767.11 (8) (a) Except as provided in par. (b), in any action affecting the family,**
18 **including an action for revision of judgment or order under s. 767.32 or 767.325, in**
19 **which it appears that legal custody or physical placement is contested, the parties**
20 **shall attend at least one session with a mediator assigned under sub. (6) (a) or**
21 **contracted with under sub. (7) and, if the parties and the mediator determine that**
22 **continued mediation is appropriate, no court may hold a trial of or a final hearing on**
23 **legal custody or physical placement until after mediation is completed or terminated.**

24 **SECTION 9. 767.11 (8) (c) of the statutes is amended to read:**

1 767.11 (8) (c) The initial session under par. (a) shall be a screening and
2 evaluation mediation session, including screening for domestic abuse, to determine
3 whether mediation is appropriate and whether both parties wish to continue in
4 mediation.

5 **SECTION 10.** 767.11 (9) (intro.) of the statutes is amended to read:

6 767.11 (9) PROHIBITED ISSUES IN MEDIATION. (intro.) If mediation is provided by
7 a mediator assigned under sub. (6) (a), no issue relating to property division,
8 maintenance, or child support may be considered during the mediation unless all of
9 the following apply:

10 **SECTION 11.** 767.11 (10) (intro.) of the statutes is amended to read:

11 767.11 (10) POWERS AND DUTIES OF MEDIATOR. (intro.) A mediator assigned
12 under sub. (6) (a) shall be guided by the best interest of the child and may do any of
13 the following, at his or her discretion:

14 **SECTION 12.** 767.11 (14) (a) 2m. of the statutes is created to read:

15 767.11 (14) (a) 2m. Whether either party has engaged in interspousal battery,
16 as described in s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12
17 (1) (am).

18 **SECTION 13.** 767.115 (1) (a) of the statutes is amended to read:

19 767.115 (1) (a) At any time during the pendency of an action affecting the family
20 in which a minor child is involved and in which the court or circuit court
21 commissioner determines that it is appropriate and in the best interest of the child,
22 the court or circuit court commissioner, on its own motion, may order the parties to
23 attend a program specified by the court or circuit court commissioner concerning the
24 effects on a child of a dissolution of the marriage. If the court or circuit court
25 commissioner orders the parties to attend a program under this paragraph and there

1 is evidence that one or both of the parties have engaged in interspousal battery, as
2 described in s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1)
3 (am), the court or circuit court commissioner may not require the parties to attend
4 the program together or at the same time.

5 SECTION 14. 767.23 (1n) of the statutes is renumbered 767.23 (1n) (a) and
6 amended to read:

7 767.23 (1n) (a) Before making any temporary order under sub. (1), the court
8 or circuit court commissioner shall consider those factors that the court is required
9 by this chapter to consider before entering a final judgment on the same subject
10 matter. In making a determination under sub. (1) (a) or (am), the court or circuit
11 court commissioner shall consider the factors under s. 767.24 (5) (am), subject to s.
12 767.24 (5) (bm).

13 (b) 1. If the court or circuit court commissioner makes a temporary child
14 support order that deviates from the amount of support that would be required by
15 using the percentage standard established by the department under s. 49.22 (9), the
16 court or circuit court commissioner shall comply with the requirements of s. 767.25
17 (1n).

18 (c) A temporary order under sub. (1) may be based upon the written stipulation
19 of the parties, subject to the approval of the court or the circuit court commissioner.
20 Temporary orders made by a circuit court commissioner may be reviewed by the
21 court.

22 SECTION 15. 767.23 (1n) (b) 2. of the statutes is created to read:

23 767.23 (1n) (b) 2. If the court or circuit court commissioner finds by a
24 preponderance of the evidence that a party has engaged in a pattern or serious
25 incident of interspousal battery, as described under s. 940.19 or 940.20 (1m), or

1 domestic abuse, as defined in s. 813.12 (1) (am), and makes a temporary order
2 awarding joint or sole legal custody or periods of physical placement to the party, the
3 court or circuit court commissioner shall comply with the requirements of s. 767.24
4 (6) (f) and, if appropriate, (g).

5 **SECTION 16.** 767.24 (2) (a) of the statutes is amended to read:

6 767.24 (2) (a) Subject to pars. (am), (b) ~~and~~, (c), and (d), based on the best
7 interest of the child and after considering the factors under sub. (5) (am), subject to
8 sub. (5) (bm), the court may give joint legal custody or sole legal custody of a minor
9 child.

10 **SECTION 17.** 767.24 (2) (am) of the statutes is amended to read:

11 767.24 (2) (am) ~~The~~ Except as provided in par. (d), the court shall presume that
12 joint legal custody is in the best interest of the child.

13 **SECTION 18.** 767.24 (2) (b) (intro.) of the statutes is amended to read:

14 767.24 (2) (b) (intro.) ~~The~~ Except as provided in par. (d), the court may give sole
15 legal custody only if it finds that doing so is in the child's best interest and that either
16 of the following applies:

17 **SECTION 19.** 767.24 (2) (c) of the statutes is amended to read:

18 767.24 (2) (c) ~~The~~ Except as provided in par. (d), the court may not give sole
19 legal custody to a parent who refuses to cooperate with the other parent if the court
20 finds that the refusal to cooperate is unreasonable.

21 **SECTION 20.** 767.24 (2) (d) of the statutes is created to read:

22 767.24 (2) (d) 1. Except as provided in subd. 4., if the court finds by a
23 preponderance of the evidence that a party has engaged in a pattern or serious
24 incident of interspousal battery, as described under s. 940.19 or 940.20 (1m), or
25 domestic abuse, as defined in s. 813.12 (1) (am), pars. (am), (b), and (c) do not apply

1 and there is a rebuttable presumption that it is detrimental to the child and contrary
2 to the best interest of the child to award joint or sole legal custody to that party. The
3 presumption under this subdivision may be rebutted only by a preponderance of
4 evidence of all of the following:

5 a. The party who committed the battery or abuse has successfully completed
6 treatment for batterers provided through a certified treatment program or by a
7 certified treatment provider and is not abusing alcohol or any other drug.

8 b. It is in the best interest of the child for the party who committed the battery
9 or abuse to be awarded joint or sole legal custody based on a consideration of the
10 factors under sub. (5) (am).

11 2. If the court finds under subd. 1. that both parties engaged in a pattern or
12 serious incident of interspousal battery, as described under s. 940.19 or 940.20 (1m),
13 or domestic abuse, as defined in s. 813.12 (1) (am), the party who engaged in the
14 battery or abuse for purposes of the presumption under subd. 1. is the party that the
15 court determines was the primary physical aggressor. Except as provided in subd.
16 3., in determining which party was the primary physical aggressor, the court shall
17 consider all of the following:

18 a. Prior acts of domestic violence between the parties.

19 b. The relative severity of the injuries, if any, inflicted upon a party by the other
20 party in any of the prior acts of domestic violence under subd. 2. a.

21 c. The likelihood of future injury to either of the parties resulting from acts of
22 domestic violence.

23 d. Whether either of the parties acted in self-defense in any of the prior acts
24 of domestic violence under subd. 2. a.

1 e. Whether there is or has been a pattern of coercive and abusive behavior
2 between the parties.

3 f. Any other factor that the court considers relevant to the determination under
4 this subdivision.

5 3. If the court must determine under subd. 2. which party was the primary
6 physical aggressor and one, but not both, of the parties has been convicted of a crime
7 that was an act of domestic abuse, as defined in s. 813.12 (1) (am), with respect to the
8 other party, the court shall find the party who was convicted of the crime to be the
9 primary physical aggressor.

10 4. The presumption under subd. 1. does not apply if the court finds that both
11 parties engaged in a pattern or serious incident of interspousal battery or domestic
12 abuse but the court determines that neither party was the primary physical
13 aggressor.

14 **SECTION 21.** 767.24 (4) (a) 2. of the statutes is amended to read:

15 767.24 (4) (a) 2. In determining the allocation of periods of physical placement,
16 the court shall consider each case on the basis of the factors in sub. (5) (am), subject
17 to sub. (5) (bm). The court shall set a placement schedule that allows the child to have
18 regularly occurring, meaningful periods of physical placement with each parent and
19 that maximizes the amount of time the child may spend with each parent, taking into
20 account geographic separation and accommodations for different households.

21 **SECTION 22.** 767.24 (5) (intro.) of the statutes is renumbered 767.24 (5) (am)
22 (intro.) and amended to read:

23 767.24 (5) (am) (intro.) ~~In~~ Subject to par. (bm), in determining legal custody and
24 periods of physical placement, the court shall consider all facts relevant to the best
25 interest of the child. The court may not prefer one parent or potential custodian over

1 the other on the basis of the sex or race of the parent or potential custodian. The
2 Subject to par. (bm), the court shall consider the following factors in making its
3 determination:

4 SECTION 23. 767.24 (5) (a) of the statutes is renumbered 767.24 (5) (am) 1.

5 SECTION 24. 767.24 (5) (b) of the statutes is renumbered 767.24 (5) (am) 2.

6 SECTION 25. 767.24 (5) (bm) of the statutes is created to read:

7 767.24 (5) (bm) If the court finds under sub. (2) (d) that a parent has engaged
8 in a pattern or serious incident of interspousal battery, as described under s. 940.19
9 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), the safety and
10 well-being of the child and the safety of the parent who was the victim of the battery
11 or abuse shall be the paramount concerns in determining legal custody and periods
12 of physical placement.

13 SECTION 26. 767.24 (5) (c) of the statutes is renumbered 767.24 (5) (am) 3.

14 SECTION 27. 767.24 (5) (cm) of the statutes is renumbered 767.24 (5) (am) 4.

15 SECTION 28. 767.24 (5) (d) of the statutes is renumbered 767.24 (5) (am) 5.

16 SECTION 29. 767.24 (5) (dm) of the statutes is renumbered 767.24 (5) (am) 6.

17 SECTION 30. 767.24 (5) (e) of the statutes is renumbered 767.24 (5) (am) 7. and
18 amended to read:

19 767.24 (5) (am) 7. The Whether the mental and or physical health of the parties,
20 the minor children and other persons a party, minor child, or other person living in
21 a proposed custodial household negatively affects the child's intellectual, physical,
22 or emotional well-being.

23 SECTION 31. 767.24 (5) (em) of the statutes is renumbered 767.24 (5) (am) 8.

24 SECTION 32. 767.24 (5) (f) of the statutes is renumbered 767.24 (5) (am) 9.

25 SECTION 33. 767.24 (5) (fm) of the statutes is renumbered 767.24 (5) (am) 10.

1 **SECTION 34.** 767.24 (5) (g) of the statutes is renumbered 767.24 (5) (am) 11.

2 **SECTION 35.** 767.24 (5) (h) of the statutes is renumbered 767.24 (5) (am) 12.

3 **SECTION 36.** 767.24 (5) (i) of the statutes is renumbered 767.24 (5) (am) 13.

4 **SECTION 37.** 767.24 (5) (j) of the statutes is renumbered 767.24 (5) (am) 14.

5 **SECTION 38.** 767.24 (5) (jm) of the statutes is renumbered 767.24 (5) (am) 15.

6 **SECTION 39.** 767.24 (5) (k) of the statutes is renumbered 767.24 (5) (am) 16.

7 **SECTION 40.** 767.24 (6) (f) of the statutes is created to read:

8 767.24 (6) (f) If the court finds under sub. (2) (d) that a party has engaged in
9 a pattern or serious incident of interspousal battery, as described under s. 940.19 or
10 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), the court shall state
11 in writing whether the presumption against awarding joint or sole legal custody to
12 that party is rebutted and, if so, what evidence rebutted the presumption, and why
13 its findings relating to legal custody and physical placement are in the best interest
14 of the child.

15 **SECTION 41.** 767.24 (6) (g) of the statutes is created to read:

16 767.24 (6) (g) If the court finds under sub. (2) (d) that a party has engaged in
17 a pattern or serious incident of interspousal battery, as described under s. 940.19 or
18 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), and the court awards
19 periods of physical placement to both parties, the court shall provide for the safety
20 and well-being of the child and for the safety of the party who was the victim of the
21 battery or abuse. For that purpose the court, giving consideration to the availability
22 of services or programs and to the ability of the party who committed the battery or
23 abuse to pay for those services or programs, shall impose one or more of the following,
24 as appropriate:

1 1. Requiring the exchange of the child to occur in a protected setting or in the
2 presence of an appropriate 3rd party who agrees by affidavit or other supporting
3 evidence to assume the responsibility assigned by the court and to be accountable to
4 the court for his or her actions with respect to the responsibility.

5 2. Requiring the child's periods of physical placement with the party who
6 committed the battery or abuse to be supervised by an appropriate 3rd party who
7 agrees by affidavit or other supporting evidence to assume the responsibility
8 assigned by the court and to be accountable to the court for his or her actions with
9 respect to the responsibility.

10 3. Requiring the party who committed the battery or abuse to pay the costs of
11 supervised physical placement.

12 4. Requiring the party who committed the battery or abuse to attend and
13 complete, to the satisfaction of the court, treatment for batterers provided through
14 a certified treatment program or by a certified treatment provider as a condition of
15 exercising his or her periods of physical placement.

16 5. If the party who committed the battery or abuse has a significant problem
17 with alcohol or drug abuse, prohibiting that party from being under the influence of
18 alcohol or any controlled substance when the parties exchange the child for periods
19 of physical placement and from possessing or consuming alcohol or any controlled
20 substance during his or her periods of physical placement.

21 6. Prohibiting the party who committed the battery or abuse from having
22 overnight physical placement with the child.

23 7. Requiring the party who committed the battery or abuse to post a bond for
24 the return and safety of the child.

