



2007 ASSEMBLY BILL 462

July 19, 2007 - Introduced by Representatives KESTELL, PRIDEMORE, HAHN, GUNDERSON, LEMAHIEU, HINES, F. LASEE and MURSAU, cosponsored by Senator PLALE. Referred to Committee on Children and Family Law.

1 **AN ACT to repeal** 767.481 (5m) (a); **to consolidate, renumber and amend**
2 767.481 (5m) (intro.) and (b); **to amend** 767.481 (1) (a) 2., 767.481 (3) (a) 1.
3 (intro.), 767.481 (3) (a) 2. a., 767.481 (3) (b) 1. (intro.), 767.481 (3) (b) 1. a.,
4 767.481 (3) (b) 2., 767.481 (3) (c) 1. and 767.481 (3) (c) 2.; and **to create** 767.481
5 (1) (a) 2m., 767.481 (1) (a) 2r., 767.481 (3) (b) 1m., 767.481 (4m) and 767.481 (7)
6 of the statutes; **relating to:** moving with a child.

Analysis by the Legislative Reference Bureau

Under current law, if both parents of a child have periods of physical placement with the child (such as after a divorce), and a parent who has sole or joint legal custody and physical placement rights intends to move with the child outside the state or in the state at a distance of 150 miles or more from the other parent, or remove the child from the state for 90 or more consecutive days, that parent (parent A) must give 60 days' written notice of his or her intention to the other parent (parent B). Parent B may file an objection to the move or removal. The options available to the court in that case, upon the proper motions and proofs, are to allow the move or removal, to modify legal custody or physical placement or both, or to prohibit the move or removal.

This bill makes the following changes to the provisions related to moving with or removing a child:

1. Under the bill, the notice requirements are the same, but, if the parents live less than 20 miles from each other, parent A must provide notice to parent B if parent

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A intends to move with the child to a location in the state that is 20 miles or more from parent B (instead of 150 miles or more). In addition, parent A must give notice to parent B if the child is in kindergarten to grade 12 and parent A intends to establish his or her legal residence with the child outside the child's current school district.

2. Under current law, if parent B files an objection to the move or removal, parent A is prohibited from moving with or removing the child until the matter is resolved, unless parent A obtains a temporary order authorizing the move or removal. The bill requires the court to find parent A in contempt of court, upon the motion of parent B, and to order parent A to pay costs and reasonable attorney fees to parent B if parent A moves with or removes the child: 1) without or before providing notice, if notice is required; or 2) before resolution of the matter and without obtaining a temporary order to do so, if parent B filed an objection to the move or removal.

3. Under current law, if parent A has either sole or joint legal custody and physical placement with the child for the greater period of time, parent B may request modification of the legal custody or physical placement order, there is a rebuttable presumption that continuing the physical placement with parent A for the greater period of time is in the child's best interest, and parent B has the burden of proving that modification of the legal custody or physical placement order is in the child's best interest. Under the bill, parent B may request modification of the legal custody or physical placement order, is subject to the rebuttable presumption that the current allocation of physical placement is in the child's best interest, and has the burden of proving that modification is in the child's best interest if parent A has physical placement with the child for at least 90 percent of the time.

4. Under current law, if the parents have joint legal custody and substantially equal periods of physical placement, either parent may request modification of the legal custody or physical placement order. The court may grant the request if the court finds that circumstances make it impractical for the parents to continue to have substantially equal periods of physical placement and the modification is in the best interest of the child. The parent requesting the modification has the burden of proof. The bill changes this so that either parent may request modification of the legal custody or physical placement order if parent A has sole or joint legal custody and physical placement for less than 90 percent of the time. In addition, the bill creates a rebuttable presumption that it is in the child's best interest to remain in the community to which the child has become adjusted, requires the court to modify legal custody or physical placement if the court makes the findings required under current law, and changes the burden of proof to the parent proposing the move or removal, regardless of which parent requests modification of the legal custody or physical placement order. Thus, if parent B requests modification of the legal custody or physical placement order, parent A must prove that modification is *not* in the child's best interest, and if parent A requests the modification, parent A must prove that modification *is* in the child's best interest.

5. Under current law, the court may prohibit the move or removal on the request of parent B if parent A has sole or joint legal custody, parent A has physical placement for the greater period of time or the parents have substantially equal

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periods of physical placement, and the court finds that prohibiting the move or removal is in the child's best interest. Parent B, who is requesting that the move or removal be prohibited, has the burden of proving that prohibiting the move or removal is in the child's best interest. The bill changes this so that, regardless of the allocation of physical placement, the court must prohibit the move or removal on the request of parent B unless the court finds that prohibiting the move or removal would be harmful to the child's best interest. The burden of proof is also changed so that parent A has the burden of proving that prohibiting the move or removal would be harmful to the child's best interest.

6. Current law sets out factors that the court *must* consider for making its determinations, such as whether the proposed action is reasonable and the nature and extent of the child's relationship with parent B. Current law also provides that the court *may* consider the child's adjustment to the home, school, religion, and community. The bill eliminates that factor, which the court may, but is not required to, consider.

7. Finally, the bill provides that, if the court does not prohibit the move or removal, the court must require parent A to pay for some or all of any additional transportation costs that parent B incurs in exercising physical placement with the child as a result of the move or removal, based on each party's ability to pay.

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

1 **SECTION 1.** 767.481 (1) (a) 2. of the statutes is amended to read:

2 767.481 (1) (a) 2. ~~Establish~~ Except as provided in subd. 2m., establish his or
3 her legal residence with the child at any location within this state that is at a distance
4 of 150 miles or more from the other parent.

5 **SECTION 2.** 767.481 (1) (a) 2m. of the statutes is created to read:

6 767.481 (1) (a) 2m. If the parent's current residence is less than 20 miles from
7 the other parent, establish his or her legal residence with the child at any location
8 within this state that is at a distance of 20 miles or more from the other parent.

9 **SECTION 3.** 767.481 (1) (a) 2r. of the statutes is created to read:

10 767.481 (1) (a) 2r. If the child is in kindergarten to grade 12, establish his or
11 her legal residence with the child in a school district that is different from the one
12 in which the child currently resides.

ASSEMBLY BILL 462**SECTION 4**

1 **SECTION 4.** 767.481 (3) (a) 1. (intro.) of the statutes is amended to read:

2 767.481 **(3)** (a) 1. (intro.) Except as provided under par. (b), if the parent
3 proposing the move or removal has sole legal or joint legal custody of the child and
4 has physical placement with the child ~~resides with that parent for the greater period~~
5 for at least 90 percent of time, the parent objecting to the move or removal may file
6 a petition, motion, or order to show cause for modification of the legal custody or
7 physical placement order affecting the child. The court may modify the legal custody
8 or physical placement order if, after considering the factors under sub. (5), the court
9 finds all of the following:

10 **SECTION 5.** 767.481 (3) (a) 2. a. of the statutes is amended to read:

11 767.481 **(3)** (a) 2. a. There is a rebuttable presumption that continuing the
12 current allocation of decision making under a legal custody order or continuing the
13 child's current allocation of physical placement with the parent with whom the child
14 resides for the greater period of time is in the best interest of the child. This
15 presumption may be overcome by a showing that the move or removal is
16 unreasonable and not in the best interest of the child.

17 **SECTION 6.** 767.481 (3) (b) 1. (intro.) of the statutes is amended to read:

18 767.481 **(3)** (b) 1. (intro.) If the ~~parents have~~ parent proposing the move or
19 removal has sole legal or joint legal custody of the child and ~~substantially equal~~
20 ~~periods of~~ has physical placement with the child for less than 90 percent of the time,
21 either parent may file a petition, motion, or order to show cause for modification of
22 the legal custody or physical placement order. The court ~~may~~ shall modify an order
23 of legal custody or physical placement if, after considering the factors under sub. (5),
24 the court finds all of the following:

25 **SECTION 7.** 767.481 (3) (b) 1. a. of the statutes is amended to read:

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1 767.481 (3) (b) 1. a. Circumstances make it impractical for the parties to
2 continue to have substantially equal periods the current allocation of physical
3 placement.

4 **SECTION 8.** 767.481 (3) (b) 1m. of the statutes is created to read:

5 767.481 (3) (b) 1m. With respect to subd. 1., there is a rebuttable presumption
6 that it is in the child's best interest to remain in the community to which the child
7 has become adjusted before the proposed move or removal.

8 **SECTION 9.** 767.481 (3) (b) 2. of the statutes is amended to read:

9 767.481 (3) (b) 2. Under this paragraph, the burden of proof is on the parent
10 ~~filing the petition, motion or order to show cause~~ proposing the move or removal.

11 **SECTION 10.** 767.481 (3) (c) 1. of the statutes is amended to read:

12 767.481 (3) (c) 1. If the parent proposing the move or removal has sole legal or
13 joint legal custody of the child ~~and the child resides with that parent for the greater~~
14 ~~period of time or the parents have substantially equal periods of physical placement~~
15 ~~with the child,~~ regardless of the allocation of physical placement, as an alternative
16 to the petition, motion, or order to show cause under par. (a) or (b), the parent
17 objecting to the move or removal may file a petition, motion, or order to show cause
18 for an order prohibiting the move or removal. The court may shall prohibit the move
19 or removal ~~if~~ unless, after considering the factors under sub. (5), the court finds that
20 ~~the prohibition is in~~ prohibiting the move or removal would be harmful to the best
21 interest of the child.

22 **SECTION 11.** 767.481 (3) (c) 2. of the statutes is amended to read:

23 767.481 (3) (c) 2. Under this paragraph, the burden of proof is on the parent
24 ~~objecting to~~ proposing the move or removal.

25 **SECTION 12.** 767.481 (4m) of the statutes is created to read:

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1 767.481 (4m) PAYMENT OF ADDITIONAL TRANSPORTATION COSTS. If the court does
2 not prohibit the move or removal, the court shall require the parent proposing the
3 move or removal to pay for some or all of any additional transportation costs that the
4 other parent, as a result of the move or removal, will incur in exercising periods of
5 physical placement with the child, based on each party's ability to pay.

6 **SECTION 13.** 767.481 (5m) (intro.) and (b) of the statutes are consolidated,
7 renumbered 767.481 (5m) and amended to read:

8 767.481 (5m) ~~OTHER FACTORS~~ FACTOR. In making a determination under sub.
9 (3):~~(b)~~ The, the court may not use the availability of electronic communication as
10 a factor in support of a modification of a physical placement order or in support of a
11 refusal to prohibit a move.

12 **SECTION 14.** 767.481 (5m) (a) of the statutes is repealed.

13 **SECTION 15.** 767.481 (7) of the statutes is created to read:

14 767.481 (7) CONTEMPT OF COURT. If a parent who is required to provide notice
15 under sub. (1) or (6) (a) moves with or removes the child without or before providing
16 notice in violation of the order under sub. (1) or in violation of sub. (6) (a), or if a parent
17 who receives a notice of objection under sub. (2) (a) moves with or removes the child
18 before the dispute is resolved or the final order of the court under sub. (3) in violation
19 of sub. (2) (b), the court shall find the parent who moves with or removes the child
20 in contempt of court under ch. 785, upon the motion of the other parent, and shall
21 order the parent who moves with or removes the child to pay the court costs and,
22 notwithstanding s. 814.04 (1), reasonable attorney fees incurred by the other parent.

23 **SECTION 16. Initial applicability.**

