

2009 DRAFTING REQUEST

Bill

Received: **07/27/2009**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Donna Seidel (608) 266-0654**

By/Representing: **Chris McKinny**

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.Seidel@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Custody studies in actions affecting the family

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 07/27/2009	bkraft 08/11/2009		_____			
/1			phenry 08/11/2009	_____	lparisi 08/11/2009	mbarman 10/01/2009	

FE Sent For:

<END>

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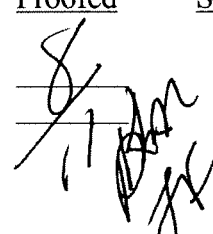
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/?	pkahler	1 bjk 8/11					

FE Sent For:

<END>

7-27 by phone Chris McKinney - Rep Seidel
wants a draft of what legal action (Bob Anderson)
described as needed for custody
study reports introduced in
accordance with the rules
of evidence

MADISON OFFICE


31 South Mills Street, Madison, Wisconsin 53715

www.legalaction.org | tel 608-256-3304 | toll-free 800-362-3904 | fax 608-256-0510

LEGALAction
OF WISCONSIN

40 Years of Justice

TO: Senator Lena Taylor

FROM: Bob Andersen 

RE: **Amendment to 2007 Assembly Bill 309, relating to: offering and admitting custody studies in accordance with the rules of evidence.**

DATE: July 8, 2009

This is a bill that passed the Assembly unanimously last session, but that raised a couple of problems that prevented its final passage.

We believe that those two problems are resolved as follows:

- (1) The first problem was that the Office of the Director of State Courts were concerned that the recommendations from custody studies could not be made available to the courts until those recommendations were introduced in evidence. Their concern was that this would delay the process. *Consequently, we have amended the proposal to provide that the recommendations must be given to the courts in advance of the hearing. This amendment has been reviewed by the Office of the Director of State Courts and their legislative committee and they now remove their objections to the bill. At the end of this memo is the amended proposal.*
- (2) The second problem was a concern that social workers in Milwaukee County who made these recommendations would have to appear in court. *This is not a problem for Milwaukee County, because Milwaukee County does not have Family Court Services. Instead, recommendations in Milwaukee County regarding custody and placement are made by Guardians ad Litem, who are required to introduce those recommendations in accordance with the rules of evidence. So, this bill has no effect on Milwaukee County, except in a very few cases where a court may have requested that an outside custody study be done.*

But this is a great concern for other counties, because custody studies are used in the other counties. While this is a small bill, it relates to a subject matter that has profound importance – because it relates to studies and reports that are made that can determine how physical placement and legal custody are to be divided between the parents in a family law action. While it is a small bill, it makes vitally important changes in the law.

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SECTION 1. 767.405 (14) (b) of the statutes is amended to read:

767.405 (14) (b) The person or entity investigating the parties under par. (a) shall complete the investigation and submit a report of the results to the court. ~~The court shall make the results available to~~ and to both parties at least 10 days before the report is introduced into evidence. The court may review the report, but may not rely upon the report as evidence, until the report is properly introduced in accordance with the rules of evidence. The report shall be a part of the record in the action ~~unless the court orders otherwise~~ if it is offered and received in accordance with the rules of evidence.

SECTION 2. Initial applicability.

(1) This act first applies to legal custody and physical placement study reports that are completed on the effective date of this subsection.

Kahler, Pam

From: Robert J. Andersen [RJA@legalaction.org]
Sent: Tuesday, July 21, 2009 4:16 PM
To: Kahler, Pam
Subject: RE: Custody study draft

Pam:

The report has to be introduced by the person who did the investigation and wrote the report. That is to say that, while there may be an attorney there, the person who did the investigation and wrote the report will take the stand and submit the report as evidence. The attorney and the person who conducted the investigation will know when this is supposed to happen, because it will be at the hearing that has been scheduled on the matter. The hearing will have been scheduled long in advance, giving the investigator ample time to make sure the report is submitted to the court and the parties 10 days in advance of the hearing. I hope this helps. Thanks.

From: Kahler, Pam [mailto:Pam.Kahler@legis.wisconsin.gov]
Sent: Tuesday, July 21, 2009 3:08 PM
To: Robert J. Andersen
Subject: RE: Custody study draft

Hi, Bob:

Sorry to be making such a big deal of this. I think one of the problems is the passive construction. Who offers the report into evidence? Most likely an attorney and not the person doing the investigation and report, right? How will that person know when the report will be offered in evidence in order to submit the report to the court and parties at least 10 days before then?

Pam

From: Robert J. Andersen [mailto:RJA@legalaction.org]
Sent: Tuesday, July 21, 2009 2:51 PM
To: Kahler, Pam
Subject: RE: Custody study draft

Hello Pam:

The answer to your first question is yes, this does not involve a change in the law. As for the second question, you are right that the way this should read is that "The report shall be offered in accordance with the rules of evidence and shall be a part of the record in the action unless the court orders otherwise if it is offered and received in accordance with the rules of evidence."

I think the report should always have to be introduced into evidence, since this is consistent with the obligation that always existed under the statute -- to submit the results to the court. And since the statute mandates that the court and the parties be given a copy of the report, it makes sense that the report has to be offered into evidence. Now, if the party fails to meet the requirements of evidence (e.g., the wrong person attempts to introduce the evidence) then it will not be a part of the record, because it will not have been offered and received in accordance with the rules of evidence.

Following is how the statute could read:

07/21/2009

SECTION 1. 767.405 (14) (b) of the statutes is amended to read:

767.405 (14) (b) The person or entity investigating the parties under par. (a) shall complete the investigation and submit a report of the results to the court. ~~The court shall make the results available to~~ and to both parties at least 10 days before the report is introduced into evidence. The court may review the report, but may not rely upon the report as evidence, until the report is properly introduced in accordance with the rules of evidence. The report shall be offered in accordance with the rules of evidence and shall be a part of the record in the action unless the court orders otherwise if it is offered and received in accordance with the rules of evidence.

From: Kahler, Pam [mailto:Pam.Kahler@legis.wisconsin.gov]

Sent: Tuesday, July 21, 2009 1:14 PM

To: Robert J. Andersen

Cc: Peterson, Eric

Subject: Custody study draft

Hi, Bob:

I have a couple of questions about the changes to the custody study draft.

1. Is it correct that you are not asking for any change with respect to the second problem (social workers appearing in court)?

2. For the language changes to address the first problem, it appears that there is less of a requirement that the report be introduced into evidence, is this correct? The reason I say this is because in the previous version, the language was "The report *shall be offered and received* in accordance with the rules of evidence. The report may not be submitted to the court *before* (as opposed to unless) it is introduced into evidence." The new language is "The report shall be a part of the record in the action *if* it is offered and received in accordance with the rules of evidence." So, the report does not have to be introduced as evidence and, in that case, it does not have to be submitted to the parties or the court and does not become a part of the record. Correct?

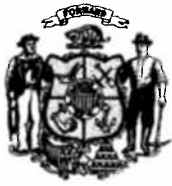
Pam

Pamela J. Kahler

Legislative Attorney

Legislative Reference Bureau

608-266-2682



State of Wisconsin

~~2007-2009~~ LEGISLATURE

2009-2010

3194/1
-3155/1
LRB:010/2
PJK:10/jf
From 3155/1
bjk

**ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO 2007 ASSEMBLY BILL 309**

2009 Bill

SA
X-ref
Inserts
Ln 7-227

June 26, 2007 - Offered by Representative ALBERS.

Regenerate ↓

- 1 AN ACT to amend 767.405 (14) (b) of the statutes; relating to: submitting
- 2 custody study reports to the parties and offering and admitting custody study
- 3 reports in accordance with the rules of evidence.

Analysis by the Legislative Reference Bureau

Under current law, in an action affecting the family, such as a divorce, if there is a minor child and the parties do not agree on legal custody or physical placement, the parties must be referred to mediation to attempt to resolve the contested issues. The court may order a person or entity designated by the county to conduct a legal custody or physical placement study to investigate such issues as the conditions of the child's home, the parties' performance of parental duties, and whether either party has engaged in domestic abuse. The report that results from the study is submitted to the court, made available to the parties, and made a part of the record of the action unless the court orders otherwise. This substitute amendment requires that the report be submitted to the parties at least ten days before it is introduced into evidence, that it be offered and received in accordance with the rules of evidence, and that it not be submitted to the court before it is introduced into evidence.

Insert A

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

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3155/ins
PJK:.....

INSERT A

bill requires that the report be submitted to the court and to the parties at least ten days before it is introduced into evidence. The court may review the report but may not rely upon it as evidence before it is properly introduced. The report must be offered in accordance with the rules of evidence, and is a part of the record in the action if it is so offered and admitted into evidence

(END OF INSERT A)

INSERT 2-8

1 **SECTION 1.** 767.405 (14) (b) of the statutes is renumbered 767.405 (14) (b) 1. and
2 amended to read:

3 767.405 (14) (b) 1. The person or entity investigating the parties under par. (a)
4 shall complete the investigation and, prepare a report of the results, and, at least 10
5 days before the report is introduced into evidence under subd. 2., submit the results
6 report to the court. The court shall make the results available and to both parties.
7 The court may review the report, but may not rely upon it as evidence before it is
8 properly introduced under subd. 2.

9 2. The report under subd. 1. shall be offered in accordance with the rules of
10 evidence and shall be a part of the record in the action unless the court orders
11 otherwise if it is so offered and admitted into evidence.

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; 2003 a. 130; 2005 a. 443 ss. 8, 56, 57, 181; Stats. 2005 s. 767.405; 2007 a. 187.

(END OF INSERT 2-8)

Duerst, Christina

From: McKinny, Chris
Sent: Wednesday, September 30, 2009 3:44 PM
To: LRB.Legal
Subject: Draft Review: LRB 09-3194/1 Topic: Custody studies in actions affecting the family

Please Jacket LRB 09-3194/1 for the ASSEMBLY.

Thank you!