



State of Wisconsin


LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 11/05/2007 (Per: PJK)





Appendix A

 The 2007 drafting file for LRB-1804/2

has been copied/added to the drafting file for

2007 LRB-3305 (SB 311)

 The attached 2007 draft was incorporated into the new 2007 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as an appendix, to the new 2007 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

 This cover sheet was added to rear of the original 2007 drafting file. The drafting file was then returned, intact, to its folder and filed.

2007 DRAFTING REQUEST

Bill

Received: **02/01/2007**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Donald Pridemore (608) 267-2367**

By/Representing: **Bill Savage**

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

Drafter: **pkahler**

May Contact:

Addl. Drafters:

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

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Pridemore@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Custody and physical placement revisions

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 03/05/2007	jdye 05/24/2007		_____			
	pkahler 05/16/2007			_____			
/1			rschluet 05/24/2007	_____	lparisi 05/24/2007		
/2	pkahler 06/06/2007	kfollett 06/06/2007	sherritz 06/06/2007	_____	lparisi 06/06/2007	mbarman 10/29/2007	

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10/29/2007 02:56:42 PM

Page 2

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

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/2	pkahler 06/06/2007	kfollett 06/06/2007	sherritz 06/06/2007	_____	lparisi 06/06/2007		

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/?	pkahler 03/05/2007	jdyer 05/24/2007					
	pkahler 05/16/2007	<i>12/6/07</i>	<i>Sh 6/6</i>	<i>Sh - pg 6/6</i>			
/1			rschluet 05/24/2007		lparisi 05/24/2007		

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pkahler

1/5/24 jld

Handwritten initials and signature, including "S287" and a large scribble.

FE Sent For:

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Kahler, Pam

From: Savage, Bill
Sent: Monday, May 14, 2007 12:34 PM
To: Kahler, Pam
Subject: LRB 1899

Pam, earlier this year we spoke about some changes to our 50/50 placement bill that would represent a compromise between Don and Sen. Taylor. Here are some changes to current law that we would like to show the Senator. In drafting this new version, work from existing law and not from 1899/P2dn. Feel free to call with any questions. Thanks, Bill.

**A LEGISLATIVE PROPOSAL
TO CLARIFY THE PROVISIONS OF 1999 WISCONSIN ACT 9,
RELATING TO CHILD PLACEMENT**

(11/22/06)

The following changes to Wisconsin statutes are proposed allow parents to resolve their own child custody and placement disputes more fairly, efficiently, and with less cost to the family and taxpayers.

1. *Modify Section 767.41(4) (Allocation of physical placement.) to read:*

767.41(4) Allocation of physical placement.

(a) 1. Except as provided under par. (b), if the court orders sole or joint legal custody under sub. (2), the court shall allocate periods of physical placement between the parties in accordance with this subsection.

2. In determining the allocation of periods of physical placement, the court shall ~~consider each case on the basis of factors in sub. (5).~~ The court shall **presume that** set a placement schedule that ~~allows the child to have regularly occurring, meaningful periods of physical placement with each parent and that~~ **equalizes to the highest degree** maximizes, the amount of time the child may spend with each parent **is in the best interest of the child**, ~~taking into account geographic separation and accommodations for different households.~~ This presumption may be rebutted if the court, after considering all the factors in sub. (5), finds by clear and convincing evidence that this would not be in the best interest of the child..

2. *ADD as factors to Section 767.41(5):*

Geographic separation of the parties.

3. *Modify Section 767.451(1)(b) to read:*

767.451 Revision of legal custody and physical placement orders.

Except for matters under s. 767.461 or 767.481, the following provisions are applicable to modifications of legal custody and physical placement orders:

(1) SUBSTANTIAL MODIFICATIONS.

(b) After 2-year period.

1. Except as provided under par. (a) and sub. (2), upon petition, motion or order to show cause by a party, a court may modify an order of legal custody or an order of physical placement where the modification would

substantially alter the time a parent may spend with his or her if the court finds all of the following:

- a. The modification is in the best interest of the child.
- b. There has been a substantial change of circumstances since the entry of the last order affecting legal custody or the last order substantially affecting physical placement.

2. With respect to subd. 1., there is a rebuttable presumption **that any of the following is**

~~a. Continuing the current allocation of decision making under a legal custody order is in the best interest of the child.~~

~~b. 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.~~

3. A change in the economic circumstances or marital status of either party is not sufficient to meet the standards for modification under subd. 1.

a. A parent modifying his or her lifestyle or geographic residence that would impact the amount of time that parent can care for the child.

b. A parent having successfully completed parenting classes or drug, alcohol, or anger management treatment programs that previously hindered that parent ability to care for the child.

4. *Modify 767.41(6) to read.*

767.41(6) final order. (A) If legal custody or physical placement is contested, **and the court orders sole custody or a placement schedule that does not equalize to the highest degree placement with each parent,** the court shall state in writing why ~~its findings relative to legal custody or physical placement are in the best interest of the child.~~



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-1804/A
PJK:.....

JL

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

(w/ 5-16)

gen cat

1 AN ACT ^{gen cat}; relating to: equalizing physical placement to the highest degree,
2 requiring the court to state the reasons for ordering sole legal custody or not
3 equalizing physical placement, and standards for modifying legal custody or
4 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 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 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,~~ ^{STET} 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, 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: ✓

1 767.41 (4) (a) 2. In determining the allocation of periods of physical placement,
2 the court shall ~~consider each case on the basis of the factors in sub. (5) (am), subject~~
3 to sub. (5) (bm). The court shall set [✓]presume that a placement schedule that allows
4 the child to have regularly occurring, meaningful periods of physical placement with
5 each parent and that maximizes equalizes to the ^hhighest degree the amount of time
6 the child may spend with each parent, ~~taking into account geographic separation and~~
7 ~~accommodations for different households~~ is in the best interest of the child. The
8 presumption under this subdivision [✓]is rebutted if the court finds by clear and
9 convincing evidence, after considering all of the factors in sub. (5) (am), [✓]subject to
10 sub. (5) (bm), that equalizing physical placement to the ^hhighest degree would not be
11 in the child's best interest.

History: 1971 c. 149, 157, 211; 1975 c. 39, 122, 200, 283; 1977 c. 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.24; 1981 c. 391; 1985 a. 70, 176; 1987 a. 332 s. 64; 1987 a. 355, 364, 383, 403; 1989 a. 56 s. 259; 1989 a. 359; 1991 a. 32; 1993 a. 213, 446, 481; 1995 a. 77, 100, 275, 289, 343, 375; 1997 a. 35, 191; 1999 a. 9; 2001 a. 109; 2003 a. 130; 2005 a. 101, 174, 264; 2005 a. 443 ss. 29, 94 to 98; Stats. 2005 s. 767.41; 2005 a. 471 ss. 1 to 5; ss. 13.93 (1) (b) and (2) (c).

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

13 767.41 (5) (am) 5m. The geographic separation of the parties. [✓]

14 **SECTION 3.** 767.41 (6) (a) [✓]of the statutes is amended to read:

15 767.41 (6) (a) If legal custody or physical placement is contested and the court
16 orders sole legal custody or a placement schedule that does not equalize physical
17 placement between the parties to the [✓]highest degree, the court shall state in writing
18 ~~why its findings relating to legal custody or physical placement are in the best~~
19 interest of the child the reasons for its order.

History: 1971 c. 149, 157, 211; 1975 c. 39, 122, 200, 283; 1977 c. 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.24; 1981 c. 391; 1985 a. 70, 176; 1987 a. 332 s. 64; 1987 a. 355, 364, 383, 403; 1989 a. 56 s. 259; 1989 a. 359; 1991 a. 32; 1993 a. 213, 446, 481; 1995 a. 77, 100, 275, 289, 343, 375; 1997 a. 35, 191; 1999 a. 9; 2001 a. 109; 2003 a. 130; 2005 a. 101, 174, 264; 2005 a. 443 ss. 29, 94 to 98; Stats. 2005 s. 767.41; 2005 a. 471 ss. 1 to 5; ss. 13.93 (1) (b) and (2) (c).

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



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-1804/2
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2007 BILL

Reger

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

BILL

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 in writing the reasons for its order.

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both orally and

✓

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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:

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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 in writing
19 ~~why its findings relating to legal custody or physical placement are in the best~~
20 ~~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)

Basford, Sarah

From: Hurlburt, Waylon
Sent: Monday, October 29, 2007 2:18 PM
To: LRB.Legal
Subject: Draft Review: LRB 07-1804/2 Topic: Custody and physical placement revisions

Please Jacket LRB 07-1804/2 for the ASSEMBLY.



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-1804/2
PJK:jld:sh

2007 BILL

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:

