

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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Under current law, when a court decides whether to modify custody or physical placement of a child, the court must consider the factors under s. 767.24 (5) (am). Section 767.24 (5) (am) 3. somewhat addresses the issue that this draft addresses by requiring the court to consider the interaction and interrelationship of the child with any person who may significantly affect the child's best interest. This draft adds that the court must consider abuse or neglect of the child by a stepparent, a "significant other," or a person who lives or has lived in the child's home. The definition of "abuse" in s. 48.02 (1) includes emotional damage.

I did not add that the court must consider whether there is evidence of interspousal battery or domestic abuse (with respect to a parent of the child) because the court is already required to consider that under s. 767.24 (5) (am) 13.

Let me know if you want the factor in this draft to have a greater effect on a judge's decision than simply as a factor for the judge to consider. The judge really should be considering abuse or neglect currently, because abuse or neglect certainly would make the current custodial conditions physically or emotionally harmful to the best interest of the child (see s. 767.325 (1) (a) (intro.)) and abuse or neglect would, I think, rebut any presumption that continuing the current placement is in the child's best interest (see s. 767.325 (1) (b) 2. b.).

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