

2007 SENATE BILL 311

November 2, 2007 – Introduced by Senators PLALE, A. LASEE, SCHULTZ, OLSEN and LEIBHAM, cosponsored by Representatives PRIDEMORE, GRONEMUS, HAHN, A. WILLIAMS, ALBERS, KESTELL, MUSSER, GUNDRUM, GUNDERSON, VAN ROY, SOLETSKI, VOS, VRUWINK, HINES, MOULTON, PETERSEN, STRACHOTA and NASS. Referred to Committee on Judiciary and Corrections.

1 **AN ACT** *to repeal* 767.451 (1) (b) 3.; *to amend* 767.41 (4) (a) 2., 767.41 (6) (a) and
2 767.451 (1) (b) 2. (intro.); *to repeal and recreate* 767.451 (1) (b) 2. a. and
3 767.451 (1) (b) 2. b.; and *to create* 767.41 (5) (am) 5m. of the statutes; **relating**
4 **to:** equalizing physical placement to the highest degree, requiring the court to
5 state the reasons for ordering sole legal custody or not equalizing physical
6 placement, and standards for modifying legal custody or physical placement.

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 minor child based on the best interest of the child. In current law, there is a presumption that joint legal custody is in the child's best interest. The court also must allocate periods of physical placement between the parties. The court is required to set a placement schedule that allows the child to have regularly occurring, meaningful periods of physical placement with each parent and that maximizes the amount of time the child may spend with each parent, taking into consideration geographic separation and accommodations for different households. 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. When determining custody and periods of physical placement, the court is required, under current law, to consider a number of factors (custody and placement factors), such as the wishes

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of the child and of the parties, the interaction and interrelationship of the child with his or her parents, the amount and quality of time that each party has spent with the child in the past, the child's adjustment to the home, school, and community, and the cooperation and communication between the parties.

This bill provides that, when the court allocates periods of physical placement, instead of maximizing the amount of time a child may spend with each parent, taking into consideration geographic separation and accommodations for different households, the court must presume that a placement schedule that equalizes to the highest degree the amount of time the child may spend with each parent is in the child's best interest. This presumption may be rebutted if the court finds by clear and convincing evidence, after considering the custody and placement factors, that equalizing physical placement would not be in the child's best interest. The bill also makes the geographic separation of the parties an additional custody and placement factor for the court to consider in every case when determining custody and periods of physical placement.

Under current law, if legal custody or physical placement is contested, the court must state in writing why its findings relating to legal custody or physical placement are in the best interest of the child. Under the bill, if legal custody or physical placement is contested and the court orders sole legal custody or a placement schedule that does not equalize placement between the parties to the highest degree, the court must state both orally and in writing the reasons for its order.

Under current law, after two years after making an initial order of legal custody or physical placement, a court may revise legal custody or physical placement in a manner that substantially alters the time a parent may spend with his or her child if the court finds that the modification is in the best interest of the child and that there has been a substantial change in circumstances since the last order was made. There is a rebuttable presumption that continuing the current allocation of decision making concerning the child and continuing the child's physical placement with the parent with whom the child resides for the greater period of time is in the best interest of the child, and a change in the economic circumstances or marital status of a party is not sufficient to meet the standard for modification. The bill changes the rebuttable presumption that applies to modifications after two years after an initial order of legal custody or physical placement. Under the bill, there is a rebuttable presumption that the standard for modification is met, that is, that modification is in the best interest of the child and that there has been a substantial change in circumstances since the last order was made, if either of the following has occurred: 1) a parent has modified his or her lifestyle or the location of his or her residence to an extent that affects the amount of time the parent is able to care for the child; or 2) a parent has successfully completed parenting classes, a drug or alcohol abuse treatment program, or an anger management program to address a problem that previously hindered his or her ability to care for the child. In addition,

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the bill deletes the provision that makes a change in the economic circumstances or marital status of a party insufficient to meet the standard for modification.

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

1 **SECTION 1.** 767.41 (4) (a) 2. of the statutes is amended to read:
2 767.41 **(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 presume that a placement schedule that allows
5 the child to have regularly occurring, meaningful periods of physical placement with
6 each parent and that ~~maximizes~~ equalizes to the highest degree the amount of time
7 the child may spend with each parent, ~~taking into account geographic separation and~~
8 ~~accommodations for different households~~ is in the best interest of the child. The
9 presumption under this subdivision is rebutted if the court finds by clear and
10 convincing evidence, after considering all of the factors in sub. (5) (am), subject to
11 sub. (5) (bm), that equalizing physical placement to the highest degree would not be
12 in the child's best interest.

13 **SECTION 2.** 767.41 (5) (am) 5m. of the statutes is created to read:

14 767.41 **(5)** (am) 5m. The geographic separation of the parties.

15 **SECTION 3.** 767.41 (6) (a) of the statutes is amended to read:

16 767.41 **(6)** (a) If legal custody or physical placement is contested and the court
17 orders sole legal custody or a placement schedule that does not equalize physical
18 placement between the parties to the highest degree, the court shall state orally and
19 in writing why its findings relating to legal custody or physical placement are in the
20 best interest of the child the reasons for its order.

21 **SECTION 4.** 767.451 (1) (b) 2. (intro.) of the statutes is amended to read:

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1 767.451 (1) (b) 2. (intro.) ~~With respect to subd. 1., there~~ There is a rebuttable
 2 presumption that any of the following is sufficient to meet the standards for
 3 modification under subd. 1.:

4 **SECTION 5.** 767.451 (1) (b) 2. a. of the statutes is repealed and recreated to read:

5 767.451 (1) (b) 2. a. A parent modifying his or her lifestyle or the location of his
 6 or her residence to an extent that affects the amount of time the parent is able to care
 7 for the child.

8 **SECTION 6.** 767.451 (1) (b) 2. b. of the statutes is repealed and recreated to read:

9 767.451 (1) (b) 2. b. A parent having successfully completed parenting classes,
 10 a drug or alcohol abuse treatment program, or an anger management program to
 11 address a problem that previously hindered the parent’s ability to care for the child.

12 **SECTION 7.** 767.451 (1) (b) 3. of the statutes is repealed.

13 **SECTION 8. Initial applicability.**

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

17 **(END)**