

2003 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB279)

Received: **06/04/2003**

Received By: **pkahler**

Wanted: **Soon**

Identical to LRB:

For: **Terese Berceau (608) 266-3784**

By/Representing: **her office**

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

Drafter: **pkahler**

May Contact: **Patti Seger**

Addl. Drafters:

Subject: **Dom. Rel. - cust./plac./vis.**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Berceau@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Rebuttable presumption against custody on basis of battery or abuse

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>
/?	pkahler 06/05/2003	csicilia 06/06/2003		_____			
/1	pkahler 06/09/2003		rschluet 06/06/2003 rschluet 06/09/2003	_____	lemery 06/09/2003	lemery 06/09/2003	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/2	pkahler 06/19/2003	csicilia 06/20/2003	chaskett 06/20/2003	_____	sbasford 06/23/2003	sbasford 06/23/2003	

FE Sent For:

<END>

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/?	pkahler 06/05/2003	csicilia 06/06/2003		<i>pg/cph</i> <u>6/20</u>			
/1	pkahler 06/09/2003		rschluet 06/06/2003		lemery 06/09/2003	lemery 06/09/2003	
		<i>2 q's 6/19 03</i>	rschluet 06/09/2003				
			<i>1 cph 6/20</i>				

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FE Sent For:

<END>

6-4

Tom Powell - advance approval
Patti Seeger email & phone call

draft a sub to AB 279 that
is the bill with a OS17/1
and the modifications
included in the email

Kahler, Pam

From: Patti Seger [pattis@wcadv.org]
Sent: Wednesday, June 04, 2003 2:03 PM
To: pam.kahler@legis.state.wi.us
Cc: Terese Berceau (E-mail)
Subject: Changes to AB 279

Hi Pam,

Can we also talk by phone to go through these changes? I am emailing this and I will also call you in a few minutes.

Patti

✓ pg. 5, beginning in line 1, sentence beginning "If the guardian ad litem finds evidence..." ending on line 4. Delete this entire sentence.

✓ pg. 6, Section 6
 767.11(8)(c) The initial session under par. (a) shall be a screening and evaluation mediation session, including screening for domestic abuse, to determine whether mediation is appropriate and whether both parties wish to continue mediation. Delete sentence in AB 279 that follows this. "Before initial session..."

✓ Create a section that states something like the following (this is the language from California): Any intake form that Family Court Counseling Services requires the parties to complete before commencement of mediation shall inquire of each party whether either party has engaged in interspousal battery, as described in s. 940.19, or domestic abuse, as defined in s. 813.12(1)(am).

✓ Definition of "serious incident"...

"A serious incident shall include but not be limited to violence which intentionally or recklessly caused or attempted to cause bodily injury or sexual assault, or have placed a person in reasonable fear of imminent bodily injury or sexual assault, or involved use of a dangerous weapon."

Patti Seger
 Policy Development Coordinator
 Wisconsin Coalition Against Domestic Violence
 608-255-0539
 fax: 608-255-3560
 email: pattis@wcadv.org

2003

Date (time) needed

Mon J-note

LRBs D104, 1

**SUBSTITUTE AMENDMENT
[TO A BILL]**

PJK : cjs :

Use the appropriate components and routines developed for substitute amendments.

SA ✓

§ (A) SUBSTITUTE AMENDMENT

TO 2003 ~~SB~~ (AB) 279 (LRB- /)

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

.....
.....
.....
.....
.....

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

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

SECTION #.





2003 ASSEMBLY BILL 279

April 18, 2003 - 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. Referred to Committee on Family Law.

1 **AN ACT to repeal** 767.24 (5) (e); **to renumber** 767.24 (5) (a), 767.24 (5) (b), 767.24
2 (5) (c), 767.24 (5) (cm), 767.24 (5) (d), 767.24 (5) (dm), 767.24 (5) (em), 767.24 (5)
3 (f), 767.24 (5) (fm), 767.24 (5) (g), 767.24 (5) (h), 767.24 (5) (i), 767.24 (5) (j),
4 767.24 (5) (jm) and 767.24 (5) (k); **to renumber and amend** 767.11 (5) (a),
5 767.23 (1n) and 767.24 (5) (intro.); **to amend** 757.48 (1) (a), 767.045 (4), 767.11
6 (4), 767.11 (8) (c), 767.115 (1) (a), 767.24 (2) (a), 767.24 (2) (am), 767.24 (2) (b)
7 (intro.), 767.24 (2) (c), 767.24 (4) (a) 2. and 767.325 (5m); and **to create** 767.11
8 (5) (a) 2., 767.11 (14) (a) 2m., 767.23 (1n) (b) 2., 767.24 (2) (d), 767.24 (5) (am)
9 7., 767.24 (5) (bm), 767.24 (6) (f) and 767.24 (6) (g) of the statutes; **relating to:**

10 → creating a rebuttable presumption against awarding a parent joint or sole legal
11 custody if the court finds that the parent has engaged in a pattern or serious
12 incident of abuse, requiring a guardian ad litem and a mediator to have training
13 related to domestic violence, ~~and~~ requiring a guardian ad litem to investigate

ASSEMBLY BILL 279

and a mediator to inquire whether a party in an action affecting the family engaged in domestic violence, and requiring screening for

1
2

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.

against sole or joint legal custody

substitute amendment

This ~~bill~~ 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. ~~The~~ 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 ~~bill~~ 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.

domestic abuse at the initial mediation session

insert A

ASSEMBLY BILL 279

In order to do that, the court must consider a number of specified factors, such as ~~the~~ 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. *Insert B*

The ~~bill~~ 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 ~~bill~~ 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 ~~bill~~ 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 ~~bill~~ requires a GAL in an action affecting the family to investigate whether there is evidence of interspousal battery or domestic abuse, to report to the court on the results of the investigation, and, if there is such evidence, to recommend to the court ways in which the safety and well-being of the child and the victim of the battery or abuse may be addressed.

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 ~~bill~~ 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. The ~~bill~~ requires every mediator to have training on the dynamics of domestic violence and its effects on victims of domestic violence and on children.

Under current law, a mediator may terminate mediation if there is evidence that a party has engaged in interspousal battery or domestic violence. The bill requires a mediator, before the initial session, to inquire of each party outside the presence of the other party whether either of them has engaged in interspousal battery or domestic violence.

The bill adds to the factors under current law that a court must consider when awarding legal custody and physical placement consideration of whether a parent or other person living in a proposed custodial household has a mental or physical impairment that negatively affects the child's intellectual, physical, or emotional

substitute amendment

substitute amendment

and

insert C



ASSEMBLY BILL 279

Insert D

well-being. In addition, the bill provides that, if the court finds that a parent has engaged in interspousal battery or domestic violence, when the court is awarding legal custody and physical placement the child's safety and well-being and the safety of the other parent are the paramount concerns.

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
16 interests of the minor child. The guardian ad litem shall consider the factors under
17 s. 767.24 (5) (am), subject to s. 767.24 (5) (bm), and custody studies under s. 767.11
18 (14). The guardian ad litem shall investigate whether there is evidence that either
19 parent has engaged in interspousal battery, as described in s. 940.19 or 940.20 (1m),
20 or domestic abuse, as defined in s. 813.12 (1) (am), and shall report to the court on

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1 the results of the investigation. If the guardian ad litem finds evidence of
 2 interspousal battery or domestic abuse, the guardian ad litem shall make
 3 recommendations to the court addressing the safety and well-being of the child and
 4 the victim of the interspousal battery or domestic abuse. The guardian ad litem shall
 5 review and comment to the court on any mediation agreement and stipulation made
 6 under s. 767.11 (12) and on any parenting plan filed under s. 767.24 (1m). Unless
 7 the child otherwise requests, the guardian ad litem shall communicate to the court
 8 the wishes of the child as to the child's legal custody or physical placement under s.
 9 767.24 (5) (b) (am) 2. The guardian ad litem has none of the rights or duties of a
 10 general guardian.

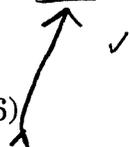
11 SECTION 3. 767.11 (4) of the statutes is amended to read:

12 767.11 (4) MEDIATOR QUALIFICATIONS. Every mediator assigned under sub. (6)
 13 shall have not less than 25 hours of mediation training or not less than 3 years of
 14 professional experience in dispute resolution. Every mediator assigned under sub.
 15 (6) shall have training on the dynamics of domestic violence and the effects of
 16 domestic violence on victims of domestic violence and on children.

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

19 767.11 (5) (a) (intro.) ~~In~~ Except as provided in sub. (8) (b), in any action affecting
 20 the family, including a revision of judgment or order under s. 767.32 or 767.325, in
 21 which it appears that legal custody or physical placement is contested, the court or
 22 circuit court commissioner shall refer the parties to the director of family court
 23 counseling services for possible mediation of those contested issues. The court or
 24 circuit court commissioner shall inform the parties that of all of the following:

(a)



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

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

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

SECTION 6. 767.11 (8) (c) of the statutes is amended to read:

767.11 (8) (c) The initial session under par. (a) shall be a screening and evaluation mediation session to determine whether mediation is appropriate and whether both parties wish to continue in mediation. Before the initial session, for purposes of determining whether mediation should be terminated under sub. (10) (e) 1., 2., or 4., the mediator shall inquire of each party, outside the presence of the other party, whether either of the parties has engaged in interspousal battery, as described in s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am).

SECTION 7. 767.11 (14) (a) 2m. of the statutes is created to read:

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

SECTION 8. 767.115 (1) (a) of the statutes is amended to read:

767.115 (1) (a) At any time during the pendency of an action affecting the family in which a minor child is involved and in which the court or circuit court commissioner determines that it is appropriate and in the best interest of the child,

Insert 6-9

Insert 6-17

Score comma

including screening for domestic abuses

Score comma

ASSEMBLY BILL 279

1 the court or circuit court commissioner, on its own motion, may order the parties to
2 attend a program specified by the court or circuit court commissioner concerning the
3 effects on a child of a dissolution of the marriage. If the court or circuit court
4 commissioner orders the parties to attend a program under this paragraph and there
5 is evidence that one or both of the parties have engaged in interspousal battery, as
6 described in s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1
7 (am), the court or circuit court commissioner may not require the parties to attend
8 the program together or at the same time.

9 **SECTION 9.** 767.23 (1n) of the statutes is renumbered 767.23 (1n) (a) and
10 amended to read:

11 767.23 (1n) (a) Before making any temporary order under sub. (1), the court
12 or circuit court commissioner shall consider those factors that the court is required
13 by this chapter to consider before entering a final judgment on the same subject
14 matter. In making a determination under sub. (1) (a) or (am), the court or circuit
15 court commissioner shall consider the factors under s. 767.24 (5) (am), subject to s.
16 767.24 (5) (bm).

17 (b) 1. If the court or circuit court commissioner makes a temporary child
18 support order that deviates from the amount of support that would be required by
19 using the percentage standard established by the department under s. 49.22 (9), the
20 court or circuit court commissioner shall comply with the requirements of s. 767.25
21 (1n).

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

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1 **SECTION 10.** 767.23 (1n) (b) 2. of the statutes is created to read:

2 767.23 (1n) (b) 2. If the court or circuit court commissioner finds by a
3 preponderance of the evidence that a party has engaged in a pattern or serious
4 incident of interspousal battery, as described under s. 940.19 or 940.20 (1m), or
5 domestic abuse, as defined in s. 813.12 (1) (am), and makes a temporary order
6 awarding joint or sole legal custody or periods of physical placement to the party, the
7 court or circuit court commissioner shall comply with the requirements of s. 767.24
8 (6) (f) and, if appropriate, (g). *Insert 8-8* ✓

9 **SECTION 11.** 767.24 (2) (a) of the statutes is amended to read:

10 767.24 (2) (a) Subject to pars. (am), (b) ~~and~~, (c), and (d), based on the best
11 interest of the child and after considering the factors under sub. (5) (am), subject to
12 sub. (5) (bm), the court may give joint legal custody or sole legal custody of a minor
13 child.

14 **SECTION 12.** 767.24 (2) (am) of the statutes is amended to read:

15 767.24 (2) (am) ~~The~~ Except as provided in par. (d), the court shall presume that
16 joint legal custody is in the best interest of the child.

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

18 767.24 (2) (b) (intro.) ~~The~~ Except as provided in par. (d), the court may give sole
19 legal custody only if it finds that doing so is in the child's best interest and that either
20 of the following applies:

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

22 767.24 (2) (c) ~~The~~ Except as provided in par. (d), the court may not give sole
23 legal custody to a parent who refuses to cooperate with the other parent if the court
24 finds that the refusal to cooperate is unreasonable.

25 **SECTION 15.** 767.24 (2) (d) of the statutes is created to read:

ASSEMBLY BILL 279

Except as provided in subd. 4., if

revising this

1

767.24 (2) (d) 1. ~~If~~ the court finds by a preponderance of the evidence that a

2

party has engaged in a pattern or serious incident of interspousal battery, as

3

described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12

4

(1) (am), pars. (am), (b), and (c) do not apply and there is a rebuttable presumption

5

that it is detrimental to the child and contrary to the best interest of the child to

6

award joint or sole legal custody to that party. ~~The~~ ^{Insert 9-6} presumption may be rebutted only

7

by a preponderance of evidence of all of the following:

8

a. The party who committed the battery or abuse has successfully completed

9

treatment for batterers provided through a certified treatment program or by a

10

certified treatment provider and is not abusing alcohol or any other drug.

11

b. It is in the best interest of the child for the party who committed the battery

12

or abuse to be awarded joint or sole legal custody based on a consideration of the

13

factors under sub. (5) (am).

14

2. If the court finds under subd. 1. that both parties engaged in a pattern or

15

serious incident of interspousal battery, as described under s. 940.19 or 940.20 (1m),

16

or domestic abuse, as defined in s. 813.12 (1) (am), the party who engaged in the

17

battery or abuse for purposes of the presumption under subd. 1. is the party that the

18

court determines was the primary physical aggressor. ~~By~~ determining which party

19

was the primary physical aggressor, the court shall consider all of the following:

20

a. ~~At~~ prior acts of domestic violence between the parties.

21

b. The relative severity of the injuries, if any, inflicted upon a party by the other

22

party in any of the prior acts of domestic violence under subd. 2. a.

23

c. The likelihood of future injury to either of the parties resulting from acts of

24

domestic violence.

Except as provided in subd. 3. in

ASSEMBLY BILL 279

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

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

5 f. Any other factor that the court considers relevant to the determination under
6 this subdivision.

Insert 10-b

7 SECTION 16. 767.24 (4) (a) 2. of the statutes is amended to read:

8 767.24 (4) (a) 2. In determining the allocation of periods of physical placement,
9 the court shall consider each case on the basis of the factors in sub. (5) (am), subject
10 to sub. (5) (bm). The court shall set a placement schedule that allows the child to have
11 regularly occurring, meaningful periods of physical placement with each parent and
12 that maximizes the amount of time the child may spend with each parent, taking into
13 account geographic separation and accommodations for different households.

14 SECTION 17. 767.24 (5) (intro.) of the statutes is renumbered 767.24 (5) (am)
15 (intro.) and amended to read:

16 767.24 (5) (am) (intro.) ~~In Subject to par. (bm), in~~ determining legal custody and
17 periods of physical placement, the court shall consider all facts relevant to the best
18 interest of the child. The court may not prefer one parent or potential custodian over
19 the other on the basis of the sex or race of the parent or potential custodian. ~~The~~
20 Subject to par. (bm), the court shall consider the following factors in making its
21 determination:

22 SECTION 18. 767.24 (5) (a) of the statutes is renumbered 767.24 (5) (am) 1.

23 ~~SECTION 19. 767.24 (5) (am) 7. of the statutes is created to read:~~



ASSEMBLY BILL 279

1 767.24 (5) (am) 7. Whether a party or other person living in a proposed
2 custodial household has a mental or physical impairment that negatively affects the
3 child's intellectual, physical, or emotional well-being.

4 SECTION 20. 767.24 (5) (b) of the statutes is renumbered 767.24 (5) (am) 2.

5 SECTION 21. 767.24 (5) (bm) of the statutes is created to read:

6 767.24 (5) (bm) If the court finds under sub. (2) (d) that a parent has engaged
7 in a pattern or serious incident of interspousal battery, as described under s. 940.19
8 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), the safety and
9 well-being of the child and the safety of the parent who was the victim of the battery
10 or abuse shall be the paramount concerns in determining legal custody and periods
11 of physical placement.

12 SECTION 22. 767.24 (5) (c) of the statutes is renumbered 767.24 (5) (am) 3.

13 SECTION 23. 767.24 (5) (cm) of the statutes is renumbered 767.24 (5) (am) 4.

14 SECTION 24. 767.24 (5) (d) of the statutes is renumbered 767.24 (5) (am) 5.

15 SECTION 25. 767.24 (5) (dm) of the statutes is renumbered 767.24 (5) (am) 6.

16 ~~SECTION 26. 767.24 (5) (e) of the statutes is repealed.~~

17 SECTION 27. 767.24 (5) (em) of the statutes is renumbered 767.24 (5) (am) 8.

18 SECTION 28. 767.24 (5) (f) of the statutes is renumbered 767.24 (5) (am) 9.

19 SECTION 29. 767.24 (5) (fm) of the statutes is renumbered 767.24 (5) (am) 10.

20 SECTION 30. 767.24 (5) (g) of the statutes is renumbered 767.24 (5) (am) 11.

21 SECTION 31. 767.24 (5) (h) of the statutes is renumbered 767.24 (5) (am) 12.

22 SECTION 32. 767.24 (5) (i) of the statutes is renumbered 767.24 (5) (am) 13.

23 SECTION 33. 767.24 (5) (j) of the statutes is renumbered 767.24 (5) (am) 14.

24 SECTION 34. 767.24 (5) (jm) of the statutes is renumbered 767.24 (5) (am) 15.

25 SECTION 35. 767.24 (5) (k) of the statutes is renumbered 767.24 (5) (am) 16.

Insert 11-16

ASSEMBLY BILL 279**SECTION 36**

1 **SECTION 36.** 767.24 (6) (f) of the statutes is created to read:

2 767.24 (6) (f) If the court finds under sub. (2) (d) that a party has engaged in
3 a pattern or serious incident of interspousal battery, as described under s. 940.19 or
4 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), the court shall state
5 in writing whether the presumption against awarding joint or sole legal custody to
6 that party is rebutted and, if so, what evidence rebutted the presumption, and why
7 its findings relating to legal custody and physical placement are in the best interest
8 of the child.

9 **SECTION 37.** 767.24 (6) (g) of the statutes is created to read:

10 767.24 (6) (g) If the court finds under sub. (2) (d) that a party has engaged in
11 a pattern or serious incident of interspousal battery, as described under s. 940.19 or
12 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), and the court awards
13 periods of physical placement to both parties, the court shall provide for the safety
14 and well-being of the child and for the safety of the party who was the victim of the
15 battery or abuse. For that purpose the court, giving consideration to the availability
16 of services or programs and to the ability of the party who committed the battery or
17 abuse to pay for those services or programs, shall impose one or more of the following,
18 as appropriate:

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

23 2. Requiring the child's periods of physical placement with the party who
24 committed the battery or abuse to be supervised by an appropriate 3rd party who
25 agrees by affidavit or other supporting evidence to assume the responsibility

ASSEMBLY BILL 279

1 assigned by the court and to be accountable to the court for his or her actions with
2 respect to the responsibility.

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

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

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

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

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

18 8. Imposing any condition not specified in subds. 1. to 7. that the court
19 determines is necessary for the safety and well-being of the child or the safety of the
20 party who was the victim of the battery or abuse.

21 **SECTION 38.** 767.325 (5m) of the statutes is amended to read:

22 767.325 (5m) FACTORS TO CONSIDER. In all actions to modify legal custody or
23 physical placement orders, the court shall consider the factors under s. 767.24 (5)
24 (am), subject to s. 767.24 (5) (bm), and shall make its determination in a manner
25 consistent with s. 767.24.

ASSEMBLY BILL 279

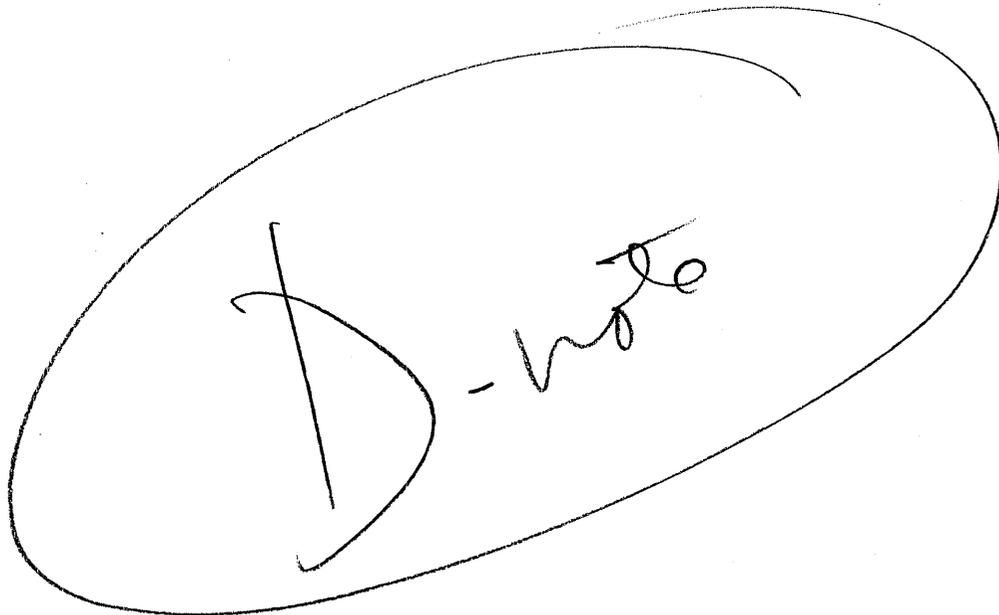
SECTION 39

1
2
3
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5

SECTION 39. Initial applicability.

(1) This act first applies to actions or proceedings that are commenced on the effective date of this subsection, including actions or proceedings to modify a judgment or order granted before the effective date of this subsection.

(END)

A large, hand-drawn oval contains a handwritten signature. The signature appears to be "D. H. H. H." written in a cursive, stylized font.

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0104/ins
PJK:.....

INSERT A

not Under the substitute amendment, a serious incident of spousal abuse includes, but ~~is~~ ^{is} limited to, the use of violence that caused or attempted to cause bodily injury or sexual assault, that placed a person in reasonable fear of bodily injury or sexual assault, or that involved the use of a dangerous weapon. The

(END OF INSERT A)

INSERT B

not 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.

(END OF INSERT B)

INSERT C

not ; 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

(END OF INSERT C)

INSERT D

4 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.

(END OF INSERT D)

INSERT 6-9

1

SECTION 1. 767.11 (6) of the statutes is renumbered 767.11 (6) (a).

Ins. 6-9 contd
^

1 **SECTION 2.** 767.11 (6) (b) of the statutes is created to read:

2 767.11 (6) (b) Any intake form that the family court counseling services
3 requires the parties to complete before commencement of mediation shall ask each
4 party whether either of the parties has engaged in interspousal battery, as described
5 in s. 940.19[✓] or 940.20 (1m)[✓], or domestic abuse, as defined in s. 813.12 (1) (am)[✓].

6 **SECTION 3.** 767.11 (8) (a)[✓] of the statutes is amended to read:

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

History: 1987 a. 355; 1989 a. 56; 1991 a. 269; Sup. Ct. Order No. 93-03, 179 Wis. 2d xv; 1995 a. 275, 343; 1999 a. 9; 2001 a. 61, 109.

(END OF INSERT 6-9)

INSERT 6-17

14 **SECTION 4.** 767.11 (9) (intro.)[✓] of the statutes is amended to read:

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

History: 1987 a. 355; 1989 a. 56; 1991 a. 269; Sup. Ct. Order No. 93-03, 179 Wis. 2d xv; 1995 a. 275, 343; 1999 a. 9; 2001 a. 61, 109.

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



Ins. 6-17 contd

1 767.11 (10) POWERS AND DUTIES OF MEDIATOR. (intro.) A mediator assigned
2 under sub. (6) (a) shall be guided by the best interest of the child and may do any of
3 the following, at his or her discretion: ✓

History: 1987 a. 355; 1989 a. 56; 1991 a. 269; Sup. Ct. Order No. 93-03, 179 Wis. 2d xv; 1995 a. 275, 343; 1999 a. 9; 2001 a. 61, 109.

(END OF INSERT 6-17)

INSERT 8-8

4 ^{WDF} In making the finding under this subdivision, the court or circuit court
5 commissioner shall consider a serious incident of interspousal battery or domestic
6 abuse to include, but not be limited to, the use of violence that intentionally or
7 recklessly causes or attempts to cause bodily injury or sexual assault, or that places
8 a person in reasonable fear of imminent bodily injury or sexual assault, or that
9 involves the use of a dangerous weapon. ✓

(END OF INSERT 8-8)

INSERT 9-6

10 ^{WDF} In making the finding under this subdivision, the court shall consider a serious
11 incident of interspousal battery or domestic abuse to include, but not be limited to,
12 the use of violence that intentionally or recklessly causes or attempts to cause bodily
13 injury or sexual assault, or that places a person in reasonable fear of imminent bodily
14 injury or sexual assault, or that involves the use of a dangerous weapon. ✓

(END OF INSERT 9-6)



State of Wisconsin
2003 - 2004 LEGISLATURE

LRBa0517/2
PJK:kjf:jf

ASSEMBLY AMENDMENT,
TO 2003 ASSEMBLY BILL 279

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

2 ~~1.~~ Page 5, line 3: delete "child and" and substitute "child".

3 ~~2.~~ Page 5, line 4: delete "the victim of the interspousal battery or domestic
4 abuse".

5 ~~3.~~ Page 9, line 1: delete "If" and substitute "Except as provided in subd. 4., if".

6 ~~4.~~ Page 9, line 18: delete "In" and substitute "Except as provided in subd. 3.,
7 in".

8 ~~5.~~ Page 9, line 20: delete "All prior" and substitute "Prior".

9 ~~6.~~ Page 10, line 6: after that line insert:

10 ~~3.~~ If the court must determine under subd. 2. which party was the primary
11 physical aggressor and one, but not both, of the parties has been convicted of a crime
12 that was an act of domestic abuse, as defined in s. 813.12 (1) (am), with respect to the

Insert
10-6

continued

Insert 10-6 contd

1 other party, the court shall find the party who was convicted of the crime to be the
2 primary physical aggressor.

3 4. The presumption under subd. 1. does not apply if the court finds that both
4 parties engaged in a pattern or serious incident of interspousal battery or domestic
5 abuse but the court determines that neither party was the primary physical
6 aggressor." *(end of ins 10-6)*

7 ~~7.~~ Page 10, line 23: delete the material beginning with that line and ending
8 with page 11, line 3.

9 ~~8.~~ Page 11, line 16: delete that line and substitute:

10 "SECTION ~~26c.~~ 767.24 (5) (e) of the statutes is renumbered 767.24 (5) (am) 7.

11 and amended to read:

12 767.24 (5) (am) 7. The Whether the mental and or physical health of the parties,
13 the minor children and other persons a party, minor child, or other person living in
14 a proposed custodial household negatively affects the child's intellectual, physical,
15 or emotional well-being." *(end of ins 11-16)*

Insert 11-16

16

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0104/Adn

PJK:f:....

4

The LRB discourages the use of the phrase "includes, but is not limited to," because it is redundant. Using "includes," in contrast to using "means," denotes that what follows is only part of the whole. Patti Seger indicated to me, however, that it was imperative to use "includes, but is not limited to" in describing some of the behaviors that amount to "a serious incident," because that was the agreement reached with the State Bar, due to the fact that some (or most) judges interpret "includes" to mean the entire universe of possibilities.

Patti and I also discussed the fact that the list of examples of what may be considered "a serious incident" is a bit problematic. I find the examples problematic because, for the most part, they do nothing more than describe "interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am)" so that you really wouldn't need to specify "a serious incident" because *any* incident of interspousal battery or domestic abuse would be "a serious incident." But, once again, the list of examples was part of the agreement with the State Bar. ←

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0104/1dn
PJK:cjs:rs

June 6, 2003

The LRB discourages the use of the phrase "includes, but is not limited to," because it is redundant. Using "includes," in contrast to using "means," denotes that what follows is only part of the whole. Patti Seger indicated to me, however, that it was imperative to use "includes, but is not limited to" in describing some of the behaviors that amount to "a serious incident," because that was the agreement reached with the State Bar, due to the fact that some (or most) judges interpret "includes" to mean the entire universe of possibilities.

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

6-16

Tom - Rep Berceau

remove language that specifies what
is a "serious incident" of abuse



State of Wisconsin
2003 - 2004 LEGISLATURE

LRBs0104/2
PJK:cjs:rs

rmisrun
Stays

ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2003 ASSEMBLY BILL 279

SOON
(in 6-19)

1-note

pp 2, 9, 10

SA ✓

Refer cut

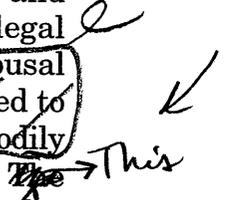
1 AN ACT *to renumber* 767.11 (6), 767.24 (5) (a), 767.24 (5) (b), 767.24 (5) (c), 767.24
2 (5) (cm), 767.24 (5) (d), 767.24 (5) (dm), 767.24 (5) (em), 767.24 (5) (f), 767.24 (5)
3 (fm), 767.24 (5) (g), 767.24 (5) (h), 767.24 (5) (i), 767.24 (5) (j), 767.24 (5) (jm) and
4 767.24 (5) (k); *to renumber 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. Under the substitute amendment, a serious incident of spousal abuse includes, but is not limited to, the use of violence that caused or attempted to cause bodily injury or sexual assault, that placed a person in reasonable fear of bodily injury or sexual assault, or that involved the use of a dangerous weapon. ~~The presumption against sole or joint legal custody~~ 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

1 manner as an attorney for a party to the action, and shall consider, but shall not be
2 bound by, the wishes of the minor child or the positions of others as to the best
3 interests of the minor child. The guardian ad litem shall consider the factors under
4 s. 767.24 (5) (am), subject to s. 767.24 (5) (bm), and custody studies under s. 767.11
5 (14). The guardian ad litem shall investigate whether there is evidence that either
6 parent has engaged in interspousal battery, as described in s. 940.19 or 940.20 (1m),
7 or domestic abuse, as defined in s. 813.12 (1) (am), and shall report to the court on
8 the results of the investigation. The guardian ad litem shall review and comment
9 to the court on any mediation agreement and stipulation made under s. 767.11 (12)
10 and on any parenting plan filed under s. 767.24 (1m). Unless the child otherwise
11 requests, the guardian ad litem shall communicate to the court the wishes of the
12 child as to the child's legal custody or physical placement under s. 767.24 (5) ~~(b)~~ (am)
13 2. The guardian ad litem has none of the rights or duties of a general guardian.

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

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

20 **SECTION 4.** 767.11 (5) (a) of the statutes is renumbered 767.11 (5) (a) (intro.) and
21 amended to read:

22 767.11 (5) (a) (intro.) In Except as provided in sub. (8) (b), in any action affecting
23 the family, including a revision of judgment or order under s. 767.32 or 767.325, in
24 which it appears that legal custody or physical placement is contested, the court or
25 circuit court commissioner shall refer the parties to the director of family court

1 counseling services for possible mediation of those contested issues. The court or
2 circuit court commissioner shall inform the parties ~~that~~ of all of the following:

3 1. That the confidentiality of communications in mediation is waived if the
4 parties stipulate under sub. (14) (c) that the person who provided mediation to the
5 parties may also conduct the legal custody or physical placement study under sub.
6 (14).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 767.23 (1n) (a) Before making any temporary order under sub. (1), the court
9 or circuit court commissioner shall consider those factors that the court is required
10 by this chapter to consider before entering a final judgment on the same subject
11 matter. In making a determination under sub. (1) (a) or (am), the court or circuit
12 court commissioner shall consider the factors under s. 767.24 (5) (am), subject to s.
13 767.24 (5) (bm).

14 (b) 1. If the court or circuit court commissioner makes a temporary child
15 support order that deviates from the amount of support that would be required by
16 using the percentage standard established by the department under s. 49.22 (9), the
17 court or circuit court commissioner shall comply with the requirements of s. 767.25
18 (1n).

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

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

24 767.23 (1n) (b) 2. If the court or circuit court commissioner finds by a
25 preponderance of the evidence that a party has engaged in a pattern or serious

1 incident of interspousal battery, as described under s. 940.19 or 940.20 (1m), or
2 domestic abuse, as defined in s. 813.12 (1) (am), and makes a temporary order
3 awarding joint or sole legal custody or periods of physical placement to the party, the
4 court or circuit court commissioner shall comply with the requirements of s. 767.24

5 (6) (f) and, if appropriate, (g). In making the finding under this subdivision, the court
6 or circuit court commissioner shall consider a serious incident of interspousal battery
7 or domestic abuse to include, but not be limited to, the use of violence that
8 intentionally or recklessly causes or attempts to cause bodily injury or sexual
9 assault, or that places a person in reasonable fear of imminent bodily injury or sexual
10 assault, or that involves the use of a dangerous weapon.

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

12 767.24 (2) (a) Subject to pars. (am), (b) and, (c), and (d), based on the best
13 interest of the child and after considering the factors under sub. (5) (am), subject to
14 sub. (5) (bm), the court may give joint legal custody or sole legal custody of a minor
15 child.

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

17 767.24 (2) (am) The Except as provided in par. (d), the court shall presume that
18 joint legal custody is in the best interest of the child.

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

20 767.24 (2) (b) (intro.) The Except as provided in par. (d), the court may give sole
21 legal custody only if it finds that doing so is in the child's best interest and that either
22 of the following applies:

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

1 767.24 (2) (c) The Except as provided in par. (d), the court may not give sole
2 legal custody to a parent who refuses to cooperate with the other parent if the court
3 finds that the refusal to cooperate is unreasonable.

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

5 767.24 (2) (d) 1. Except as provided in subd. 4., if the court finds by a
6 preponderance of the evidence that a party has engaged in a pattern or serious
7 incident of interspousal battery, as described under s. 940.19 or 940.20 (1m), or
8 domestic abuse, as defined in s. 813.12 (1) (am), pars. (am), (b), and (c) do not apply
9 and there is a rebuttable presumption that it is detrimental to the child and contrary
10 to the best interest of the child to award joint or sole legal custody to that party. In

11 making the finding under this subdivision, the court shall consider a serious incident
12 of interspousal battery or domestic abuse to include, but not be limited to, the use of
13 violence that intentionally or recklessly causes or attempts to cause bodily injury or
14 sexual assault, or that places a person in reasonable fear of imminent bodily injury
15 or sexual assault, or that involves the use of a dangerous weapon. The presumption

16 under this subdivision may be rebutted only by a preponderance of evidence of all of
17 the following:

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

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

24 2. If the court finds under subd. 1. that both parties engaged in a pattern or
25 serious incident of interspousal battery, as described under s. 940.19 or 940.20 (1m),

1 or domestic abuse, as defined in s. 813.12 (1) (am), the party who engaged in the
2 battery or abuse for purposes of the presumption under subd. 1. is the party that the
3 court determines was the primary physical aggressor. Except as provided in subd.
4 3., in determining which party was the primary physical aggressor, the court shall
5 consider all of the following:

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

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

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

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

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

15 f. Any other factor that the court considers relevant to the determination under
16 this subdivision.

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

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

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

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

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

10 767.24 (5) (am) (intro.) In Subject to par. (bm), in determining legal custody and
11 periods of physical placement, the court shall consider all facts relevant to the best
12 interest of the child. The court may not prefer one parent or potential custodian over
13 the other on the basis of the sex or race of the parent or potential custodian. The
14 Subject to par. (bm), the court shall consider the following factors in making its
15 determination:

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

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

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

19 767.24 (5) (bm) If the court finds under sub. (2) (d) that a parent has engaged
20 in a pattern or serious incident of interspousal battery, as described under s. 940.19
21 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), the safety and
22 well-being of the child and the safety of the parent who was the victim of the battery
23 or abuse shall be the paramount concerns in determining legal custody and periods
24 of physical placement.

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

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

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

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

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

6 767.24 (5) (am) 7. ~~The Whether the mental and or physical health of the parties,~~
7 ~~the minor children and other persons a party, minor child, or other person living in~~
8 a proposed custodial household negatively affects the child's intellectual, physical,
9 or emotional well-being.

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

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

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

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

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

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

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

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

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

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

20 767.24 (6) (f) If the court finds under sub. (2) (d) that a party has engaged in
21 a pattern or serious incident of interspousal battery, as described under s. 940.19 or
22 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), the court shall state
23 in writing whether the presumption against awarding joint or sole legal custody to
24 that party is rebutted and, if so, what evidence rebutted the presumption, and why

1 its findings relating to legal custody and physical placement are in the best interest
2 of the child.

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

4 767.24 (6) (g) If the court finds under sub. (2) (d) that a party has engaged in
5 a pattern or serious incident of interspousal battery, as described under s. 940.19 or
6 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), and the court awards
7 periods of physical placement to both parties, the court shall provide for the safety
8 and well-being of the child and for the safety of the party who was the victim of the
9 battery or abuse. For that purpose the court, giving consideration to the availability
10 of services or programs and to the ability of the party who committed the battery or
11 abuse to pay for those services or programs, shall impose one or more of the following,
12 as appropriate:

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

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

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

24 4. Requiring the party who committed the battery or abuse to attend and
25 complete, to the satisfaction of the court, treatment for batterers provided through

1 a certified treatment program or by a certified treatment provider as a condition of
2 exercising his or her periods of physical placement.

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

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

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

12 8. Imposing any condition not specified in subds. 1. to 7. that the court
13 determines is necessary for the safety and well-being of the child or the safety of the
14 party who was the victim of the battery or abuse.

15 **SECTION 42.** 767.325 (5m) of the statutes is amended to read:

16 767.325 (5m) FACTORS TO CONSIDER. In all actions to modify legal custody or
17 physical placement orders, the court shall consider the factors under s. 767.24 (5)
18 (am), subject to s. 767.24 (5) (bm), and shall make its determination in a manner
19 consistent with s. 767.24.

20 **SECTION 43. Initial applicability.**

21 (1) This act first applies to actions or proceedings that are commenced on the
22 effective date of this subsection, including actions or proceedings to modify a
23 judgment or order granted before the effective date of this subsection.

24 (END)

D. note

D-note

This redraft removes the language that specifies what the court or court commissioner must consider to be a serious incident of interspousal battery or domestic abuse.

PTK

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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June 20, 2003

This redraft removes the language that specifies what the court or court commissioner must consider to be a serious incident of interspousal battery or domestic abuse.

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