


2017 DRAFTING REQUEST

Bill

For: **Jessie Rodriguez (608) 266-0610** Drafter: **ewheeler**
 By: **Vince** Secondary Drafters:
 Date: **11/15/2016** May Contact: **LRB - Amber Otis**

Same as LRB: **-4359** 

Submit via email: **YES**
 Requester's email: **Rep.Rodriguez@legis.wisconsin.gov**
 Carbon copy (CC) to: **sarah.walkenhorstbarber@legis.wisconsin.gov**
Elizabeth.Wheeler@legis.wisconsin.gov
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Pre Topic:

No specific pre topic given

Topic:

Relocating a child's residence

Instructions:

Redraft 15-4731

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	ewheeler 11/23/2016	jdyer 11/30/2016			
/P1	ewheeler 4/5/2017	jdyer 4/6/2017	mbarman 11/30/2016		
/P2	ewheeler 4/14/2017	jdyer 4/19/2017	lparisi 4/6/2017		
/P3	ewheeler 4/25/2017	kfollett 4/27/2017	lparisi 4/19/2017		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P4	ewheeler 5/8/2017	jdye 5/8/2017	rmilford 4/27/2017		
/P5	ewheeler 9/25/2017	jdye 9/26/2017	mbarman 5/8/2017		
/1			dwalker 9/26/2017	dwalker 9/26/2017	

FE Sent For:

<END>

NOT
NEEDED



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-4731/P2 0794/PI
PJK
JL

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

In: 11/23
Due: 11/30

X

Gen

1 AN ACT *to repeal* 767.41 (4) (d); *to amend* 767.001 (1) (k), 767.117 (1) (c), 767.215
2 (2) (j) 1., 767.215 (2) (j) 2. and 767.225 (1) (bm); *to repeal and recreate*
3 767.481; and *to create* 767.14, 767.41 (6) (h), 767.805 (4) (am) and 767.89 (3)
4 (bm) of the statutes; **relating to:** relocating with a child.

✓ who is the subject of a legal custody or physical placement order

Analysis by the Legislative Reference Bureau

✓ INS-A

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

5 SECTION 1. 767.001 (1) (k) of the statutes is amended to read:
6 767.001 (1) (k) Concerning periods of physical placement or visitation rights
7 to children, including an action to prohibit a move with or the removal of relocate
8 and reside with a child under s. 767.481 (3) (e). ✓

9 SECTION 2. 767.117 (1) (c) of the statutes is amended to read:

1 767.117 (1) (c) Unless the action is one under s. 767.001 (1) (g) or (h), without
2 the consent of the other party or an order of the court, relocating and establishing
3 a residence with a minor child of the parties ~~outside the state or more than 150~~ 100
4 miles from the residence of the other party ~~within the state~~, removing a minor child
5 of the parties from the state child's primary residence for more than 90 consecutive
6 days, or concealing a minor child of the parties from the other party.

 ****NOTE: Is this how you want this provision amended? This language tracks the
new language in proposed s. 767.481 (1) (a) more closely.

7 **SECTION 3.** 767.14 ~~X~~ of the statutes is created to read:

8 **767.14** Change of address. Within 5 business days after receiving notice of
9 an address change by a party to an action affecting the family, the clerk of circuit
10 court shall enter the new address in the case file for the action. ✓

11 **SECTION 4.** 767.215 (2) (j) 1. ~~X~~ of the statutes is amended to read:

12 767.215 (2) (j) 1. ~~Establishing~~ Relocating and establishing a residence with a
13 minor child of the parties ~~outside the state or more than 150~~ 100 miles from the
14 residence of the other party ~~within the state~~. ✓

 ****NOTE: Is this how you want this provision amended? This language tracks the
new language in proposed s. 767.481 (1) (a) more closely.

15 **SECTION 5.** 767.215 (2) (j) 2. ~~X~~ of the statutes is amended to read:

16 767.215 (2) (j) 2. Removing a minor child of the parties from the state child's
17 primary residence for more than 90 consecutive days.

18 **SECTION 6.** 767.225 (1) (bm) ~~X~~ of the statutes is amended to read:

19 767.225 (1) (bm) Allowing a party to move with or ~~remove~~ relocate and reside
20 with a child after a notice of an objection to the move has been filed under s. 767.481
21 (2) (a) (c) as provided in s. 767.481 (3). ✓

22 **SECTION 7.** 767.41 (4) (d) ~~X~~ of the statutes is repealed.

1 **SECTION 8.** 767.41 (6) (h) of the statutes is created to read:

2 767.41 (6) (h) In making an order of legal custody and periods of physical
3 placement, the court shall in writing inform the parents, and any other person
4 granted legal custody of the child, of all of the following:

5 1. That each parent must notify the other parent, the child support agency, and
6 the clerk of court of the address at which they may be served within 10 business days
7 of moving to that address. The address may be a street or post office address.

8 2. That the address provided to the court is the address on which the other
9 parties may rely for service of any motion relating to modification of legal custody or
10 physical placement or to relocating the child's residence.

11 3. That a parent granted periods of physical placement with the child must
12 obtain a court order before relocating with the child 100 miles or more from the other
13 parent if the other parent also has court-ordered periods of physical placement with
14 the child.

15 **SECTION 9.** 767.481 of the statutes is repealed and recreated to read:

16 **767.481 Relocating a child's residence.** (1) MOTION; FILING AND SERVING.

17 (a) Except as provided in par. (d), if the court grants any periods of physical
18 placement with a child to both parents and one parent intends to relocate and reside
19 with the child 100 miles or more from the other parent, the parent who intends to
20 move shall file a motion with the court seeking permission for the child's relocation.

21 (b) The motion under par. (a) shall include all of the following:

22 1. The date of the proposed move.

23 2. The municipality and state of the proposed new residence.

24 3. The reason for the move.

1 4. If applicable, a proposed new placement schedule, including placement
2 during the school year, summers, and holidays.✓

3 5. The proposed responsibility of each parent for transportation of the child
4 between the parties under any proposed new placement schedule.✓

5 6. If applicable, a request for a change in legal custody.✓

6 7. Notice to the other parent that, if he or she objects to the move, he or she must
7 file and serve, no later than✓5 days before the initial hearing, an objection to the move
8 and any alternate proposal, including a modification of physical placement or legal
9 custody.✓

10 8. An attached✓“Objection to Move” form, furnished by the court, for use by the
11 other parent if he or she objects to the move.✓

12 (c) The parent filing the motion shall serve a copy of the motion by mail on the
13 other parent at his or her most recent address on file with the court.✓ If the parent
14 filing the motion has actual knowledge that the other parent has a different address
15 from the one on file, the motion shall be served by mail at both addresses.✓

16 (d) The requirement to file a motion under par.✓(a) does not apply if the child’s
17 parents already live more than 100✓miles apart when a parent proposes to move and
18 relocate with the child.

19 (2) INITIAL HEARING.✓ (a) Upon the filing of a motion under sub.✓(1) (a), the court
20 shall schedule an initial hearing to be held within 30✓days after the motion is filed
21 and shall provide notice to the parents of the date of the initial hearing. The child
22 may not be relocated pending the initial hearing.✓

23 (b) If the court finds at the initial hearing that the parent not filing the motion
24 was properly served and does not appear at the hearing,✓or appears at the hearing
25 but does not object to the proposed relocation and relocation plan,✓the court shall

1 approve the proposed relocation plan submitted by the parent filing the motion
2 unless the court finds that the proposed relocation plan is not in the best interest of
3 the child. ✓

4 (c) If the parent not filing the motion appears at the initial hearing and objects
5 to the relocation or relocation plan, the court shall do all of the following:

6 1. Require the parent who objects to respond by stating in writing within ✓5
7 business days, if he or she has not already done so, the basis for the objection and his
8 or her proposals for a new placement schedule and transportation responsibilities
9 under sub. (1) (b) 4. and ✓5 in the event that the court grants the parent filing the
10 motion permission to relocate with the child. The parent who objects must file the
11 response with the court and serve a copy of the response on the parent proposing the
12 relocation in the manner provided in s. 801.14 (2). ✓

13 2. Refer the parties to mediation, unless the court finds that attending
14 mediation would cause undue hardship or endanger the health or safety of a party
15 as provided in s. 767.405 (8) (b). ✓

16 3. Except as provided in s. 767.407 (1) (am), ✓ appoint a guardian ad litem for the
17 child. The court shall provide in the order for appointment, however, that if a
18 mediator is ordered under subd. ✓2 the guardian ad litem is not required to commence
19 investigation on behalf of the child unless the mediator notifies the court that the
20 parties are unable to reach an agreement on the issue.

***NOTE: I changed "Notwithstanding s. 767.407 (1)" ✓ to "Except as provided in s.
767.407 ✓(1) (am)." Okay?

21 4. Set the matter for a further hearing to be held within ✓60 days.

22 (3) RELOCATION PENDING FINAL HEARING. ✓(a) At the initial hearing, or at any time
23 after the initial hearing but before the final hearing, the court may allow the parent

1 proposing the relocation to move with the child if the court finds that the relocation
2 is in the child's immediate best interest. The court shall inform the parties, however,
3 that approval of the relocation is subject to revision at the final hearing.✓

4 (b) If a court commissioner makes a determination, order, or ruling regarding
5 relocation pending the final hearing, either party may seek a review by hearing de
6 novo under s. 757.69 (8).✓ The motion requesting the de novo hearing must be filed
7 with the court within 10✓ days after the court commissioner orally issues the
8 determination, order, or ruling. The judge shall hold the de novo hearing within 30✓
9 days after the motion requesting the de novo hearing is filed, unless the court finds
10 good cause for an extension.✓

11 (4) STANDARDS FOR DECIDING RELOCATION MOTIONS.✓ At the final hearing, the
12 judge shall decide the matter as follows:✓

13 (a) If the proposed relocation and new placement schedule only minimally
14 change or affect the current placement schedule, the court shall approve the
15 proposed relocation, set a new placement schedule if appropriate, and allocate the
16 costs of and responsibility for transportation of the child between the parties under
17 the new placement schedule.✓

18 (b) In cases other than that specified in par. (a),✓ the court shall, in determining
19 whether to approve the proposed relocation and a new placement schedule, use the
20 following factors:

21 1. The factors under s. 767.41 (5).✓

22 2. A presumption that the court should approve the plan of the parent
23 proposing the relocation if the objecting parent has not significantly exercised
24 court-ordered✓ physical placement.

1 3. A presumption that the court should approve the plan of the parent
2 proposing the relocation if the parent's move is related to abuse, as defined in s.
3 813.122 (1) (a),[✓] of the child, as defined in s. 813.122 (1) (b);[✓] a pattern or serious
4 incident of interspousal battery, as described under s. 940.19[✓] or 940.20 (1m);[✓] or a
5 pattern or serious incident of domestic abuse, as defined in s. 813.12[✓](1) (am).

6 (c) If the objecting parent files a responsive motion that seeks a substantial
7 change in physical placement or a change in legal custody, the court shall, in deciding
8 the motion of the objecting parent, use the following factors:

9 1. The factors under s. 767.41 (5).[✓]

10 2. A presumption against transferring legal custody or the primary residence
11 of the child to a parent who has significantly failed to exercise[✓] court-ordered physical
12 placement.[✓]

13 3. A presumption that the court should approve the plan of the parent
14 proposing the relocation if the parent's move is related to abuse, as defined in s.
15 813.122 (1) (a),[✓] of the child, as defined in s. 813.122 (1) (b);[✓] a pattern or serious
16 incident of interspousal battery, as described under s. 940.19[✓] or 940.20 (1m);[✓] or a
17 pattern or serious incident of domestic abuse, as defined in s. 813.12[✓](1) (am).

18 (d) The court shall decide all contested relocation motions and all motions for
19 modification of legal custody or physical placement filed in response to relocation
20 motions in the best interest of the child. Both parents bear the burden of proof in
21 contested relocation motions except in cases involving a presumption under par. (b)
22 [✓]2. or 3. or (c) 2. or 3.[✓] In cases involving a presumption under par. (b) 2. or 3.[✓] or (c) 2.
23 or 3.,[✓] the parent objecting to the move shall have the burden of proof in
24 demonstrating the proposed move is not in the child's best interest.

1 (e) If the objecting parent files a responsive motion that seeks a substantial
2 change in physical placement or a change in legal custody, and the parent proposing
3 the relocation withdraws or otherwise fails to pursue his or her relocation motion or
4 the court does not allow the relocation, the court shall proceed on the objecting
5 parent's responsive motion under s. 767.451.

6 (5) STIPULATIONS. At any time after a motion is filed under sub. (1), if the parties
7 agree that one parent may move more than 100 miles away from the other parent,
8 the parties may file a stipulation with the court that specifies that neither parent has
9 any objection to the planned move and that sets out any agreed upon modification
10 to legal custody or periods of physical placement, including responsibility for
11 transportation of the child between the parties under a proposed new placement
12 schedule. The court shall incorporate the terms of the stipulation into an order for
13 the relocation or a revised order of legal custody or physical placement, as
14 appropriate, unless the court finds that the modification is not in the best interest
15 of the child.

16 (6) OTHER NOTICE REQUIRED FOR REMOVALS. Except as otherwise provided in an
17 order or judgment allocating periods of physical placement with a child, a person who
18 has legal custody of and periods of physical placement with the child shall notify any
19 other person who has periods of physical placement with the child before removing
20 the child from his or her primary residence for a period of more than 14 consecutive
21 days.

22 (7) APPLICABILITY. (a) The requirements and procedures under this section
23 apply to relocations with or removals of a child in any of the following cases:

24 1. Cases that are originally commenced on or after the effective date of this
25 subdivision [LRB inserts date].

1 2. Cases that were originally commenced before the effective date of this
2 subdivision[✓].... [LRB inserts date], but in which a legal custody or physical placement
3 order is modified on or after the effective date of this subdivision[✓].... [LRB inserts
4 date].

5 (b) Except as provided in par. (a) 2.,[✓] the requirements and procedures under
6 s. 767.481, 2015 stats.,[✓] apply to moves with or removals of a child in cases that were
7 originally commenced before the effective date of this paragraph[✓].... [LRB inserts
8 date].

9 **SECTION 10.** 767.805 (4) (am)[✓] of the statutes is created to read:

10 767.805 (4) (am) The information set forth in s. 767.41 (6) (h).[✓]

11 **SECTION 11.** 767.89 (3) (bm)[✓] of the statutes is created to read:

12 767.89 (3) (bm) The information set forth in s. 767.41 (6) (h).[✓]

13 **SECTION 12. Initial applicability.**

14 (1) INFORMATION IN ORDERS REGARDING RELOCATIONS.[✓] The treatment of sections
15 767.41 (4) (d)[✓] and (6) (h),[✓] 767.805 (4) (am),[✓] and 767.89 (3) (bm)[✓] of the statutes first
16 applies to judgments or orders for legal custody of and physical placement with a
17 child that are granted in actions affecting the family, including actions to modify
18 judgments or orders previously granted, that are commenced on the effective date
19 of this subsection.[✓]

20 (2) MOTIONS TO RELOCATE WITH A CHILD.[✓] The treatment of sections[✓] 767.001 (1)
21 (k) and 767.225 (1) (bm)[✓] of the statutes first applies to motions to relocate with a child
22 that are filed in any of the following:[✓]

23 (a) Cases originally commenced on the effective date of this[✓] paragraph.

24 (b) Cases in which legal custody or physical placement is modified on the
25 effective date of this paragraph.[✓]

1 (3) PROHIBITED ACTS DURING THE PENDENCY OF AN ACTION. ✓ The treatment of
2 sections 767.117 (1) (c) ✓ and 767.215 (2) (j) 1. and 2. ✓ of the statutes first applies to
3 actions affecting the family, excluding actions for maintenance payments or property
4 division, but including actions to modify judgments or orders previously granted,
5 that are commenced on the effective date of this subsection. ✓

6

(END)

2017-2018 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0794/P1
EAW:...

INS - A

This bill changes the procedures for relocating a child's residence where a court grants any periods of physical placement with a child to both parents and one parent intends to relocate and reside with the child 100 miles or more from the other parent.

Under current law, if the court grants periods of physical placement to more than one parent, a parent is required to provide at least 60 days' written notice to the court and the other parent of intent to move with the child out of state; move 150 miles or more from the other parent; or remove the child from the state for more than 90 consecutive days. If the other parent objects to the proposed action, he or she may file a notice of objection.

Currently, — Upon notice of objection, the court must refer the parents for mediation or other family court services and may appoint a guardian ad litem. If the dispute cannot be resolved through mediation, the court must appoint a guardian ad litem and may modify the legal custody or physical placement order to accommodate or prohibit the move. Depending on how custody and placement are allocated between the parents, there are a number of factors that the court must consider, including whether modification is in the best interest of the child, when determining whether to modify the legal custody or physical placement order affecting the child.

Under the bill, if both parents are granted periods of physical placement with a child, a parent must obtain a court order before relocating with the child 100 miles or more from the other parent, unless the parents already live 100 miles or more away from each other. The bill requires a parent to file a motion to relocate a child's residence and a relocation plan, and requires an initial hearing on the motion to be held within 30 days of filing. If the other parent does not object or appear at the hearing, the court must approve the relocation plan submitted by the parent unless it finds that the plan is not in the best interest of the child.

If the other parent objects to the relocation, the court must require a response from the objecting parent, refer the parties to mediation, appoint a guardian ad litem, and set the matter for a second hearing to be held within 60 days. After the initial hearing but before the final hearing, the court may allow a parent to relocate with the child, subject to revision at the final hearing, if the court finds that the relocation is in the child's best interest. The bill establishes standards for deciding relocation motions, including whether the new placement schedule will substantially change the physical placement schedule, consideration of the factors for legal custody, whether a parent has exercised court-ordered physical placement rights, and whether the relocation is in the best interest of the child. There is a presumption that the court should approve the relocation if the parent's move is related to domestic abuse or abuse of the child.

At any time after a motion for relocation of a child is filed, the parties may file a stipulated agreement with the court that specifies that neither parent has any objection to the planned move and that sets out any agreed upon modification to legal custody or periods of physical placement. The court must incorporate the terms of the



stipulation into an order for relocation or revised order of legal custody or physical placement, unless the court finds that the modification is not in the best interest of the child. ✓

Wheeler, Elizabeth

From: Bentz, Nick
Sent: Wednesday, March 29, 2017 3:45 PM
To: Wheeler, Elizabeth
Subject: Relocation Draft LRB 0794

Follow Up Flag: Follow up
Flag Status: Flagged

Elizabeth,

Below you will find several changes Rep. Rodriguez would like made to the p-draft of LRB-0794. Also, Rep. Rodriguez is comfortable with regard to the notes you included on pages 3 and 6 of the draft.

If you have any questions please feel free to contact our office (608) 266-0610.

Changes:

P. 5, lines 16-18

The requirement to file a motion under par. (a) does not apply if the child's parents already live more than 100 miles apart when a parent proposes to move and relocate with the child. If the parents already live more than 100 miles apart, then the parent who intends to relocate with the child shall serve written notice of their intent to relocate on the other parent at least 60 days prior to relocation. Such written notice shall include the date they intend to relocate and the address at which they will be residing when they relocate.

P. 6, lines 6-12

Require the parent who objects to respond by stating in writing within 5 business days, if he or she has not already done so, the basis for the objection and his or her proposals for a new placement schedule and transportation responsibilities under sub. (1) (b) 4. and 5. in the event that the court grants the parent filing the motion permission to relocate with the child. The parent who objects must file the response with the court and shall serve a copy of the response by mail on the other parent at his or her most recent address on file with the court. If the parent filing the response has actual knowledge that the other parent has a different address from the one on file, the response shall be served by mail at both addresses.

P. 7, lines 11-12

(4) STANDARDS FOR DECIDING RELOCATION MOTIONS. At the final hearing, the court shall decide the matter as follows:

Sect. 767.89(6) Paternity Judgement is revised as follows:

(6) Other applicable provisions. Sections 767.41, 767.43, 767.451, 767.481, 767.57, 767.58, 767.59, 767.71, 767.75, 767.76, 767.77, and 767.78, where applicable, apply to a judgment or order under this section.

Strike the word "primary" from the phrase "primary residence" in the following locations:

P. 3, line 5 and line 17

P. 8, line 10

P. 9, line 20

Regards,

Nick Bentz
Office of Rep. Jessie Rodriguez
21st Assembly District
608.266.0610
Nick.bentz@legis.wi.gov



PR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in: 4/5
due: 4/6

Insert

lx

Regen

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2
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4
5

AN ACT to repeal 767.41 (4) (d); **to amend** 767.001 (1) (k), 767.117 (1) (c), 767.215 (2) (j) 1., 767.215 (2) (j) 2. and 767.225 (1) (bm); **to repeal and recreate** 767.481; and **to create** 767.14, 767.41 (6) (h), 767.805 (4) (am) and 767.89 (3) (bm) of the statutes; **relating to:** relocating with a child who is the subject of a legal custody or physical placement order.

Analysis by the Legislative Reference Bureau

This bill changes the procedures for relocating a child's residence where a court grants any periods of physical placement with a child to both parents and one parent intends to relocate and reside with the child 100 miles or more from the other parent.

Under current law, if the court grants periods of physical placement to more than one parent, a parent is required to provide at least 60 days' written notice to the court and the other parent of intent to move with the child out of state; move 150 miles or more from the other parent; or remove the child from the state for more than 90 consecutive days. If the other parent objects to the proposed action, he or she may file a notice of objection.

Currently, upon notice of objection, the court must refer the parents for mediation or other family court services and may appoint a guardian ad litem. If the dispute cannot be resolved through mediation, the court must appoint a guardian ad litem and may modify the legal custody or physical placement order to accommodate or prohibit the move. Depending on how custody and placement are allocated between the parents, there are a number of factors that the court must consider,

including whether modification is in the best interest of the child, when determining whether to modify the legal custody or physical placement order affecting the child.

Under the bill, if both parents are granted periods of physical placement with a child, a parent must obtain a court order before relocating with the child 100 miles or more from the other parent, unless the parents already live 100 miles or more away from each other. The bill requires a parent to file a motion to relocate a child's residence and a relocation plan, and requires an initial hearing on the motion to be held within 30 days of filing. If the other parent does not object or appear at the hearing, the court must approve the relocation plan submitted by the parent unless it finds that the plan is not in the best interest of the child. *INS-A*

If the other parent objects to the relocation, the court must require a response from the objecting parent, refer the parties to mediation, appoint a guardian ad litem, and set the matter for a second hearing to be held within 60 days. After the initial hearing but before the final hearing, the court may allow a parent to relocate with the child, subject to revision at the final hearing, if the court finds that the relocation is in the child's best interest. The bill establishes standards for deciding relocation motions, including whether the new placement schedule will substantially change the physical placement schedule, consideration of the factors for legal custody, whether a parent has exercised court-ordered physical placement rights, and whether the relocation is in the best interest of the child. *There is a presumption that the court should approve the relocation if the parent's move is related to domestic abuse or abuse of the child.* *bill allows the*

At any time after a motion for relocation of a child is filed, the parties may file a stipulated agreement with the court that specifies that neither parent has any objection to the planned move and that sets out any agreed upon modification to legal custody or periods of physical placement. The court must incorporate the terms of the stipulation into an order for relocation or revised order of legal custody or physical placement, unless the court finds that the modification is not in the best interest of the child. *bill requires the*

Under the bill

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

1 **SECTION 1.** 767.001 (1) (k) of the statutes is amended to read:
2 767.001 (1) (k) Concerning periods of physical placement or visitation rights
3 to children, including an action to ~~prohibit a~~ move with or the ~~removal of~~ relocate
4 and reside with a child under s. 767.481 (3) (e).

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1 767.117 (1) (c) Unless the action is one under s. 767.001 (1) (g) or (h), without
2 the consent of the other party or an order of the court, relocating and establishing
3 a residence with a minor child of the parties ~~outside the state or more than 150~~ 100
4 miles from the residence of the other party ~~within the state~~, removing a minor child
5 of the parties from the state child's primary residence for more than 90 consecutive
6 days, or concealing a minor child of the parties from the other party.

***NOTE: Is this how you want this provision amended? This language tracks the new language in proposed s. 767.481 (1) (a) more closely.

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12 767.215 (2) (j) 1. ~~Establishing~~ Relocating and establishing a residence with a
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14 residence of the other party ~~within the state~~.

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19 767.225 (1) (bm) Allowing a party to move with or ~~remove~~ relocate and reside
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21 (2) (a) (c), as provided in s. 767.481 (3).

22 **SECTION 7.** 767.41 (4) (d) of the statutes is repealed.

1 **SECTION 8.** 767.41 (6) (h) of the statutes is created to read:

2 **767.41 (6) (h)** In making an order of legal custody and periods of physical
3 placement, the court shall in writing inform the parents, and any other person
4 granted legal custody of the child, of all of the following:

5 1. That each parent must notify the other parent, the child support agency, and
6 the clerk of court of the address at which they may be served within 10 business days
7 of moving to that address. The address may be a street or post office address.

8 2. That the address provided to the court is the address on which the other
9 parties may rely for service of any motion relating to modification of legal custody or
10 physical placement or to relocating the child's residence.

11 3. That a parent granted periods of physical placement with the child must
12 obtain a court order before relocating with the child 100 miles or more from the other
13 parent if the other parent also has court-ordered periods of physical placement with
14 the child.

15 **SECTION 9.** 767.481^W of the statutes is repealed and recreated to read:

16 **767.481 Relocating a child's residence. (1) MOTION; FILING AND SERVING.**

17 (a) Except as provided in par. (d), if the court grants any periods of physical
18 placement with a child to both parents and one parent intends to relocate and reside
19 with the child 100 miles or more from the other parent, the parent who intends to
20 move shall file a motion with the court seeking permission for the child's relocation.

21 (b) The motion under par. (a) shall include all of the following:

22 1. The date of the proposed move.

23 2. The municipality and state of the proposed new residence.

24 3. The reason for the move.

1 4. If applicable, a proposed new placement schedule, including placement
2 during the school year, summers, and holidays.

3 5. The proposed responsibility of each parent for transportation of the child
4 between the parties under any proposed new placement schedule.

5 6. If applicable, a request for a change in legal custody.

6 7. Notice to the other parent that, if he or she objects to the move, he or she must
7 file and serve, no later than 5 days before the initial hearing, an objection to the move
8 and any alternate proposal, including a modification of physical placement or legal
9 custody.

10 8. An attached "Objection to Move" form, furnished by the court, for use by the
11 other parent if he or she objects to the move.

12 (c) The parent filing the motion shall serve a copy of the motion by mail on the
13 other parent at his or her most recent address on file with the court. If the parent
14 filing the motion has actual knowledge that the other parent has a different address
15 from the one on file, the motion shall be served by mail at both addresses.

16 (d) The requirement to file a motion under par. (a) does not apply if the child's
17 parents already live more than 100 miles apart when a parent proposes to move and
18 relocate with the child. *Y INS 5-18^v*

19 **(2) INITIAL HEARING.** (a) Upon the filing of a motion under sub. (1) (a), the court
20 shall schedule an initial hearing to be held within 30 days after the motion is filed
21 and shall provide notice to the parents of the date of the initial hearing. The child
22 may not be relocated pending the initial hearing.

23 (b) If the court finds at the initial hearing that the parent not filing the motion
24 was properly served and does not appear at the hearing, or appears at the hearing
25 but does not object to the proposed relocation and relocation plan, the court shall

1 approve the proposed relocation plan submitted by the parent filing the motion
2 unless the court finds that the proposed relocation plan is not in the best interest of
3 the child.

4 (c) If the parent not filing the motion appears at the initial hearing and objects
5 to the relocation or relocation plan, the court shall do all of the following:

6 1. Require the parent who objects to respond by stating in writing within 5
7 business days, if he or she has not already done so, the basis for the objection and his
8 or her proposals for a new placement schedule and transportation responsibilities
9 under sub. (1) (b) 4. and 5. in the event that the court grants the parent filing the
10 motion permission to relocate with the child. The parent who objects ^{shall} must file the
11 response with the court and serve a copy of the response on the parent proposing the
12 relocation in the manner provided in s. 801.14 (2). ^{by mail} ^{INS 6-11}

13 2. Refer the parties to mediation, unless the court finds that attending
14 mediation would cause undue hardship or endanger the health or safety of a party
15 as provided in s. 767.405 (8) (b).

16 3. Except as provided in s. 767.407 (1) (am), appoint a guardian ad litem for the
17 child. The court shall provide in the order for appointment, however, that if a
18 mediator is ordered under subd. 2. the guardian ad litem is not required to commence
19 investigation on behalf of the child unless the mediator notifies the court that the
20 parties are unable to reach an agreement on the issue.

****NOTE: I changed "Notwithstanding s. 767.407 (1)" to "Except as provided in s.
767.407 (1) (am)." Okay?

21 4. Set the matter for a further hearing to be held within 60 days.

22 **(3) RELOCATION PENDING FINAL HEARING.** (a) At the initial hearing, or at any time
23 after the initial hearing but before the final hearing, the court may allow the parent

1 proposing the relocation to move with the child if the court finds that the relocation
2 is in the child's immediate best interest. The court shall inform the parties, however,
3 that approval of the relocation is subject to revision at the final hearing.

4 (b) If a court commissioner makes a determination, order, or ruling regarding
5 relocation pending the final hearing, either party may seek a review by hearing de
6 novo under s. 757.69 (8). The motion requesting the de novo hearing must be filed
7 with the court within 10 days after the court commissioner orally issues the
8 determination, order, or ruling. The judge shall hold the de novo hearing within 30
9 days after the motion requesting the de novo hearing is filed, unless the court finds
10 good cause for an extension.

11 (4) STANDARDS FOR DECIDING RELOCATION MOTIONS. At the final hearing, the
12 judge shall decide the matter as follows:

13 (a) If the proposed relocation and new placement schedule only minimally
14 change or affect the current placement schedule, the court shall approve the
15 proposed relocation, set a new placement schedule if appropriate, and allocate the
16 costs of and responsibility for transportation of the child between the parties under
17 the new placement schedule.

18 (b) In cases other than that specified in par. (a), the court shall, in determining
19 whether to approve the proposed relocation and a new placement schedule, use the
20 following factors:

- 21 1. The factors under s. 767.41 (5).
- 22 2. A presumption that the court should approve the plan of the parent
23 proposing the relocation if the objecting parent has not significantly exercised
24 court-ordered physical placement.

1 3. A presumption that the court should approve the plan of the parent
2 proposing the relocation if the parent's move is related to abuse, as defined in s.
3 813.122 (1) (a), of the child, as defined in s. 813.122 (1) (b); a pattern or serious
4 incident of interspousal battery, as described under s. 940.19 or 940.20 (1m); or a
5 pattern or serious incident of domestic abuse, as defined in s. 813.12 (1) (am).

6 (c) If the objecting parent files a responsive motion that seeks a substantial
7 change in physical placement or a change in legal custody, the court shall, in deciding
8 the motion of the objecting parent, use the following factors:

9 1. The factors under s. 767.41 (5).

10 2. A presumption against transferring legal custody or the primary residence
11 of the child to a parent who has significantly failed to exercise court-ordered physical
12 placement.

13 3. A presumption that the court should approve the plan of the parent
14 proposing the relocation if the parent's move is related to abuse, as defined in s.
15 813.122 (1) (a), of the child, as defined in s. 813.122 (1) (b); a pattern or serious
16 incident of interspousal battery, as described under s. 940.19 or 940.20 (1m); or a
17 pattern or serious incident of domestic abuse, as defined in s. 813.12 (1) (am).

18 (d) The court shall decide all contested relocation motions and all motions for
19 modification of legal custody or physical placement filed in response to relocation
20 motions in the best interest of the child. Both parents bear the burden of proof in
21 contested relocation motions except in cases involving a presumption under par. (b)
22 2. or 3. or (c) 2. or 3. In cases involving a presumption under par. (b) 2. or 3. or (c) 2.
23 or 3., the parent objecting to the move shall have the burden of proof in
24 demonstrating the proposed move is not in the child's best interest.

The movant

1 (e) If the objecting parent files a responsive motion that seeks a substantial
2 change in physical placement or a change in legal custody, and the parent proposing
3 the relocation withdraws or otherwise fails to pursue his or her relocation motion or
4 the court does not allow the relocation, the court shall proceed on the objecting
5 parent's responsive motion under s. 767.451.

6 (5) STIPULATIONS. At any time after a motion is filed under sub. (1), if the parties
7 agree that one parent may move more than 100 miles away from the other parent,
8 the parties may file a stipulation with the court that specifies that neither parent has
9 any objection to the planned move and that sets out any agreed upon modification
10 to legal custody or periods of physical placement, including responsibility for
11 transportation of the child between the parties under a proposed new placement
12 schedule. The court shall incorporate the terms of the stipulation into an order for
13 the relocation or a revised order of legal custody or physical placement, as
14 appropriate, unless the court finds that the modification is not in the best interest
15 of the child.

16 (6) OTHER NOTICE REQUIRED FOR REMOVALS. Except as otherwise provided in an
17 order or judgment allocating periods of physical placement with a child, a person who
18 has legal custody of and periods of physical placement with the child shall notify any
19 other person who has periods of physical placement with the child before removing
20 the child from his or her primary residence for a period of more than 14 consecutive
21 days.

22 (7) APPLICABILITY. (a) The requirements and procedures under this section
23 apply to relocations with or removals of a child in any of the following cases:

24 1. Cases that are originally commenced on or after the effective date of this
25 subdivision [LRB inserts date].

1 2. Cases that were originally commenced before the effective date of this
2 subdivision [LRB inserts date], but in which a legal custody or physical placement
3 order is modified on or after the effective date of this subdivision [LRB inserts
4 date].

5 (b) Except as provided in par. (a) 2., the requirements and procedures under
6 s. 767.481, 2015 stats., apply to moves with or removals of a child in cases that were
7 originally commenced before the effective date of this paragraph [LRB inserts
8 date].

9 **SECTION 10.** 767.805 (4) (am) of the statutes is created to read:

10 767.805 (4) (am) The information set forth in s. 767.41 (6) (h).

11 **SECTION 11.** 767.89 (3) (bm) of the statutes is created to read:

12 767.89 (3) (bm) The information set forth in s. 767.41 (6) (h).

13 **SECTION 12. Initial applicability.**

14 (1) INFORMATION IN ORDERS REGARDING RELOCATIONS. The treatment of sections
15 767.41 (4) (d) and (6) (h), 767.805 (4) (am), and 767.89 (3) (bm) of the statutes first
16 applies to judgments or orders for legal custody of and physical placement with a
17 child that are granted in actions affecting the family, including actions to modify
18 judgments or orders previously granted, that are commenced on the effective date
19 of this subsection.

20 (2) MOTIONS TO RELOCATE WITH A CHILD. The treatment of sections 767.001 (1)
21 (k) and 767.225 (1) (bm) of the statutes first applies to motions to relocate with a child
22 that are filed in any of the following:

23 (a) Cases originally commenced on the effective date of this paragraph.

24 (b) Cases in which legal custody or physical placement is modified on the
25 effective date of this paragraph.

INS ✓
10-13

1 (3) PROHIBITED ACTS DURING THE PENDENCY OF AN ACTION. The treatment of
2 sections 767.117 (1) (c) and 767.215 (2) (j) 1. and 2. of the statutes first applies to
3 actions affecting the family, excluding actions for maintenance payments or property
4 division, but including actions to modify judgments or orders previously granted,
5 that are commenced on the effective date of this subsection.

6

(END)

2017-2018 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0794/P2ins
EAW:jld

INS - A

~~NO~~ Under the bill, if the parents already live 100[✓] miles or more away from each other, a parent proposing to relocate with a child must provide 60 days' written notice to the other parent.✓

INS 5-18

~~NO~~ If the parents already live more than 100 miles apart, the parent who intends to relocate with the child shall serve written notice of his or her intent to relocate on the other parent at least 60 days[✓] prior to relocation. Such written notice shall include the date^{on which} the parent intends to relocate and the parent's new address.✓
~~before~~

INS 6-11

~~NO~~ other parent at his or her most recent address on file with the court. If the parent filing the response has actual knowledge that the other parent has a different address from the one on file, the response shall be served by mail to both addresses.✓

~~INSERT~~ SECTION 1. 767.89 (6)¹⁰⁻¹³ of the statutes is amended to read:

767.89 (6) OTHER APPLICABLE PROVISIONS. Sections 767.41, 767.43, 767.451, 767.481[✓], 767.57, 767.58, 767.59, 767.71, 767.75, 767.76, 767.77, and 767.78, where applicable, apply to a judgment or order under this section.✓

History: 1979 c. 352; 1983 a. 27, 192, 447; 1985 a. 29; 1985 a. 315 s. 22; 1987 a. 27, 37, 355, 413; 1989 a. 212; 1991 a. 39; 1993 a. 481; 1995 a. 27 ss. 7115, 7116, 9126 (19); 1995 a. 100, 201, 279, 375, 404; 1997 a. 27, 35, 191; 1999 a. 9; 2001 a. 16; 2005 a. 304; 2005 a. 443 ss. 218, 261; Stats. 2005 s. 767.89; 2007 a. 20.

(end ins 10-13)



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in: 4/14
due: 4/18

insert

✓ Regen

1 **AN ACT to repeal** 767.41 (4) (d); **to amend** 767.001 (1) (k), 767.117 (1) (c), 767.215

2 (2) (j) 1., 767.215 (2) (j) 2., 767.225 (1) (bm) and 767.89 (6); **to repeal and**

3 **recreate** 767.481; and **to create** 767.14, 767.41 (6) (h), 767.805 (4) (am) and

4 767.89 (3) (bm) of the statutes; **relating to:** relocating with a child who is the

5 subject of a legal custody or physical placement order.

✓
with child or removal of a child

Analysis by the Legislative Reference Bureau

This bill changes the procedures for relocating a child's residence where a court grants any periods of physical placement with a child to both parents and one parent intends to relocate and reside with the child 100 miles or more from the other parent.

Under current law, if the court grants periods of physical placement to more than one parent, a parent is required to provide at least 60 days' written notice to the court and the other parent of intent to move with the child out of state; move 150 miles or more from the other parent; or remove the child from the state for more than 90 consecutive days. If the other parent objects to the proposed action, he or she may file a notice of objection.

Currently, upon notice of objection, the court must refer the parents for mediation or other family court services and may appoint a guardian ad litem. If the dispute cannot be resolved through mediation, the court must appoint a guardian ad litem and may modify the legal custody or physical placement order to accommodate or prohibit the move. Depending on how custody and placement are allocated between the parents, there are a number of factors that the court must consider,

✓
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A-1

* or removing the child from the child's residence for more than 90 consecutive days

including whether modification is in the best interest of the child, when determining whether to modify the legal custody or physical placement order affecting the child.

Under the bill, if both parents are granted periods of physical placement with a child, a parent must obtain a court order before relocating with the child 100 miles or more from the other parent, unless the parents already live 100 miles or more away from each other. The bill requires a parent to file a motion to relocate a child's residence and a relocation plan, and requires an initial hearing on the motion to be held within 30 days of filing. If the other parent does not object or appear at the hearing, the court must approve the relocation plan submitted by the parent unless it finds that the plan is not in the best interest of the child. Under the bill, if the parents already live 100 miles or more away from each other, a parent proposing to relocate with a child must provide 60 days' written notice to the other parent.

If the other parent objects to the relocation, the court must require a response from the objecting parent, refer the parties to mediation, appoint a guardian ad litem, and set the matter for a second hearing to be held within 60 days. After the initial hearing but before the final hearing, the court may allow a parent to relocate with the child, subject to revision at the final hearing, if the court finds that the relocation is in the child's best interest. The bill establishes standards for deciding relocation motions, including whether the new placement schedule will substantially change the physical placement schedule, consideration of the factors for legal custody, whether a parent has exercised court-ordered physical placement rights, and whether the relocation is in the best interest of the child. Under the bill, there is a presumption that the court should approve the relocation if the parent's move is related to domestic abuse or abuse of the child.

At any time after a motion for relocation of a child is filed, the bill allows the parties to file a stipulated agreement with the court that specifies that neither parent has any objection to the planned move and that sets out any agreed upon modification to legal custody or periods of physical placement. The bill requires the court to incorporate the terms of the stipulation into an order for relocation or revised order of legal custody or physical placement, unless the court finds that the modification is not in the best interest of the child.

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

1 SECTION 1. 767.001 (1) (k) of the statutes is amended to read:

2 767.001 (1) (k) Concerning periods of physical placement or visitation rights
3 to children, including an action to prohibit a ~~move with or the removal of~~ relocate
4 and reside with a child under s. 767.481 (3) (e).

5 SECTION 2. 767.117 (1) (c) of the statutes is amended to read:

or remove a child
or removal
or removal
or removal
or removal

or removal

INS
A-2

or removal of the child

relocation or removal of the child

or remove ← score

1 767.117 (1) (c) Unless the action is one under s. 767.001 (1) (g) or (h), without
2 the consent of the other party or an order of the court, relocating and establishing
3 a residence with a minor child of the parties ~~outside the state or more than 150~~ 100
4 miles from the residence of the other party ~~within the state~~, removing a minor child
5 of the parties from the state child's residence for more than 90 consecutive days, or
6 concealing a minor child of the parties from the other party.

7 **SECTION 3.** 767.14 of the statutes is created to read:

8 **767.14 Change of address.** Within 5 business days after receiving notice of
9 an address change by a party to an action affecting the family, the clerk of circuit
10 court shall enter the new address in the case file for the action.

11 **SECTION 4.** 767.215 (2) (j) 1. of the statutes is amended to read:

12 767.215 (2) (j) 1. Establishing Relocating and establishing a residence with a
13 minor child of the parties ~~outside the state or more than 150~~ 100 miles from the
14 residence of the other party ~~within the state~~.

15 **SECTION 5.** 767.215 (2) (j) 2. of the statutes is amended to read:

16 767.215 (2) (j) 2. Removing a minor child of the parties from the state child's
17 residence for more than 90 consecutive days.

18 **SECTION 6.** 767.225 (1) (bm) of the statutes is amended to read:

19 767.225 (1) (bm) Allowing a party to ~~move~~ with or remove relocate and reside
20 with a child after a notice of an objection to the move ^{plain} has been filed under s. 767.481
21 (2) (a) (c), as provided in s. 767.481 (3). relocation or removal

22 **SECTION 7.** 767.41 (4) (d) of the statutes is repealed.

23 **SECTION 8.** 767.41 (6) (h) of the statutes is created to read:

1 767.41 (6) (h) In making an order of legal custody and periods of physical
2 placement, the court shall in writing inform the parents, and any other person
3 granted legal custody of the child, of all of the following:

4 1. That each parent must notify the other parent, the child support agency, and
5 the clerk of court of the address at which they may be served within 10 business days
6 of moving to that address. The address may be a street or post office address.

7 2. That the address provided to the court is the address on which the other
8 parties may rely for service of any motion relating to modification of legal custody or
9 physical placement or to relocating the child's residence.

or removing the child from the child's residence for more than 90 consecutive days

10 3. That a parent granted periods of physical placement with the child must
11 obtain a court order before relocating with the child 100 miles or more from the other
12 parent if the other parent also has court-ordered periods of physical placement with
13 the child.

MOVE

or removing the child from the child's residence for more than 90 consecutive days

14 SECTION 9. 767.481 of the statutes is repealed and recreated to read:

15 **767.481 Relocating a child's residence.** (1) MOTION; FILING AND SERVING.

or removing a child from

16 (a) Except as provided in par. (d), if the court grants any periods of physical
17 placement with a child to both parents and one parent intends to relocate and reside
18 with the child 100 miles or more from the other parent, the parent who intends to

4-20
relocate

19 shall file a motion with the court seeking permission for the child's relocation.

20 (b) The motion under par. (a) shall include all of the following:

21 a. 1. The date of the proposed *move*.

or specific beginning and end dates of the proposed removal

22 b. 2. The municipality and state of the proposed new residence.

relocation

23 c. 3. The reason for the *move*.

relocation

or location of the proposed removal

24 d. 4. If applicable, a proposed new placement schedule, including placement

25 during the school year, summers, and holidays.

or remove the child from the child's residence for more than 90 consecutive days

1 e. ^{and allocation of costs for} 5. The proposed responsibility of each parent for transportation of the child
2 between the parties under any proposed new placement schedule.

3 2. ⁶ If applicable, a request for a change in legal custody.

4 3. ⁷ Notice to the other parent that, if he or she objects to the ^{relocation or removal} move, he or she must
5 file and serve, no later than 5 days before the initial hearing, an objection to the ^{move} move
6 and any alternate proposal, including a modification of physical placement or legal
7 custody. ^{relocation or removal}

8 4. ⁸ An attached "Objection to ^{relocation or removal} Move" form, furnished by the court, for use by the
9 other parent if he or she objects to the ^{relocation or removal} move.

10 (c) The parent filing the motion shall serve a copy of the motion by mail on the
11 other parent at his or her most recent address on file with the court. If the parent
12 filing the motion has actual knowledge that the other parent has a different address
13 from the one on file, the motion shall be served by mail at both addresses.

14 (d) The requirement to file a motion under par. (a) does not apply if the child's
15 parents already live more than 100 miles apart when a parent proposes to ^{relocate and} move and
16 relocate with the child. If the parents already live more than 100 miles apart, the
17 parent who intends to ^{relocate or remove} relocate with the child shall serve written notice of his or her
18 intent to ^{relocate or remove the child} relocate on the other parent at least 60 days before ^{relocation or removal} relocation. Such written
19 notice shall include the date on which the parent intends to relocate and the parent's
20 new address. ^{or the dates and location for the removal}

21 (2) INITIAL HEARING. (a) Upon the filing of a motion under sub. (1) (a), the court
22 shall schedule an initial hearing to be held within 30 days after the motion is filed
23 and shall provide notice to the parents of the date of the initial hearing. The child
24 may not be ^{relocated or removed} relocated pending the initial hearing.

1 (b) If the court finds at the initial hearing that the parent not filing the motion
2 was properly served and does not appear at the hearing, or appears at the hearing
3 but does not object to the proposed relocation and relocation plan, the court shall
4 approve the proposed relocation plan submitted by the parent filing the motion
5 unless the court finds that the proposed relocation plan is not in the best interest of
6 the child.

7 (c) If the parent not filing the motion appears at the initial hearing and objects
8 to the relocation or relocation plan, the court shall do all of the following:

9 1. Require the parent who objects to respond by stating in writing within 5
10 business days, if he or she has not already done so, the basis for the objection and his
11 or her proposals for a new placement schedule and transportation responsibilities
12 under sub. (1) (b) 4. and 5. in the event that the court grants the parent filing the
13 motion permission to relocate with the child. The parent who objects shall file the
14 response with the court and serve a copy of the response by mail on the other parent
15 at his or her most recent address on file with the court. If the parent filing the
16 response has actual knowledge that the other parent has a different address from the
17 one on file, the response shall be served by mail to both addresses.

18 2. Refer the parties to mediation, unless the court finds that attending
19 mediation would cause undue hardship or endanger the health or safety of a party
20 as provided in s. 767.405 (8) (b).

21 3. Except as provided in s. 767.407 (1) (am), appoint a guardian ad litem for the
22 child. The court shall provide in the order for appointment, however, that if a
23 mediator is ordered under subd. 2. the guardian ad litem is not required to commence
24 investigation on behalf of the child unless the mediator notifies the court that the
25 parties are unable to reach an agreement on the issue.

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4. Set the matter for a further hearing to be held within 60 days.

(3) RELOCATION PENDING FINAL HEARING. (a) At the initial hearing, or at any time

Issue a temporary order under s. 767.225 to

after the initial hearing but before the final hearing, the court may allow the parent

proposing the relocation to move with the child if the court finds that the relocation

is in the child's immediate best interest. The court shall inform the parties, however,

that approval of the relocation is subject to revision at the final hearing.

(b) If a court commissioner makes a determination, order, or ruling regarding

relocation pending the final hearing, either party may seek a review by hearing de

novo under s. 757.69 (8). The motion requesting the de novo hearing must be filed

with the court within 10 days after the court commissioner orally issues the

determination, order, or ruling. The judge shall hold the de novo hearing within 30

days after the motion requesting the de novo hearing is filed, unless the court finds

good cause for an extension.

(4) STANDARDS FOR DECIDING RELOCATION MOTIONS. At the final hearing, the court

shall decide the matter as follows:

(a) If the proposed relocation and new placement schedule only minimally

change or affect the current placement schedule, the court shall approve the

proposed relocation, set a new placement schedule if appropriate, and allocate the

costs of and responsibility for transportation of the child between the parties under

the new placement schedule.

(b) In cases other than that specified in par. (a), the court shall, in determining

whether to approve the proposed relocation and a new placement schedule, use the

following factors:

1. The factors under s. 767.41 (5).

or removal

the current

or does not affect or change placement schedule

or removal

or removal

or removal

1 2. A presumption that the court should approve the plan of the parent
2 proposing the relocation if the objecting parent has not significantly exercised
3 court-ordered physical placement.

4 3. A presumption that the court should approve the plan of the parent
5 proposing the relocation if the parent's move is related to abuse, as defined in s.
6 813.122 (1) (a), of the child, as defined in s. 813.122 (1) (b); a pattern or serious
7 incident of interspousal battery, as described under s. 940.19 or 940.20 (1m); or a
8 pattern or serious incident of domestic abuse, as defined in s. 813.12 (1) (am).

9 (c) If the objecting parent files a responsive motion that seeks a substantial
10 change in physical placement or a change in legal custody, the court shall, in deciding
11 the motion of the objecting parent, use the following factors:

12 1. The factors under s. 767.41 (5).

13 2. A presumption against transferring legal custody or the residence of the
14 child to a parent who has significantly failed to exercise court-ordered physical
15 placement.

16 3. A presumption that the court should approve the plan of the parent
17 proposing the relocation if the parent's move is related to abuse, as defined in s.
18 813.122 (1) (a), of the child, as defined in s. 813.122 (1) (b); a pattern or serious
19 incident of interspousal battery, as described under s. 940.19 or 940.20 (1m); or a
20 pattern or serious incident of domestic abuse, as defined in s. 813.12 (1) (am).

21 (d) The court shall decide all contested relocation motions and all motions for
22 modification of legal custody or physical placement filed in response to relocation
23 motions in the best interest of the child. The movant bears the burden of proof in

24 contested relocation motions except in cases involving a presumption under par. (b)
25 2. or 3. or (c) 2. or 3. In cases involving a presumption under par. (b) 2. or 3. or (c) 2.

Court determines that the

relocation or removal of the child

relocation or removal plan

8/15/15

The court determines

The court determines that

relocation or removal plan

relocation or removal of the child

or removal

related

or a related motion for modification of legal custody or physical placement

or removal

1 or 3., the parent objecting to the ^{relocation or removal} move shall have the burden of proof in
 2 demonstrating the proposed ^{relocation or removal} move is not in the child's best interest.

3 (e) If the objecting parent files a responsive motion that seeks a substantial
 4 change in physical placement or a change in legal custody, and the parent proposing
 5 the relocation ^{or removal} withdraws or otherwise fails to pursue his or her relocation ^{or removal} motion or
 6 the court does not allow the relocation ^{or removal}, the court shall proceed on the objecting ^{or removal}
 7 parent's responsive motion under s. 767.451. ^{or remove the child from his or her residence for more than 90 consecutive days}

8 (5) STIPULATIONS. At any time after a motion is filed under sub. (1), if the parties
 9 agree that one parent may ^{relocate and reside with the child} move more than 100 miles away from the other parent,
 10 the parties may file a stipulation with the court that specifies that neither parent has
 11 any objection to the planned ^{relocation or removal} move and that sets out any agreed upon modification
 12 to legal custody or periods of physical placement, including responsibility ^{and costs} for
 13 transportation of the child between the parties under a proposed new placement
 14 schedule. The court shall incorporate the terms of the stipulation into an order for
 15 the relocation ^{or removal} or a revised order of legal custody or physical placement, as
 16 appropriate, unless the court finds that the modification is not in the best interest
 17 of the child.

18 (6) OTHER NOTICE REQUIRED FOR ^{SHORT-TERM} REMOVALS. Except as otherwise provided in an
 19 order or judgment allocating periods of physical placement with a child, a person who
 20 has legal custody of and periods of physical placement with the child shall notify any
 21 other person who has periods of physical placement with the child before removing
 22 the child from ^{to the child's} his or her residence for a period of more than 14 ^{but not more than 90} consecutive days.

23 (7) APPLICABILITY. (a) The requirements and procedures under this section
 24 apply to relocations with or removals of a child in any of the following cases:

1 1. Cases that are originally commenced on or after the effective date of this
2 subdivision [LRB inserts date].

3 2. Cases that were originally commenced before the effective date of this
4 subdivision [LRB inserts date], but in which a legal custody or physical placement
5 order is modified on or after the effective date of this subdivision [LRB inserts
6 date].

7 (b) Except as provided in par. (a) 2., the requirements and procedures under
8 s. 767.481, 2015 stats., apply to moves with or removals of a child in cases that were
9 originally commenced before the effective date of this paragraph [LRB inserts
10 date].

11 **SECTION 10.** 767.805 (4) (am) of the statutes is created to read:

12 767.805 (4) (am) The information set forth in s. 767.41 (6) (h).

13 **SECTION 11.** 767.89 (3) (bm) of the statutes is created to read:

14 767.89 (3) (bm) The information set forth in s. 767.41 (6) (h).

15 **SECTION 12.** 767.89 (6) of the statutes is amended to read:

16 767.89 (6) OTHER APPLICABLE PROVISIONS. Sections 767.41, 767.43, 767.451,
17 767.481, 767.57, 767.58, 767.59, 767.71, 767.75, 767.76, 767.77, and 767.78, where
18 applicable, apply to a judgment or order under this section.

19 **SECTION 13. Initial applicability.**

20 (1) INFORMATION IN ORDERS REGARDING RELOCATIONS. The treatment of sections
21 767.41 (4) (d) and (6) (h), 767.805 (4) (am), and 767.89 (3) (bm) of the statutes first
22 applies to judgments or orders for legal custody of and physical placement with a
23 child that are granted in actions affecting the family, including actions to modify
24 judgments or orders previously granted, that are commenced on the effective date
25 of this subsection.

CS
OR REMOVALS OF A CHILD

1
2

(2) MOTIONS TO RELOCATE WITH A CHILD. The treatment of sections 767.001 (1) (k) and 767.225 (1) (bm) of the statutes first applies to motions to relocate with a child that are filed in any of the following:

or remove ← (CS)

or remove ✓

3
4
5
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- (a) Cases originally commenced on the effective date of this paragraph.
 - (b) Cases in which legal custody or physical placement is modified on the effective date of this paragraph.
- (3) PROHIBITED ACTS DURING THE PENDENCY OF AN ACTION. The treatment of sections 767.117 (1) (c) and 767.215 (2) (j) 1. and 2. of the statutes first applies to actions affecting the family, excluding actions for maintenance payments or property division, but including actions to modify judgments or orders previously granted, that are commenced on the effective date of this subsection.

(END)

**2017-2018 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0794/P2ins
EAW:jld

INS - A-1

This bill changes the procedures for relocating with a child to more than 100 miles from the other parent or removing a child from the child's residence for more than 90 consecutive days where both parents have court-ordered physical placement with the child.

INS - A-2

Under the bill, if the proposed relocation or removal plan does not affect the existing placement schedule or only minimally affects the existing placement schedule, the court is required to approve the proposed relocation or removal. If the proposed relocation or removal will have more than a minimal effect on the existing placement schedule, the court is required to consider the factors in custody and physical placement determinations. Under the bill, there is a presumption in favor of granting the motion to relocate or remove the child if the objecting parent has not significantly exercised court-ordered physical placement or if the move or removal is related to abuse.

INS 4-20

****NOTE: This draft requires a parent proposing to remove a child from the child's residence for more than 90 days to file a motion to obtain a court order to allow for the removal before removing the child. Under current law, a parent must only give notice of removing the child from the child's residence for more than 90 consecutive days if the removal will be to outside of the state. Does the new approach meet your intent for how this would work?

INS 8-8

****NOTE: As drafted, both presumptions apply to removal as well as relocation. is this OK?

OK?
OKay

1 767.001 (1) (k) Concerning periods of physical placement or visitation rights
2 to children, including an action to ~~prohibit a move with or the removal of~~ relocate and
3 reside with or remove a child under s. 767.481 (3) (e).

4 SECTION 2. 767.117 (1) (c) of the statutes is amended to read:

5 767.117 (1) (c) Unless the action is one under s. 767.001 (1) (g) or (h), without
6 the consent of the other party or an order of the court, relocating and establishing
7 a residence with a minor child of the parties ~~outside the state or~~ more than 150 100
8 miles from the residence of the other party ~~within the state~~, removing a minor child
9 of the parties from the ~~state child's residence~~ state for more than 90 consecutive days, or
10 concealing a minor child of the parties from the other party.

11 SECTION 3. 767.14 of the statutes is created to read:

12 **767.14 Change of address.** Within 5 business days after receiving notice of
13 an address change by a party to an action affecting the family, the clerk of circuit
14 court shall enter the new address in the case file for the action.

15 SECTION 4. 767.215 (2) (j) 1. of the statutes is amended to read:

16 767.215 (2) (j) 1. ~~Establishing~~ Relocating and establishing a residence with a
17 minor child of the parties ~~outside the state or~~ more than 150 100 miles from the
18 residence of the other party ~~within the state~~.

19 SECTION 5. 767.215 (2) (j) 2. of the statutes is amended to read:

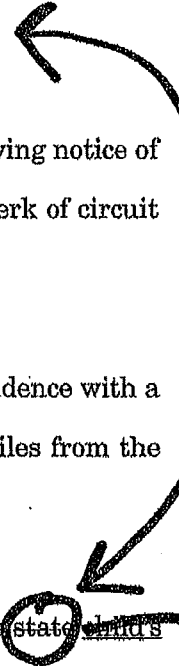
20 767.215 (2) (j) 2. Removing a minor child of the parties from the ~~state child's~~
21 ~~residence for~~ more than 90 consecutive days.

22 SECTION 6. 767.225 (1) (bm) of the statutes is amended to read:

23 767.225 (1) (bm) Allowing a party to ~~move~~ relocate and reside with or remove
24 a child after a notice of an objection to the relocation or removal has been filed under
25 s. 767.481 (2) (a) (c), as provided in s. 767.481 (3).

*Can be deleted
as no change to
current statute*

These provisions only apply to pending actions



1 **SECTION 7.** 767.41 (4) (d) of the statutes is repealed.

2 **SECTION 8.** 767.41 (6) (h) of the statutes is created to read:

3 767.41 (6) (h) In making an order of legal custody and periods of physical
4 placement, the court shall in writing inform the parents, and any other person
5 granted legal custody of the child, of all of the following:

6 1. That each parent must notify the other parent, the child support agency, and
7 the clerk of court of the address at which they may be served within 10 business days
8 of moving to that address. The address may be a street or post office address.

9 2. That the address provided to the court is the address on which the other
10 parties may rely for service of any motion relating to modification of legal custody or
11 physical placement, relocating the child's residence, ~~or removing the child from the~~
12 ~~child's residence for more than 90 consecutive days.~~

13 3. That, if the other parent also has court-ordered periods of physical
14 placement with the child, a parent granted periods of physical placement with the
15 child must obtain a court order before relocating with the child 100 miles or more
16 from the other parent ~~or removing the child from the child's residence for more than~~
17 ~~90 consecutive days.~~

18 **SECTION 9.** 767.481 of the statutes is repealed and recreated to read:

19 **767.481 Relocating ~~or removing~~ a child from a child's residence.** (1)

20 MOTION; FILING AND SERVING. (a) Except as provided in par. (d), if the court grants any
21 periods of physical placement with a child to both parents and one parent intends to
22 relocate and reside with the child 100 miles or more from the other parent ~~or remove~~
23 ~~the child from the child's residence for more than 90 consecutive days~~, the parent who
24 intends to relocate ~~or remove~~ the child shall file a motion with the court seeking
25 permission for the child's relocation ~~or removal~~.

*irrelevant
new*

****NOTE: This draft requires a parent proposing to remove a child from the child's residence for more than 90 days to file a motion to obtain a court order to allow for the removal before removing the child. Under current law, a parent must only give notice of removing the child from the child's residence for more than 90 consecutive days if the removal will be to outside of the state. Does the new approach meet your intent for how this would work?

- 1 (b) The motion under par. (a) shall include all of the following:
- 2 1. A relocation ~~or removal~~ plan including:
- 3 a. The date of the proposed relocation ~~or specific beginning and end dates of the~~
- 4 ~~proposed removal~~.
- 5 b. The municipality and state of the proposed new residence ~~or location of the~~
- 6 ~~proposed removal~~.
- 7 c. The reason for the relocation ~~or removal~~.
- 8 d. If applicable, a proposed new placement schedule, including placement
- 9 during the school year, summers, and holidays.
- 10 e. The proposed responsibility and allocation of costs for each parent for
- 11 transportation of the child between the parties under any proposed new placement
- 12 schedule.
- 13 2. If applicable, a request for a change in legal custody.
- 14 3. Notice to the other parent that, if he or she objects to the relocation ~~or~~
- 15 ~~removal~~, he or she must file and serve, no later than 5 days before the initial hearing,
- 16 an objection to the relocation ~~or removal~~ and any alternate proposal, including a
- 17 modification of physical placement or legal custody.
- 18 4. An attached "Objection to Relocation ~~or Removal~~" form, furnished by the
- 19 court, for use by the other parent if he or she objects to the relocation ~~or removal~~.
- 20 (c) The parent filing the motion shall serve a copy of the motion by mail on the
- 21 other parent at his or her most recent address on file with the court. If the parent

1 filing the motion has actual knowledge that the other parent has a different address
2 from the one on file, the motion shall be served by mail at both addresses.

3 (d) The requirement to file a motion under par. (a) does not apply if the child's
4 parents already live more than 100 miles apart when a parent proposes to relocate
5 with ~~or remove~~ the child. If the parents already live more than 100 miles apart, the
6 parent who intends to relocate with the child shall serve written notice of his or her
7 intent to relocate ~~or remove~~ the child on the other parent at least 60 days before
8 relocation ~~or removal~~. Such written notice shall include the date on which the parent
9 intends to relocate and the parent's new address, ~~or the dates and location for the~~
10 ~~removal.~~

11 (2) INITIAL HEARING. (a) Upon the filing of a motion under sub. (1) (a), the court
12 shall schedule an initial hearing to be held within 30 days after the motion is filed
13 and shall provide notice to the parents of the date of the initial hearing. The child
14 may not be relocated ~~or removed~~ pending the initial hearing.

15 (b) If the court finds at the initial hearing that the parent not filing the motion
16 was properly served and does not appear at the hearing, or appears at the hearing
17 but does not object to the proposed relocation ~~or removal~~ plan, the court shall approve
18 the proposed relocation ~~or removal~~ plan submitted by the parent filing the motion
19 unless the court finds that the proposed relocation ~~or removal~~ plan is not in the best
20 interest of the child.

21 (c) If the parent not filing the motion appears at the initial hearing and objects
22 to the proposed relocation ~~or removal~~ plan, the court shall do all of the following:

23 1. Require the parent who objects to respond by stating in writing within 5
24 business days, if he or she has not already done so, the basis for the objection and his
25 or her proposals for a new placement schedule and transportation responsibilities

1 and costs under sub. (1) (b) 4. and 5. in the event that the court grants the parent
2 filing the motion permission to relocate with ~~or remove~~ the child. The parent who
3 objects shall file the response with the court and serve a copy of the response by mail
4 on the other parent at his or her most recent address on file with the court. If the
5 parent filing the response has actual knowledge that the other parent has a different
6 address from the one on file, the response shall be served by mail to both addresses.

7 2. Refer the parties to mediation, unless the court finds that attending
8 mediation would cause undue hardship or endanger the health or safety of a party
9 as provided in s. 767.405 (8) (b).

10 3. Except as provided in s. 767.407 (1) (am), appoint a guardian ad litem for the
11 child. The court shall provide in the order for appointment, however, that if a
12 mediator is ordered under subd. 2. the guardian ad litem is not required to commence
13 investigation on behalf of the child unless the mediator notifies the court that the
14 parties are unable to reach an agreement on the issue.

15 4. Set the matter for a further hearing to be held within 60 days.

16 (3) RELOCATION OR ~~REMOVAL~~ PENDING FINAL HEARING. (a) At the initial hearing,
17 or at any time after the initial hearing but before the final hearing, the court may
18 issue a temporary order under s. 767.225 to allow a parent to relocate ~~or remove~~ ^{with} the
19 child if the court finds that the relocation ~~or removal~~ is in the child's immediate best
20 interest. The court shall inform the parties, however, that approval of the relocation
21 ~~or removal~~ is subject to revision at the final hearing.

22 (b) If a court commissioner makes a determination, order, or ruling regarding
23 relocation ~~or removal~~ pending the final hearing under par. (a), either party may seek
24 a review by hearing de novo under s. 757.69 (8). The motion requesting the de novo
25 hearing must be filed with the court within 10 days after the court commissioner

1 orally issues the determination, order, or ruling. The judge shall hold the de novo
2 hearing within 30 days after the motion requesting the de novo hearing is filed,
3 unless the court finds good cause for an extension.

4 (4) STANDARDS FOR DECIDING RELOCATION ~~OR REMOVAL~~ MOTIONS. At the final
5 hearing, the court shall decide the matter as follows:

6 (a) If the proposed relocation ~~or removal~~ only minimally changes or affects the
7 current placement schedule or does not affect or change the current placement
8 schedule, the court shall approve the proposed relocation ~~or removal~~, set a new
9 placement schedule if appropriate, and allocate the costs of and responsibility for
10 transportation of the child between the parties under the new placement schedule.

11 (b) In cases other than that specified in par. (a), the court shall, in determining
12 whether to approve the proposed relocation ~~or removal~~ and a new placement
13 schedule, use the following factors:

14 1. The factors under s. 767.41 (5).

15 2. A presumption that the court should approve the plan of the parent
16 proposing the relocation if the court determines that the objecting parent has not
17 significantly exercised court-ordered physical placement.

18 3. A presumption that the court should approve the relocation ~~or removal~~ plan
19 if the court determines that the relocation or removal of the child is related to abuse,
20 as defined in s. 813.122 (1) (a), of the child, as defined in s. 813.122 (1) (b); a pattern
21 or serious incident of interspousal battery, as described under s. 940.19 or 940.20
22 (1m); or a pattern or serious incident of domestic abuse, as defined in s. 813.12 (1)
23 (am).

***NOTE: As drafted, both presumptions apply to removal as well as relocation. Is
this okay?

*irrelevant
now*

1 (c) If the objecting parent files a responsive motion that seeks a substantial
2 change in physical placement or a change in legal custody, the court shall, in deciding
3 the motion of the objecting parent, use the following factors:

4 1. The factors under s. 767.41 (5).

5 2. A presumption against transferring legal custody or the residence of the
6 child to a parent who the court determines has significantly failed to exercise
7 court-ordered physical placement.

8 3. A presumption that the court should approve the relocation ~~or removal~~ plan
9 if the court determines that the relocation ~~or removal~~ of the child is related to abuse,
10 as defined in s. 813.122 (1) (a), of the child, as defined in s. 813.122 (1) (b); a pattern
11 or serious incident of interspousal battery, as described under s. 940.19 or 940.20
12 (1m); or a pattern or serious incident of domestic abuse, as defined in s. 813.12 (1)
13 (am).

14 (d) The court shall decide all contested relocation ~~or removal~~ motions and all
15 related motions for modification of legal custody or physical placement in the best
16 interest of the child. The movant bears the burden of proof in a contested relocation
17 ~~or removal~~ motion or a related motion for modification of legal custody or physical
18 placement except in cases involving a presumption under par. (b) 2. or 3. or (c) 2. or
19 3. In cases involving a presumption under par. (b) 2. or 3. or (c) 2. or 3., the parent
20 objecting to the relocation ~~or removal~~ shall have the burden of proof in demonstrating
21 the proposed relocation ~~or removal~~ is not in the child's best interest.

22 (e) If the objecting parent files a responsive motion that seeks a substantial
23 change in physical placement or a change in legal custody, and the parent proposing
24 the relocation ~~or removal~~ withdraws or otherwise fails to pursue his or her relocation

1 ~~or removal~~ motion or the court does not allow the relocation ~~or removal~~, the court
2 shall proceed on the objecting parent's responsive motion under s. 767.451.

3 (5) STIPULATIONS. At any time after a motion is filed under sub. (1), if the parties
4 agree that one parent may relocate and reside with the child more than 100 miles
5 away from the other parent ~~or remove the child from his or her residence for more~~
6 ~~than 90 consecutive days~~, the parties may file a stipulation with the court that
7 specifies that neither parent has any objection to the planned relocation ~~or removal~~
8 and that sets out any agreed upon modification to legal custody or periods of physical
9 placement, including responsibility and costs for transportation of the child between
10 the parties under a proposed new placement schedule. The court shall incorporate
11 the terms of the stipulation into an order for the relocation ~~or removal~~ or a revised
12 order of legal custody or physical placement, as appropriate, unless the court finds
13 that the modification is not in the best interest of the child.

14 (6) OTHER NOTICE REQUIRED FOR SHORT-TERM REMOVALS. Except as otherwise
15 provided in an order or judgment allocating periods of physical placement with a
16 child, a person who has legal custody of and periods of physical placement with the
17 child shall notify any other person who has periods of physical placement with the
18 child before removing the child from the child's residence for a period of more than
19 14 ~~but not more than 90 consecutive days~~.

20 (7) APPLICABILITY. (a) The requirements and procedures under this section
21 apply to relocations with ~~or removals~~ of a child in any of the following cases:

22 1. Cases that are originally commenced on or after the effective date of this
23 subdivision [LRB inserts date].

24 2. Cases that were originally commenced before the effective date of this
25 subdivision [LRB inserts date], but in which a legal custody or physical placement

1 order is modified on or after the effective date of this subdivision [LRB inserts
2 date].

3 (b) Except as provided in par. (a) 2., the requirements and procedures under
4 s. 767.481, 2015 stats., apply to moves with or removals of a child in cases that were
5 originally commenced before the effective date of this paragraph [LRB inserts
6 date].

7 **SECTION 10.** 767.805 (4) (am) of the statutes is created to read:

8 767.805 (4) (am) The information set forth in s. 767.41 (6) (h).

9 **SECTION 11.** 767.89 (3) (bm) of the statutes is created to read:

10 767.89 (3) (bm) The information set forth in s. 767.41 (6) (h).

11 **SECTION 12.** 767.89 (6) of the statutes is amended to read:

12 767.89 (6) OTHER APPLICABLE PROVISIONS. Sections 767.41, 767.43, 767.451,
13 767.481, 767.57, 767.58, 767.59, 767.71, 767.75, 767.76, 767.77, and 767.78, where
14 applicable, apply to a judgment or order under this section.

15 **SECTION 13. Initial applicability.**

16 (1) INFORMATION IN ORDERS REGARDING RELOCATIONS ~~OR REMOVALS~~ OF A CHILD. The
17 treatment of sections 767.41 (4) (d) and (6) (h), 767.805 (4) (am), and 767.89 (3) (bm)
18 of the statutes first applies to judgments or orders for legal custody of and physical
19 placement with a child that are granted in actions affecting the family, including
20 actions to modify judgments or orders previously granted, that are commenced on the
21 effective date of this subsection.

22 (2) MOTIONS TO RELOCATE WITH ~~OR REMOVE~~ A CHILD. The treatment of sections
23 767.001 (1) (k) and 767.225 (1) (bm) of the statutes first applies to motions to relocate
24 with ~~or remove~~ a child that are filed in any of the following:

25 (a) Cases originally commenced on the effective date of this paragraph.

1 (b) Cases in which legal custody or physical placement is modified on the
2 effective date of this paragraph.

3 (3) PROHIBITED ACTS DURING THE PENDENCY OF AN ACTION. The treatment of
4 sections 767.117 (1) (c) and 767.215 (2) (j) 1. and 2. of the statutes first applies to
5 actions affecting the family, excluding actions for maintenance payments or property
6 division, but including actions to modify judgments or orders previously granted,
7 that are commenced on the effective date of this subsection.

8 (END)