

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1681/P1dn
PJK:cjs:jf

February 19, 2003

I did not include in this version of the draft everything that was proposed in the instructions. For some of the omissions, I included embedded NOTES in the draft after the sections that do not include proposed language. What follows are other comments I have about language I omitted:

1. I did not include in s. 767.11 (8) (c) that mediation will occur only “if the victim of the interspousal battery or domestic abuse voluntarily consents to participation in mediation.” The mediator is not in a position to adjudicate whether allegations of abuse are true. Therefore, the most that this proposal could do is to require mediation only if a party who *alleges* abuse consents to participate. That would, however, allow any party who does not want to mediate simply to allege abuse and refuse to consent to mediation. Is that what you want? Section 767.11 (8) (b) already allows the court to hold a trial or hearing without requiring mediation for reasons related to evidence of abuse, and s. 767.11 (10) (e) already allows the mediator to terminate mediation for reasons related to evidence of abuse.

2. I did not include the language proposed for either s. 767.24 (2) (am) or (4) (a) 1. The “unless there is evidence that either party engaged in” language in s. 767.24 (2) (am) is unnecessary because, in the draft, proposed s. 767.24 (2) (d) begins with “Notwithstanding par. (am).” In other words, proposed s. 767.24 (2) (d) already addresses the presumption in par. (am).

The proposed language that “the court shall consider evidence of domestic abuse as being contrary to the best interests of the child” doesn’t make sense to me. In the first place, I can’t believe that any judge would ever find abuse to be in a child’s best interest. But it makes no sense to say that *evidence* of it is contrary to the child’s best interest. What would be contrary to a child’s best interest would be something along the lines of awarding sole custody and primary physical placement to a parent who has engaged in domestic abuse and with whom placement would endanger the child’s physical, emotional, and mental health. The statutes already address that and the proposed language of the draft provides pretty specific instructions to a court on what to do if the court finds that a party has engaged in abuse.

Regarding the proposed language for s. 767.24 (4) (a) 1., I don’t understand what the “unless there is evidence” language creates an exception to. If there is evidence of

interspousal battery or domestic abuse, is the court not supposed to set a physical placement schedule? If there is such evidence, is the court still supposed to set a physical placement schedule but not one that allows regularly occurring, meaningful periods of physical placement with each parent? Or is the court supposed to set a physical placement schedule but not one that maximizes the amount of time that the child spends with each parent? How does the proposed language relate to s. 767.24 (4) (b)?

I don't understand the significance of the language proposed for s. 767.24 (2) (am) and (4) (a) 1. related to the safety and well-being of the child and victim being of "primary importance." Does that mean that it is the most important factor for determining custody and physical placement? Does it mean that the court is supposed to place more importance on this factor than the factors in s. 767.24 (5)? Would it be preferable to include the safety and well-being of the child and alleged victim as a factor in s. 767.24 (5)?

I don't think that any of the language proposed for s. 767.24 (2) (am) or (4) (a) 1. is needed, because I think it is covered by current law s. 767.24 (4) (b) and proposed s. 767.24 (2) (d) and (6) (g) in the draft.

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