




Appendix A

LEGISLATIVE REFERENCE BUREAU
BILL HISTORY RESEARCH APPENDIX

 The drafting file for 2015 LRB-4707 (For: Rep. Rodriguez)
has been transferred to the drafting file for
2017 LRB-0793 (For: Rep. Rodriguez)



RESEARCH APPENDIX -

PLEASE KEEP WITH THE DRAFTING FILE

(Request Made By: EAW) (Date: 1/22/2016)

2015 DRAFTING REQUEST

Bill

Received: 2/5/2016 Received By: pkahler
For: Jessie Rodriguez (608) 266-0610 Same as LRB:
May Contact: By/Representing: Vince
Subject: Dom. Rel. - cust./plac./vis. Drafter: pkahler
Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email: Rep.Rodriguez@legis.wisconsin.gov
Carbon copy (CC) to: peggy.hurley@legis.wisconsin.gov
sarah.walkenhorstbarber@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Allowing custody and placement orders based on a future contingency

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 2/11/2016	jdye 2/15/2016	_____			
/P1	pkahler 5/10/2016		_____	lparisi 2/15/2016		
/P2		kfollett 5/11/2016	_____	mbarman 5/12/2016		

FE Sent For:

<END>

Kahler, Pam

From: Williams, Vincent
Sent: Friday, February 05, 2016 2:53 PM
To: Kahler, Pam
Subject: FW: State Bar memos
Attachments: CP memo - Rodriguez.pdf

From: Lynne Davis [mailto:ldavis@wisbar.org]
Sent: Friday, January 08, 2016 2:28 PM
To: Williams, Vincent <Vincent.Williams@legis.wisconsin.gov>
Subject: State Bar memos

Hi Vince,

I have gotten about half of the information I needed for the relocation proposal and expect the rest of the information by early next week, so I should have that memo to you soon.

Also, in reviewing the contingent placement memo, I just caught the spelling of Rep. Rodriguez's name in the address was autocorrected, so I corrected it and have attached the new version.

Sorry about that, I usually catch those things since people never spell my name correctly, but unfortunately, this slipped by.

-Lynne

Lynne Davis
Government Relations Coordinator
State Bar of Wisconsin
www.wisbar.org
(608) 250-6045
(800) 444-9404, ext. 6045

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FAMILY LAW SECTION

MEMORANDUM

To: Rep. Jessie Rodriguez
From: Family Law Section, State Bar of Wisconsin
Date: December 17, 2015
Re: Contingent Placement proposal

As a follow up to your November 19th meeting with Lynne Davis, discussing possible sponsorship of a contingent placement proposal from the State Bar of Wisconsin's Family Law Section, we have addressed your concerns regarding the legislative history of this issue and how this proposal differs from previous bills, as well as why the section believes the current proposal to be a better solution to the issues surrounding contingent placement.

AB 29 (2007) and AB 311 (2005) were identical bills that gave the court the authority, *absent any agreement of the parties*, to consider "events likely to occur in the future or temporary conditions affecting decision making and parental duties" and then make orders that provided for future modification or retained the option to modify at a future time.

The current proposal is more narrow in scope because:

1. The proposal does not give the court any authority to consider or order modification at a future time unless there first exists an agreement between the parties for future modification.
2. The court is not required to accept the future modification agreement but it has the discretion to do so which 767.461 (Revisions Agreed to By Stipulation) provides that the court shall order the terms of the agreement unless the court finds that the modification is not in the child's best interest. However, it is worth noting that this provision does not apply to initial orders.
3. The definition of a future event in our draft is more limited by requiring the future event to occur within a specific time frame (two years of the stipulated order). The previous proposals did not have any time limit within which the future event would occur.
4. The definition of the future event is more specifically defined as "reasonably certain to occur" versus the previous proposals definition of likely "likely to occur in the future".

The Family Law Section believes this proposal is a stronger alternative to previous proposals. First, future modification is limited to an agreement between the parties. The court cannot impose a future modification on an unwilling parent. In addition, the future modification must be timely. Lastly, the definition of future events has been narrowed from previous versions of this bill.

For these reasons, the Family Law Section respectfully requests you please consider introduction of this proposal in the upcoming legislative session.

If you would like to discuss this issue further, please do not hesitate to contact our lobbyist, Lynne Davis, ldavis@isba.org or 608.852.3603.



STATE BAR OF WISCONSIN

Relating to: ordering modifications to legal custody or periods of physical placement contingent upon the occurrence of a specified future event or a specified change in conditions.

Section 1. 767.41(5M) of the statutes is created to read:

767.41(5M) MODIFICATION CONTINGENT ON FUTURE EVENT. In making an order of legal custody under sub (2) or (3) or periods of physical placement under sub (4), the court may approve the parties' stipulated agreement to change custodial conditions or periods of physical placement upon the occurrence of specified future event(s) that are reasonably certain to occur within two years of the stipulated agreement.

Section 2. Initial applicability.

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

Section 1. 767.451(3R) of the statutes is created to read:

767.451(3R) MODIFICATION CONTINGENT ON FUTURE EVENT. Notwithstanding sub. (1), in modifying an order of legal custody or periods of physical placement, the court may approve the parties' stipulated agreement to change custodial conditions or periods of physical placement upon the occurrence of specified future event(s) that are reasonably certain to occur within two years of the stipulated agreement.

Section 2. Initial applicability.

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

Rationale: The Family Law Section supports this legislation because the provisions are likely to reduce post-judgment custody and placement litigation. There are foreseeable changes, such as the child aging, commencing school, the improvement of a parent's or child's health, or the completion of a parent's drug or alcohol treatment program that may mandate changes in a placement schedule. This bill allows parents and the court to incorporate those anticipated changes in an order without the necessity of returning to court after the changes actually occur. Under current law, the court cannot order placement changes to occur in the future based upon the happening of foreseeable events without a return to court and an agreement between the parties regarding such events is unenforceable. Being able to incorporate contingent changes in a placement schedule would be particularly helpful for parents of young children because infants and young children need a different type of schedule than older children. As the child ages, the placement schedule could modify to accommodate the child's development.

This legislation allows greater flexibility for the parents to negotiate and allows the court to issue orders that can be more adaptable as families go through predictable changes. This will benefit children greatly by reducing the frequency and intensity of litigation. Studies have clearly documented the damaging effect of parental conflict on

their children. This legislation is a significant improvement in helping avoid that damage by providing parents and the court with an important tool to reduce litigation and tailor provisions specific to the individual family.

DRAFT



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-4707/7

PJK:

71
jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Monday
2-15

✓

Gen

- 1 AN ACT ...; **relating to:** modifications to legal custody or physical placement
2 contingent upon the occurrence of a specified future event.✓

Analysis by the Legislative Reference Bureau

This bill authorizes a court to approve a stipulation for modifications to legal custody or physical placement that are contingent upon the occurrence of a specified future event.✓

According to case law, a court's authority in actions affecting the family, such as annulments, divorces, legal separations, and paternity actions, is based entirely on the statutes, which with respect to determining legal custody and physical placement "embody a sense of contemporaneity..." *In re Marriage of Koeller v. Koeller*, 195 Wis. 2d 660, 666 (1995). Therefore, the court lacks the authority to include in a custody or physical placement order a prospective modification of custody or physical placement that is contingent upon the occurrence of a future event or a change in current conditions.✓

Under this bill, in an action affecting the family the court may approve a stipulated agreement between the parties for modifications to legal custody or physical placement upon the occurrence of a specified future event that is reasonably certain to occur within two years✓ of the date of the parties' stipulation. The bill authorizes the court to approve a stipulation for future modifications filed in an action initially determining legal custody and physical placement, filed for the

purpose of modifying an initial order of legal custody or physical placement, or filed in an action revising a legal custody or physical placement order. ✓

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

1 **SECTION 1.** 767.34 (3) of the statutes is created to read: ✓

2 767.34 (3) APPROVAL OF MODIFICATIONS CONTINGENT ON FUTURE EVENT. ✓ A court
3 may approve a stipulation for legal custody and physical placement ✓ that includes
4 modifications to ✓ legal custody or physical placement upon the occurrence of a
5 specified future event that is reasonably certain to occur within 2 ✓ years of the date
6 of the stipulation. ✓

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

8 767.41 (5m) APPROVAL OF STIPULATION FOR MODIFICATIONS CONTINGENT ON FUTURE ✓
9 EVENT. In making an order of legal custody under sub. (2) or (3) ✓ or physical placement
10 under sub. (4) ✓, the court may approve a stipulation for modifications to legal custody
11 or physical placement ✓ upon the occurrence of a specified future event that is
12 reasonably certain to occur within 2 ✓ years of the date of the stipulation and
13 incorporate the terms of the stipulation into the order. ✓

14 **SECTION 3.** 767.451 (6r) of the statutes is created to read: ✓

15 767.451 (6r) APPROVAL OF STIPULATION FOR MODIFICATIONS CONTINGENT ON FUTURE
16 EVENT. ✓ In an action to modify a legal custody or physical placement order, the court
17 may approve a stipulation for futher modifications to legal custody or physical
18 placement ✓ upon the occurrence of a specified future event that is reasonably certain
19 to occur within 2 ✓ years of the date of the stipulation and incorporate the terms of the
20 stipulation into (the) any revised legal custody or physical placement order granted
21 by the court. ✓

****NOTE: It was unclear to me whether the stipulation in the provision above was for the modification being sought in the current action or whether the stipulation was for a future modification to the modification currently being sought. However, I added "further modifications" because I assumed that the parties would not be in court now solely for the purpose of getting a future modification approved. Please advise if this is not the intent. (Note, however, that the amendment of s. 767.461[✓] can accommodate a stipulation for a future change without any current change.)

****NOTE: I did not include "Notwithstanding sub. (1)"[✓] at the beginning of this provision because I'm not sure what it is intended to do. Does it mean that sub. (1) does not apply to a modification that is ordered on the basis of a stipulation for future modifications? If the parties are already in court for a modification it seems like sub. (1) (a) would not be relevant because most likely more than two years would have passed since the final judgment. Additionally, if sub.[✓](1) does not apply, it would be clearer, I think, to say that. Please advise if any of the provisions in current s. 767.451[✓] should not apply to a future modification based on a stipulation.

1 **SECTION 4.** 767.461[✓] of the statutes is amended to read:

2 **767.461 Revisions agreed to by stipulation.** If after an initial order is
3 entered under s. 767.41 the parties agree to a modification in an order of physical
4 placement or legal custody and file a stipulation with the court that specifies the
5 agreed upon modification, including a modification to physical placement or legal
6 custody[✓] upon the occurrence of a specified future event that is reasonably certain to
7 occur within[✓] 2 years of the date of the stipulation,[✓] the court shall incorporate the
8 terms of the stipulation into a revised order of physical placement or legal custody
9 unless the court finds that the modification is not in the best interest of the child.

10 History: 1987 a. 355; 2005 a. 443 s. 166; Stats. 2005 s. 767.461.

10 **SECTION 5. Initial applicability.**

11 (1) The treatment of sections 767.34 (3), 767.41 (5m),[✓] and 767.451 (6r)[✓] of the
12 statutes first applies to actions or proceedings, including actions or proceedings to
13 modify a judgment or order previously granted, that are commenced on the effective
14 date of this subsection.[✓]

15 (2) The treatment of section 767.461[✓] *of the statutes* first applies to stipulations filed with the
16 court on the effective date of this subsection.[✓]

17

(END)

Kahler, Pam

From: Williams, Vincent
Sent: Monday, May 09, 2016 4:11 PM
To: Kahler, Pam
Subject: RE: Draft review: LRB -4707/P1
Attachments: LRB draft 4707 - with comments.pdf

Pam,

Attached is a copy of the draft, with some hand written responses to your notes from the State Bar's Family Law committee.

Vince

From: LRB.Legal
Sent: Monday, February 15, 2016 1:09 PM
To: Rep.Rodriguez <Rep.Rodriguez@legis.wisconsin.gov>
Subject: Draft review: LRB -4707/P1

Following is the PDF version of draft LRB -4707/P1.



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-4707/P1
PJK:jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Contingent
Placement

- 1 AN ACT *to amend* 767.461; and *to create* 767.34 (3), 767.41 (5m) and 767.451
2 (6r) of the statutes; **relating to:** modifications to legal custody or physical
3 placement contingent upon the occurrence of a specified future event.

Analysis by the Legislative Reference Bureau

This bill authorizes a court to approve a stipulation for modifications to legal custody or physical placement that are contingent upon the occurrence of a specified future event.

According to case law, a court's authority in actions affecting the family, such as annulments, divorces, legal separations, and paternity actions, is based entirely on the statutes, which with respect to determining legal custody and physical placement "embody a sense of contemporaneity..." *In re Marriage of Koeller v. Koeller*, 195 Wis. 2d 660, 666 (1995). Therefore, the court lacks the authority to include in a custody or physical placement order a prospective modification of custody or physical placement that is contingent upon the occurrence of a future event or a change in current conditions.

Under this bill, in an action affecting the family the court may approve a stipulated agreement between the parties for modifications to legal custody or physical placement upon the occurrence of a specified future event that is reasonably certain to occur within two years of the date of the parties' stipulation. The bill authorizes the court to approve a stipulation for future modifications filed in an action initially determining legal custody and physical placement, filed for the

purpose of modifying an initial order of legal custody or physical placement, or filed in an action revising a legal custody or physical placement order.

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

1 **SECTION 1.** 767.34 (3) of the statutes is created to read:

2 767.34 (3) APPROVAL OF MODIFICATIONS CONTINGENT ON FUTURE EVENT. A court
3 may approve a stipulation for legal custody and physical placement that includes
4 modifications to legal custody or physical placement upon the occurrence of a
5 specified future event that is reasonably certain to occur within 2 years of the date
6 of the stipulation.

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

8 767.41 (5m) APPROVAL OF STIPULATION FOR MODIFICATIONS CONTINGENT ON FUTURE
9 EVENT. In making an order of legal custody under sub. (2) or (3) or physical placement
10 under sub. (4), the court may approve a stipulation for modifications to legal custody
11 or physical placement upon the occurrence of a specified future event that is
12 reasonably certain to occur within 2 years of the date of the stipulation and
13 incorporate the terms of the stipulation into the order.

14 **SECTION 3.** 767.451 (6r) of the statutes is created to read:

15 767.451 (6r) APPROVAL OF STIPULATION FOR MODIFICATIONS CONTINGENT ON FUTURE
16 EVENT. In an action to modify a legal custody or physical placement order, the court
17 may approve a stipulation for further modifications to legal custody or physical
18 placement upon the occurrence of a specified future event that is reasonably certain
19 to occur within 2 years of the date of the stipulation and incorporate the terms of the
20 stipulation into any revised legal custody or physical placement order granted by the
21 court.

*Correctly
drafted*

***NOTE: It was unclear to me whether the stipulation in the provision above was for the modification being sought in the current action or whether the stipulation was for a future modification to the modification currently being sought. However, I added "further modifications" because I assumed that the parties would not be in court now solely for the purpose of getting a future modification approved. Please advise if this is not the intent. (Note, however, that the amendment of s. 767.461 can accommodate a stipulation for a future change without any current change.)

*want to apply
to initial order
even if change
happens w/
2 years*

***NOTE: I did not include "Notwithstanding sub. (1)" at the beginning of this provision because I'm not sure what it is intended to do. Does it mean that sub. (1) does not apply to a modification that is ordered on the basis of a stipulation for future modifications? If the parties are already in court for a modification it seems like sub. (1) (a) would not be relevant because most likely more than two years would have passed since the final judgment. Additionally, if sub. (1) does not apply, it would be clearer, I think, to say that. Please advise if any of the provisions in current s. 767.451 should not apply to a future modification based on a stipulation.

*intentionally
included
sub(1)
language*

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SECTION 4. 767.461 of the statutes is amended to read:

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SECTION 5. Initial applicability.

(1) The treatment of sections 767.34 (3), 767.41 (5m), and 767.451 (6r) of the statutes first applies to actions or proceedings, including actions or proceedings to modify a judgment or order previously granted, that are commenced on the effective date of this subsection.

(2) The treatment of section 767.461 of the statutes first applies to stipulations filed with the court on the effective date of this subsection.

(END)



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-4707/PA

PJK:jld

P2
lf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 5-10
out by 5-13, please

regenerate ↓

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2 (6r) of the statutes; **relating to:** modifications to legal custody or physical
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✓

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

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9 EVENT. In making an order of legal custody under sub. (2) or (3) or physical placement
10 under sub. (4), the court may approve a stipulation for modifications to legal custody
11 or physical placement upon the occurrence of a specified future event that is
12 reasonably certain to occur within 2 years of the date of the stipulation and
13 incorporate the terms of the stipulation into the order.

14 **SECTION 3.** 767.451 (6^{3r}) of the statutes is created to read:

15 767.451 (6^{3r}) APPROVAL OF STIPULATION FOR MODIFICATIONS CONTINGENT ON FUTURE
16 EVENT. In an action to modify a legal custody or physical placement order, the court
17 may approve a stipulation for further modifications to legal custody or physical
18 placement upon the occurrence of a specified future event that is reasonably certain
19 to occur within 2 years of the date of the stipulation and incorporate the terms of the
20 stipulation into any revised legal custody or physical placement order granted by the
21 court.

✓

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→ Notwithstanding sub. (1),

***NOTE: It was unclear to me whether the stipulation in the provision above was for the modification being sought in the current action or whether the stipulation was for a future modification to the modification currently being sought. However, I added "further modifications" because I assumed that the parties would not be in court now solely for the purpose of getting a future modification approved. Please advise if this is not the intent. (Note, however, that the amendment of s. 767.461 can accommodate a stipulation for a future change without any current change.)

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5 agreed upon modification, including a modification to physical placement or legal
6 custody upon the occurrence of a specified future event that is reasonably certain to
7 occur within 2 years of the date of the stipulation, the court shall incorporate the
8 terms of the stipulation into a revised order of physical placement or legal custody
9 unless the court finds that the modification is not in the best interest of the child.

10 **SECTION 5. Initial applicability.**

11 (1) The treatment of sections 767.34 (3), 767.41 (5m), and 767.451 (3r) of the
12 statutes first applies to actions or proceedings, including actions or proceedings to
13 modify a judgment or order previously granted, that are commenced on the effective
14 date of this subsection.

15 (2) The treatment of section 767.461 of the statutes first applies to stipulations
16 filed with the court on the effective date of this subsection.

17 **(END)**



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-4707/P2
PJK:jld&kjf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to amend* 767.461; and *to create* 767.34 (3), 767.41 (5m) and 767.451
2 (3r) of the statutes; **relating to:** modifications to legal custody or physical
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3 may approve a stipulation for legal custody and physical placement that includes
4 modifications to legal custody or physical placement upon the occurrence of a
5 specified future event that is reasonably certain to occur within 2 years of the date
6 of the stipulation.

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

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9 EVENT. In making an order of legal custody under sub. (2) or (3) or physical placement
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11 or physical placement upon the occurrence of a specified future event that is
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13 incorporate the terms of the stipulation into the order.

14 **SECTION 3.** 767.451 (3r) of the statutes is created to read:

15 **767.451 (3r)** APPROVAL OF STIPULATION FOR MODIFICATIONS CONTINGENT ON FUTURE
16 EVENT. Notwithstanding sub. (1), in an action to modify a legal custody or physical
17 placement order, the court may approve a stipulation for further modifications to
18 legal custody or physical placement upon the occurrence of a specified future event
19 that is reasonably certain to occur within 2 years of the date of the stipulation and
20 incorporate the terms of the stipulation into any revised legal custody or physical
21 placement order granted by the court.

