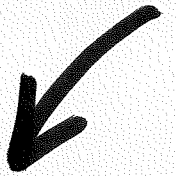





# Appendix A ... segment I



LEGISLATIVE REFERENCE BUREAU  
BILL HISTORY RESEARCH APPENDIX

 The drafting file for 2015 LRB-4731/P2 (For: Rep. Rodriguez)  
has been transferred to the drafting file for  
**2017 LRB-0794** (For: Rep. Rodriguez)



**RESEARCH APPENDIX -**

**PLEASE KEEP WITH THE DRAFTING FILE**

(Request Made By: EAW) (Date: 11/22/2016)

**2015 DRAFTING REQUEST**

**Bill**

Received: **2/9/2016** 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**  
**Dom. Rel. - miscellaneous** 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

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**Topic:**

Relocating a child's residence

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**Instructions:**

See attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 2/16/2016	kfollett 2/18/2016	_____			
/P1	pkahler 5/12/2016		_____	mbarman 2/18/2016		
/P2		kfollett 5/17/2016	_____	rmilford 5/17/2016		

FE Sent For:

<END>

## FAMILY LAW SECTION

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### MEMORANDUM

**To:** Rep. Jessie Rodriguez  
**From:** Family Law Section, State Bar of Wisconsin  
**Date:** January 13, 2016  
**Re:** Relocation proposal

---

As a follow up to your November 19<sup>th</sup> meeting with Lynne Davis discussing possible sponsorship of a relocation proposal from the State Bar of Wisconsin's Family Law Section, we have addressed your questions regarding how this proposal differs from previously introduced bills, AB 462 (2007) and AB 400 (2005), which the State Bar of Wisconsin opposed, as well as why the section believes the current proposal to be a better solution to the issues surrounding the relocation of one parent in a custody arrangement.

The most notable difference between previous proposals and Family Law's proposal center around the distance a parent must move in order to trigger notification to the other parent. Under current law, if a parent wants to move with the child(ren) more than 150 miles or out of Wisconsin, the parent must provide notice of the move. AB 462 and AB 400 aimed to reduce that triggering distance 150 miles to 20 miles, whereas Family Law is proposing to reduce the distance of relocation that triggers notification to 100 miles. In addition, AB 462 required notification if the parent with sole or primary custody intended to move outside the child(ren)'s current school district even if the move was less than 20 miles. The Family Law proposal does not propose to make such a change.

Unaddressed in previous proposals, but addressed in the Family Law proposal are clarifications that the provisions apply to never-married parents as well as divorced parents, which is unclear in current law and handled inconsistently throughout the state. In addition, this proposal outlines how to modify the custody order if there is no objection to a move of more than 100 miles by the non-moving parent, something that is not provided for under current statute. Lastly, the proposal removes the application of the notification requirements to a move out of state that is less than 100 miles.

The Family Law Section believes their proposal is a stronger alternative to the previous bills. A significant amount of time was spent trying to determine a mileage that would be a good balance between too lenient and too restrictive, and settled on relocating 100 miles or more from the other parent. In determining this distance, consideration was given to the impact on families living in more rural areas where driving longer distances is more common. In addition, the previous proposals had triggering events that likely occur frequently, such as a short distance move across state lines, which would create unnecessary litigation, whereas, this proposal is focused on the situations that truly create issues – when the distance becomes unduly burdensome on the current placement schedule.

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](mailto:ldavis@isba.org) or 608.852.3603.



STATE BAR OF WISCONSIN

## Kahler, Pam

---

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

---

**From:** Lynne Davis [mailto:ldavis@wisbar.org]  
**Sent:** Wednesday, January 13, 2016 9:39 AM  
**To:** Williams, Vincent <Vincent.Williams@legis.wisconsin.gov>  
**Subject:** State Bar - relocation memo

Hi Vince,

Got the requested info from my Family Law attorneys on the relocation proposal, so the memo is attached. Please let me know if you or Rep. Rodriguez have any questions on this issue after reviewing, and let me know if you need any additional information from me in order to get this proposal, or the contingent placement proposal, drafted and introduced. Thank you again so much for your patience and willingness to partner on this issue with us.

-Lynne

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

Follow the State Bar on [Facebook](#) and [Twitter](#).

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

767.001 **(1)** (k) Concerning periods of physical placement or visitation rights to children, including an action to move with or relocate with a child under s. 767.481.

**SECTION 2.** 767.14 of the statutes is created to read:

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

**SECTION 3.** 767.225 (1) (bm) of the statutes is amended to read:

767.225 **(1)** (bm) Allowing a party to move with or relocate with a child after a notice of an objection to the move has been filed under s. 767.481 (2) (a), as provided in s. 767.481 (3).

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

**SECTION 5.** 767.41 (6) (h) of the statutes is created to read:

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

1. That each parent notify the other parent, the child support agency, and the clerk of court, of the address at which they may be served within ten business days of moving to the address. The address may be a street or post office address.
2. That the address provided to the court is the address on which the other parties may rely for service of any motion relating to a modification of legal custody or physical placement, or to relocation of the child's residence.
3. That parent must obtain a court order before relocating the child's residence 100 miles or more from the other parent, if the other parent also has court-ordered periods of physical placement with the child.

**SECTION 6.** 767.481 of the statutes is repealed and recreated to read:

**767.481 Relocating the child's residence.**

**(1) MOTION; FILING AND SERVING.**

(a) If the court grants periods of physical placement with a child to both parents and one parent intends to relocate with the child 100 miles or more from the other parent, the parent who intends to move shall file a motion with the court seeking permission for the child's relocation.

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

1. The date of the proposed move.
2. The municipality and state of the proposed new residence.
3. The reason for the move.
4. A proposed new placement schedule, including placement during the school year, summers, and holidays.
5. The proposed responsibility of each parent for transportation of the child between the parties under the proposed new placement schedule.
6. Notice to the other parent that, if he or she objects to the move, he or she must file and serve, no later than 5 days before the initial hearing, an objection to the move and any alternate proposal, including a modification of physical placement or legal custody.
7. An attached "Objection to Move" form, furnished by the court, for use by the other parent if he or she objects to the move.

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

(d) If the parties agree that one parent may move more than 100 miles away from the other parent, the parties may file a stipulation with the court which specifies the agreed upon modification and that neither parent has any objection to the planned move. The court shall incorporate the terms of the stipulation into a revised order of custody or placement unless the court finds that the modification is not in the best interest of the child.

**(2) INITIAL HEARING.**

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

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

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

1. Require the parent who objects to the relocation 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 response must be filed with the court and served on the parent proposing the relocation in the manner provided in s. 801.14 (2).
2. Refer the parties to mediation, unless the court finds that attending mediation would cause undue hardship or endanger the health or safety of a party as provided in s. 767.405 (8) (b).
3. Appoint a guardian ad litem for the child. The court shall provide in the order for appointment, however, that if a mediator is ordered under subd. 2. the guardian ad litem is not required to commence investigation on behalf of the child before the mediator notifies the court that the parties are unable to reach an agreement on the issue.
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 thereafter 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 de novo review 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 issued the determination, order, or ruling. The judge shall hold the de novo hearing within 30 days after the motion requesting the hearing is filed unless the court finds good cause for an extension.

**(4) STANDARDS FOR DECIDING RELOCATION MOTIONS.** At the final hearing, the judge 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).
2. A presumption that the court should approve the plan of the parent proposing the relocation if the objecting parent has not significantly exercised court-ordered physical placement.
3. A presumption that the court should approve the plan of the parent proposing the relocation if the parent's move is related to abuse, as defined in s. 813.122 (1) (a), of the child, as defined in s. 48.02 (2); a pattern or serious incident of interspousal battery, as described under s. 940.19 or 940.20 (1m); or a pattern or serious incident of domestic abuse, as defined in s. 813.12 (1) (am).

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

1. The factors under s. 767.41 (5).
2. A presumption against transferring legal custody or the primary residence of the child to a parent who has significantly failed to exercise court-ordered physical placement.
3. A presumption that the court should approve the plan of the parent proposing the relocation if the parent's move is related to abuse, as defined in s. 813.122 (1) (a), of the child, as defined in s. 48.02 (2); a pattern or serious incident of interspousal battery, as described under s. 940.19 or 940.20 (1m); or a pattern or serious incident of domestic abuse, as defined in s. 813.12 (1) (am).

(d) If the objecting parent files a responsive motion that seeks a substantial change in physical placement or a change in legal custody, and the parent proposing the relocation does not relocate or the court does not allow the relocation, the motion shall proceed under s. 767.451.

(e) The court shall decide all contested relocation motions and all motions for modification of legal custody or physical placement filed in response to relocation motions in the best interest of the child. Both parents bear the burden of proof in contested relocation motions except in cases involving the presumptions at s. 767.481(4)(b)2, 767.418(4)(b)3, 767.481(4)(c)2, or 767.418(4)(c)3. In cases involving the presumptions at s. 767.481(4)(b)2, 767.418(4)(b)3, 767.481(4)(c)2, or 767.418(4)(c)3, the parent objecting to the move shall have the burden of proof in demonstrating the proposed move is not in the child's best interest.

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



**(6) STIPULATIONS.** The parties the parties may file a stipulation with the court which specifies the agreed upon modification and that neither parent has any objection to the planned move. The court shall incorporate the terms of the stipulation into a revised order of custody or placement unless the court finds that the modification is not in the best interest of the child.

**SECTION 7.** 767.805 (4) (am) of the statutes is created to read:  
767.805 **(4)** (am) The information set forth in s. 767.41 (6) (h), if applicable.

**SECTION 8.** 767.89 (3) (bm) of the statutes is created to read:  
767.89 **(3)** (bm) The information set forth in s. 767.41 (6) (h), if applicable.

**SECTION 9. Initial applicability.**

(1) **INFORMATION IN ORDERS REGARDING RELOCATIONS.** The treatment of sections 767.41 (4) (d) and (6) (h), 767.805 (4) (am), and 767.89 (3) (bm) of the statutes first applies to judgments or orders for legal custody of and physical placement with a child that are granted on the effective date of this subsection.

(2) **MOTIONS TO RELOCATE WITH A CHILD.** The treatment of sections 767.001 (1) (k), 767.225 (1) (bm), 767.407 (1) (am) 1., and 767.481 of the statutes first applies to motions to relocate with a child that are filed on the effective date of this subsection.

**(END)**



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-4731/0  
PJK...

PI  
kjf

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

Tues  
Feb 23  
D-note

Gen

1 **AN ACT ...; relating to:** relocating with a child.

*Analysis by the Legislative Reference Bureau*

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:*

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

3 767.001 (1) (k) Concerning periods of physical placement or visitation rights

4 to children, including an action to prohibit <sup>↓</sup> a move with or the removal of relocate

5 with a child under s. 767.481 (3) (e).

History: 1987 a. 355; 1995 a. 100, 279, 404; 1997 a. 3, 27, 35; 2005 a. 174; 2005 a. 443 ss. 7, 8, 15, 16; 2007 a. 20.

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

7 767.117 (1) (c) Unless the action is one under s. 767.001 (1) (g) or (h), without

8 the consent of the other party or an order of the court, establishing a residence with

9 or relocating with a minor child of the parties ~~outside the state or more than 150~~ 100

1 miles from the residence of the other party ~~within the state~~, removing a minor child  
 2 of the parties from the state child's primary residence for more than ~~90~~ 14  
 3 consecutive days, or concealing a minor child of the parties from the other party.

\*\*\*\*NOTE: Is this how you want this provision amended?

History: 1993 a. 78; 2001 a. 61; 2005 a. 443 ss. 51, 64; Stats. 2005 s. 767.117. ✓

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

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

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

9 767.215 (2) (j) 1. Establishing a residence with or relocating with a minor child  
 10 of the parties ~~outside the state or more than 150~~ 100 miles from the residence of the  
 11 other party ~~within the state~~.

\*\*\*\*NOTE: Is this how you want this provision amended?

History: 1971 c. 220; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; 1979 c. 352 s. 39; Stats. 1979 s. 767.085; 1985 a. 29; 1987 a. 332 s. 64; 1987 a. 355, 403; 1989  
 a. 31, 56, 132; 1993 a. 78, 481; 1995 a. 27 s. 9126 (19); 1995 a. 201, 404; 1997 a. 191; 2001 a. 61; 2005 a. 443 ss. 31, 46 to 49, 71, 83, 84; Stats. 2005 s. 767.215; 2007 a. 187;  
 2011 a. 32. ✓

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

13 767.215 (2) (j) 2. Removing a minor child of the parties from the state child's  
 14 primary residence for more than ~~90~~ 14 consecutive days.

\*\*\*\*NOTE: Is this how you want to treat this provision?

History: 1971 c. 220; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; 1979 c. 352 s. 39; Stats. 1979 s. 767.085; 1985 a. 29; 1987 a. 332 s. 64; 1987 a. 355, 403; 1989  
 a. 31, 56, 132; 1993 a. 78, 481; 1995 a. 27 s. 9126 (19); 1995 a. 201, 404; 1997 a. 191; 2001 a. 61; 2005 a. 443 ss. 31, 46 to 49, 71, 83, 84; Stats. 2005 s. 767.215; 2007 a. 187;  
 2011 a. 32. ✓

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

16 767.225 (1) (bm) Allowing a party to move with or ~~remove~~ relocate with a child  
 17 after a notice of an objection to the move has been filed under s. 767.481 (2) ~~(a)~~ (c),  
 18 as provided in s. 767.481 (3).

History: 1971 c. 149; 1971 c. 211 s. 126; 1971 c. 220, 307; 1975 c. 283; Sup. Ct. Order, 73 Wis. 2d xxxi (1976); 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 111, 196;  
 1979 c. 352 s. 39; Stats. 1979 s. 767.23; 1983 a. 27; 1983 a. 204 s. 22; 1983 a. 447; 1985 a. 29 s. 3202 (9); 1987 a. 355, 364, 413; 1989 a. 212; 1991 a. 39; 1993 a. 78, 481, 490;  
 1995 a. 27 ss. 7100h, 9126 (19); 1995 a. 70, 404; 1999 a. 9; 2001 a. 16, 61; 2003 a. 130, 326; 2005 a. 174, 342; 2005 a. 443 ss. 86 to 91; Stats. 2005 s. 767.225; 2007 a. 96.

19 **SECTION 7.** 767.407 (1) (am) 1. of the statutes is amended to read:

1           767.407 (1) (am) 1. Legal custody or physical placement is contested in an  
2           action to modify legal custody or physical placement under s. 767.451 or 767.481.

      \*\*\*NOTE: How do you want to treat the subdivision above? This must be  
coordinated with proposed s. 767.481 (2) (c) 3. In this version of the draft, I notwithstanding  
s. 767.407 (1) in proposed s. 767.481 (2) (c) 3.

History: Sup. Ct. Order, 50Wis. 2d vii (1971); 1977 c. 105, 299; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; 1979 c. 352 s. 39; Stats. 1979 s. 767.045; 1987 a. 355; Sup. Ct. Order,  
151 Wis. 2d xxv (1989); 1993 a. 16, 481; 1995 a. 27, 201, 289, 404; 1997 a. 105, 191; 1999 a. 9; 2001 a. 61; 2003 a. 130; 2005 a. 443 s. 25; Stats. 2005 s. 767.407; 2007 a. 20.

3           **SECTION 8.** 767.41 (4) (d) of the statutes is repealed.

4           **SECTION 9.** 767.41 (6) (h) of the statutes is created to read:

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

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

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

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

18          **SECTION 10.** 767.481 of the statutes is repealed and recreated to read:

19          **767.481 Relocating a child's residence. (1) MOTION; FILING AND SERVING.**

20          (a) If the court grants periods of physical placement with a child to both parents and  
21          one parent intends to relocate with the child 100 miles or more from the other parent,

1 the parent who intends to move shall file a motion with the court seeking permission  
2 for the child's relocation.

\*\*\*\*NOTE: This terminology is confusing because it seems to imply that only a parent with *more* physical placement than the other parent needs to give the notice. If the parent who is moving has much less physical placement with the child, will that move be considered relocating with the child? Should this provision simply require either parent to seek permission to move if both parents have physical placement rights? In other words, should the draft not characterize the move as "relocating with the child"?

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

4 1. The date of the proposed move.

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

6 3. The reason for the move.

7 4. A proposed new placement schedule, including placement during the school  
8 year, summers, and holidays.

9 5. The proposed responsibility of each parent for transportation of the child  
10 between the parties under the proposed new placement schedule.

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

15 7. An attached "Objection to Move" form, furnished by the court, for use by the  
16 other parent if he or she objects to the move.

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

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

1 and shall provide notice to the parents of the date of the initial hearing. The child  
2 may not be relocated pending the initial hearing.

\*\*\*NOTE: If the child may not be "relocated" before the initial hearing, what does that mean if the parent needs to move before the hearing? Does the child then just not have physical placement with that parent, regardless of how much time the child normally spent with that parent before the move?

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

\*\*\*NOTE: This would seem to be in essence the same as a stipulation between the parties, which the court approves unless it is not in the best interest of the child. Must the court still approve the proposed relocation and plan under this paragraph if the court finds that the relocation and plan are not in the best interest of 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 must file the  
14 response with the court and serve a copy of the response on the parent proposing the  
15 relocation in the manner provided in s. 801.14 (2).

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

19 3. Notwithstanding s. 767.407 (1), appoint a guardian ad litem for the child.  
20 The court shall provide in the order for appointment, however, that if a mediator is

1 ordered under subd. 2. the guardian ad litem is not required to commence  
2 investigation on behalf of the child unless the mediator notifies the court that the  
3 parties are unable to reach an agreement on the issue.

\*\*\*\*NOTE: I notwithstanding s. 767.407 (1) since that provision specifies when a GAL  
must be appointed and when one need not be appointed. Section 767.407 (1) (am) 1.  
specifically references s. 767.481 (this section). Section 767.407 (1) needs to be reviewed  
to determine if any changes are needed to that section.

\*\*\*\*NOTE: I changed the language above to “unless the mediator notifies the court  
...” Okay? “[B]efore the mediator notifies the court ...” sounds like the mediator is  
definitely going to notify the court that the parties are unable to reach an agreement.

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

5 (3) RELOCATION PENDING FINAL HEARING. (a) At the initial hearing, or at any time  
6 after the initial hearing but before the final hearing, the court may allow the parent  
7 proposing the relocation to move with the child if the court finds that the relocation  
8 is in the child’s immediate best interest. The court shall inform the parties, however,  
9 that approval of the relocation is subject to revision at the final hearing.

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

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

19 (a) If the proposed relocation and new placement schedule only minimally  
20 change or affect the current placement schedule, the court shall approve the  
21 proposed relocation, set a new placement schedule if appropriate, and allocate the

1 costs of and responsibility for transportation of the child between the parties under  
2 the new placement schedule.

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

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

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

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

\*\*\*\*NOTE: Instead of the definition for "child" in s. 48.02 (2), I used the definition  
in s. 813.122 (1) (b) for consistency with the other provisions in ch. 767 that refer to abuse  
of a child. Okay?

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

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

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

22 3. A presumption that the court should approve the plan of the parent  
23 proposing the relocation if the parent's move is related to abuse, as defined in s.



1 813.122 (1) (a), of the child, as defined in s. 813.122 (1) (b); a pattern or serious  
 2 incident of interspousal battery, as described under s. 940.19 or 940.20 (1m); or a  
 3 pattern or serious incident of domestic abuse, as defined in s. 813.12 (1) (am).

X \*\*\*\*NOTE: See <sup>the</sup> NOTE above regarding the definition of "child."

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

11 (e) If the objecting parent files a responsive motion that seeks a substantial  
 12 change in physical placement or a change in legal custody, and the parent proposing  
 13 the relocation does not relocate or the court does not allow the relocation, the motion  
 14 shall proceed under s. 767.451.

X \*\*\*\*NOTE: This provision is confusing to me. I don't understand the statement "and  
 the parent proposing the relocation does not relocate." Is that referring to not relocating  
 after the initial hearing pending the final hearing? Does it mean the parent proposing the  
 relocation decides to drop the motion? What timeframe is meant? If the parent proposing  
 the relocation decides not to do it, or if the court does not allow the relocation, wouldn't  
 it be likely that the other parent would drop the objection so a proceeding under s. 767.451  
 would not be needed?   
 ↳ to the relocation

15 (5) STIPULATIONS. At any time after a motion is filed under sub. (1), if the parties  
 16 agree that one parent may move more than 100 miles away from the other parent,  
 17 the parties may file a stipulation with the court that specifies that neither parent has  
 18 any objection to the planned move and that sets out any agreed upon modification  
 19 to legal custody or periods of physical placement, including responsibility for  
 20 transportation of the child between the parties under a proposed new placement

1 schedule. The court shall incorporate the terms of the stipulation into a revised order  
2 of custody or placement unless the court finds that the modification is not in the best  
3 interest of the child.

\*\*\*\*NOTE: The proposed subsection above appeared to duplicate proposed sub. (1)  
(d). Therefore, I deleted sub. (1) (d).

\*\*\*\*NOTE: What if the stipulation does not modify custody or physical placement?  
Into what kind of an order would the stipulation be incorporated? An order allowing the  
relocation?

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

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

11 767.805 (4) (am) The information set forth in s. 767.41 (6) (h).

12 **SECTION 12.** 767.89 (3) (bm) of the statutes is created to read:

13 767.89 (3) (bm) The information set forth in s. 767.41 (6) (h).

14 **SECTION 13.** 814.61 (7) (b) of the statutes is amended to read:

15 814.61 (7) (b) Upon the filing of any petition, motion, or order to show cause  
16 by either party under s. 767.451 or 767.481, \$50. No fee may be collected under this  
17 paragraph for filing a petition, motion, or order to show cause for the revision of a  
18 judgment or order for legal custody or physical placement if both parties have  
19 stipulated to the revision of the judgment or order. Of the fees received by the clerk  
20 under this paragraph, the county treasurer shall pay 25% to the secretary of  
21 administration for deposit in the general fund, retain 25% for the use of the county,

1 and deposit 50% in a separate account to be used by the county exclusively for the  
2 purposes specified in s. 767.405.

\*\*\*\*NOTE: Do you want to add filing an objection under s. 767.481 to the provision  
above? That would require a \$50 fee for filing an objection.

History: 1981 c. 317; 1983 a. 27; 1983 a. 189 s. 329 (28); 1983 a. 228, 447, 538; 1985 a. 29, 169; 1987 a. 27 ss. 2143p, 3202 (24); 1987 a. 144, 355, 399; 1989 a. 31; 1989  
a. 56 s. 259; 1989 a. 191; 1991 a. 39, 221, 269; 1993 a. 16, 319, 326, 481, 491; 1995 a. 27, 201, 224, 269, 279, 289, 306; 1997 a. 27, 35, 285; 1999 a. 9, 71; 2001 a. 109; 2003  
a. 33, 165, 327; 2005 a. 272, 387, 434; 2005 a. 443 s. 265; 2007 a. 20; 2009 a. 261; 2015 a. 55.

3 **SECTION 14. Initial applicability.**

4 (1) INFORMATION IN ORDERS REGARDING RELOCATIONS. The treatment of sections  
5 767.41 (4) (d) and (6) (h), 767.805 (4) (am), and 767.89 (3) (bm) of the statutes first  
6 applies to judgments or orders for legal custody of and physical placement with a  
7 child that are granted on the effective date of this subsection.

8 (2) MOTIONS TO RELOCATE WITH A CHILD. The treatment of sections 767.001 (1)  
9 (k), 767.225 (1) (bm), 767.407 (1) (am) 1., and 767.481 of the statutes first applies to  
10 motions to relocate with a child that are filed on the effective date of this subsection.

2  
2  
\*\*\*\*NOTE: I have concerns about the two initial applicability provisions above.  
When the actions to which these provisions apply were filed, the rules regarding moving  
with children were different. When the actions were filed, the petition stated the old rules  
(see s. 767.215 (f) (j)) and the parties were prohibited from violating the old rules (see s.  
767.117 (1)(c) and (2)). Do you want to change the rules for actions that were commenced  
when the old rules applied or do you want to start fresh and have the new rules apply in  
actions that are commenced on or after the effective date?

\*\*\*\*NOTE: Section 767.407 (1) (am) 1. was included in the initial applicability  
provision above in the proposed draft, but that section itself was not treated or included  
in the proposed draft. I have included that section in this version of the draft but only  
to highlight that it may need to be treated in some way.

11 (3) PROHIBITED ACTS DURING THE PENDANCY OF AN ACTION. The treatment of  
12 sections 767.117 (1) (c) and 767.215 (f) (j) 1. and 2. of the statutes first applies to  
13 actions affecting the family, other than actions for maintenance payments or  
14 property division, that are commenced on the effective date of this subsection.

15 (END)

*J - note*

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-4731/8dn

PJK...  
PI  
sf

Date

I have included numerous embedded NOTES in the draft with questions or comments.

Besides the embedded Notes in the draft, I have two main concerns:

- ← 1. The draft explicitly allows a party who objects to a move to request a modification to physical placement or legal custody. However, the draft does not explicitly allow a party who files a motion requesting permission to move to request a modification to legal custody, only a modification to physical placement. Was this intentional or inadvertent?
- ← 2. It is unclear to me when a motion must be filed to obtain permission to move. It is clear that both parents must have been granted periods of physical placement, but it is not clear whether that is all that is required. The motion is for the purpose of obtaining a court order to “move with” or “relocate with” or “establish a residence with” the child more than 100 miles from the other parent’s residence. Is there some threshold of physical placement time that must be spent with the child for moving to be considered moving *with* the child? If not, it would seem clearer simply to require a parent to request permission to move if both parents have physical placement rights.

Pamela J. Kahler  
Senior Legislative Attorney  
(608) 266-2682  
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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4731/P1dn  
PJK:kjf

February 18, 2016

I have included numerous embedded NOTES in the draft with questions or comments.

Besides the embedded Notes in the draft, I have two main concerns:

1. The draft explicitly allows a party who objects to a move to request a modification to physical placement or legal custody. However, the draft does not explicitly allow a party who files a motion requesting permission to move to request a modification to legal custody, only a modification to physical placement. Was this intentional or inadvertent?
2. It is unclear to me when a motion must be filed to obtain permission to move. It is clear that both parents must have been granted periods of physical placement, but it is not clear whether that is all that is required. The motion is for the purpose of obtaining a court order to “move with” or “relocate with” or “establish a residence with” the child more than 100 miles from the other parent’s residence. Is there some threshold of physical placement time that must be spent with the child for moving to be considered moving *with* the child? If not, it would seem clearer simply to require a parent to request permission to move if both parents have physical placement rights.

Pamela J. Kahler  
Senior Legislative Attorney  
(608) 266-2682  
pam.kahler@legis.wisconsin.gov

**Kahler, Pam**

---

**From:** Williams, Vincent  
**Sent:** Monday, May 09, 2016 4:18 PM  
**To:** Kahler, Pam  
**Subject:** RE: Draft review: LRB -4731/P1  
**Attachments:** LRB 4731 - Relocation draft with comments.pdf

Pam,

Let me know if you can read the comments in the attached draft, not sure what program they used to do that. I also have some follow-up comments that I will copy and paste below.

**Comments:**

Hi Vince,

The relocation subcommittee came up with language to address the second drafter's note re: when a motion must be filed to obtain permission to move. The subcommittee members were unable to find much in caselaw that specifically defines relocation other than current law stating "establish his or her legal residence with the child." The suggest changing section 10 of the LRB draft to read:

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

(a) If the 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, the parent who intends to move shall file a motion with the court seeking permission for the child's relocation.

They feel this would make clear that if either parent has any court-ordered periods of placement and the parent is moving with the child, the notice is required. There would be threshold amount of placement the parent would have to meet. If the language is "relocate and reside with the child" then it should hopefully make it clear that if the parent wants to move, but doesn't want to take the kid with them, then it wouldn't apply.

In addition, they came up with some possible language to further clarify which situations the new language would not apply, along with an opening for judicial discretion. They thought this might address some of the drafter's questions. I'm not sure how you or Rep. Rodriguez feel about outlining specifics like this in statute, but I thought I would pass along for you to review and consider:

Here's the list of scenarios for which we would explicitly say the newly created 767.481(1)-(5) do not apply (including, but not limited to):

1. If the court grants any periods of physical placement with a child to both parents, both parents live less than 100 miles away from each other, and one parent intends to relocate and reside with the child less than 100 miles or more from the other parent.
2. If the court grants any periods of physical placement with a child to both parents, both parents live more than 100 miles away from each other, and one parent intends to relocate and reside with the child.
3. If the court grants any periods of physical placement with a child to both parents and one parent intends to relocate 100 miles or more from the other parent without relocating the child.
4. If the court has denied periods of physical placement to one parent and the other parent intended to relocate and reside with the child more than 100 miles away from the parent who is denied all periods of physical placement.

---

My comments regarding the suggested scenarios... correct me if I'm wrong, but you don't draft examples as part of the statutory language???

---

**From:** LRB.Legal  
**Sent:** Thursday, February 18, 2016 3:55 PM  
**To:** Rep.Rodriguez <Rep.Rodriguez@legis.wisconsin.gov>  
**Subject:** Draft review: LRB -4731/P1

**Following is the PDF version of draft LRB -4731/P1 and drafter's note.**

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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4731/P1dn  
PJK:kjf

February 18, 2016

I have included numerous embedded NOTES in the draft with questions or comments.

Besides the embedded Notes in the draft, I have two main concerns:

1. The draft explicitly allows a party who objects to a move to request a modification to physical placement or legal custody. However, the draft does not explicitly allow a party who files a motion requesting permission to move to request a modification to legal custody, only a modification to physical placement. Was this intentional or inadvertent?

2. It is unclear to me when a motion must be filed to obtain permission to move. It is clear that both parents must have been granted periods of physical placement, but it is not clear whether that is all that is required. The motion is for the purpose of obtaining a court order to "move with" or "relocate with" or "establish a residence with" the child more than 100 miles from the other parent's residence. Is there some threshold of physical placement time that must be spent with the child for moving to be considered moving *with* the child? If not, it would seem clearer simply to require a parent to request permission to move if both parents have physical placement rights.

Pamela J. Kahler  
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# Summary of Comments on LRB 4731 - Relocation draft with comments.pdf

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Page: 1

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Number: 1 Author: Subject: Sticky Note Date: 2/22/2016 7:22:40 AM -06'00'  
This was inadvertent. Both custody and placement should be included.

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Number: 2 Author: pkahler Subject: Sticky Note Date: 5/9/2016 4:35:17 PM

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Number: 3 Author: Subject: Sticky Note Date: 2/22/2016 7:22:13 AM -06'00'

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The requirements for the motion are : 1) Both parents have court-ordered periods of placement and 2) one of the parents wants to move with the child more than 100 miles away from the other parent. If only one parent has court-ordered periods of placement, the motion is not required. If the parents already live more than 100 miles away from each other, the motion is not required. If some sort of clarification is necessary, that would be ok to add. The motion provision should not apply to cases in which both parents have "physical placement rights" as in cases in which only one parent has court-ordered periods of placement, the other parent does have a right to physical placement unless there has been a termination of their parental rights.

*S-note*



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-4731/P1  
PJK:kjf

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

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), 767.407 (1) (am) 1. and 814.61 (7)  
3           (b); *to repeal and recreate* 767.481; and *to create* 767.14, 767.41 (6) (h),  
4           767.805 (4) (am) and 767.89 (3) (bm) of the statutes; **relating to:** relocating  
5           with a child.

---

***Analysis by the Legislative Reference Bureau***

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:***

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

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

2           767.117 (1) (c) Unless the action is one under s. 767.001 (1) (g) or (h), without  
3 the consent of the other party or an order of the court, establishing a residence with  
4 or relocating with a minor child of the parties ~~outside the state or more than 150 100~~  
5 miles from the residence of the other party ~~within the state~~, removing a minor child  
6 of the parties from the state child's primary residence for more than 90 14  
7 consecutive days, or concealing a minor child of the parties from the other party.


      \*\*\*\*NOTE: Is this how you want this provision amended? 

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

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


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

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

      \*\*\*\*NOTE: Is this how you want this provision amended? 

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

17           767.215 (2) (j) 2. Removing a minor child of the parties from the state child's  
18 primary residence for more than 90 14 consecutive days.

      \*\*\*\*NOTE: Is this how you want to treat this provision? 

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

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

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Number: 1 Author: Subject: Sticky Note Date: 2/22/2016 7:22:24 AM -06'00'  
No, this should remain at 90 days while an action is pending.

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Number: 2 Author: Subject: Sticky Note Date: 2/22/2016 7:22:31 AM -06'00'  
No, this should remain at 90 days while an action is pending.

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Number: 3 Author: Subject: Sticky Note Date: 2/22/2016 7:22:50 AM -06'00'  
No, this should remain at 90 days while an action is pending.

---

p. 2

1           **SECTION 7.** 767.407 (1) (am) 1. of the statutes is amended to read:

2           767.407 (1) (am) 1. Legal custody or physical placement is contested in an  
3           action to modify legal custody or physical placement under s. 767.451 or 767.481.

          \*\*\*\*NOTE: How do you want to treat the subdivision above? This must be  
coordinated with proposed s. 767.481 (2) (c) 3. In this version of the draft, I notwithstanding  
s. 767.407 (1) in proposed s. 767.481 (2) (c) 3.



4           **SECTION 8.** 767.41 (4) (d) of the statutes is repealed.

5           **SECTION 9.** 767.41 (6) (h) of the statutes is created to read:

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

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

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

15          3. That a parent granted periods of physical placement with the child must  
16          obtain a court order before relocating with the child 100 miles or more from the other  
17          parent if the other parent also has court-ordered periods of physical placement with  
18          the child.

19          **SECTION 10.** 767.481 of the statutes is repealed and recreated to read:

20          **767.481 Relocating a child's residence.** (1) MOTION; FILING AND SERVING.

21          (a) If the court grants periods of physical placement with a child to both parents and  
22          one parent intends to relocate with the child 100 miles or more from the other parent,

P. 3

1 the parent who intends to move shall file a motion with the court seeking permission  
2 for the child's relocation.

\*\*\*\*NOTE: This terminology is confusing because it seems to imply that only a parent with *more* physical placement than the other parent needs to give the notice. If the parent who is moving has much less physical placement with the child, will that move be considered relocating with the child? Should this provision simply require either parent to seek permission to move if both parents have physical placement rights? In other words, should the draft not characterize the move as "relocating with the child"?



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

4 1. The date of the proposed move.

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

6 3. The reason for the move.

7 4. A proposed new placement schedule, including placement during the school  
8 year, summers, and holidays.

9 5. The proposed responsibility of each parent for transportation of the child  
10 between the parties under the proposed new placement schedule.

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

15 7. An attached "Objection to Move" form, furnished by the court, for use by the  
16 other parent if he or she objects to the move.

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

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

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Number: 1 Author: Subject: Sticky Note Date: 2/22/2016 7:22:59 AM -06'00'

This is correct. The provision applies in cases in which both parents have some court-ordered periods of placement and one of the parents wants to move more than 100 miles away. It should not cover cases in which only one parent has court-ordered periods of placement, as in those cases the other parent does have "physical placement rights" in that they have a right to request placement.

p. 4



1 and shall provide notice to the parents of the date of the initial hearing. The child  
2 may not be relocated pending the initial hearing.

\*\*\*\*NOTE: If the child may not be “relocated” before the initial hearing, what does  
that mean if the parent needs to move before the hearing? Does the child then just not  
have physical placement with that parent, regardless of how much time the child  
normally spent with that parent before the move?



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

\*\*\*\*NOTE: This would seem to be in essence the same as a stipulation between the  
parties, which the court approves unless it is not in the best interest of the child. Must  
the court still approve the proposed relocation and plan under this paragraph if the court  
finds that the relocation and plan are not in the best interest of 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 must file the  
14 response with the court and serve a copy of the response on the parent proposing the  
15 relocation in the manner provided in s. 801.14 (2).

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

19 3. Notwithstanding s. 767.407 (1), appoint a guardian ad litem for the child.  
20 The court shall provide in the order for appointment, however, that if a mediator is

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Number: 1 Author: Subject: Sticky Note Date: 2/22/2016 7:23:06 AM -06'00'

In these cases, the parent can move, but the child may not.

---

Number: 2 Author: Subject: Sticky Note Date: 2/22/2016 7:23:10 AM -06'00'

Correct. There should be language added that the court shall approve the plan unless it finds it is not in the child's best interest.

φ.5

1 ordered under subd. 2. the guardian ad litem is not required to commence  
2 investigation on behalf of the child unless the mediator notifies the court that the  
3 parties are unable to reach an agreement on the issue.

\*\*\*\*NOTE: I notwithstanding s. 767.407 (1) since that provision specifies when a GAL must be appointed and when one need not be appointed. Section 767.407 (1) (am) 1. specifically references s. 767.481 (this section). Section 767.407 (1) needs to be reviewed to determine if any changes are needed to that section.



\*\*\*\*NOTE: I changed the language above to “*unless* the mediator notifies the court ...” Okay? “[B]efore the mediator notifies the court ...” sounds like the mediator is definitely going to notify the court that the parties are unable to reach an agreement.



4 4. Set the matter for a further hearing to be held within 60 days.  
5 (3) RELOCATION PENDING FINAL HEARING. (a) At the initial hearing, or at any time  
6 after the initial hearing but before the final hearing, the court may allow the parent  
7 proposing the relocation to move with the child if the court finds that the relocation  
8 is in the child’s immediate best interest. The court shall inform the parties, however,  
9 that approval of the relocation is subject to revision at the final hearing.

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

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

19 (a) If the proposed relocation and new placement schedule only minimally  
20 change or affect the current placement schedule, the court shall approve the  
21 proposed relocation, set a new placement schedule if appropriate, and allocate the

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I believe this is correct

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Okay.

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1 costs of and responsibility for transportation of the child between the parties under  
2 the new placement schedule.

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

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

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

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

\*\*\*\*NOTE: Instead of the definition for "child" in s. 48.02 (2), I used the definition  
in s. 813.122 (1) (b) for consistency with the other provisions in ch. 767 that refer to abuse  
of a child. Okay?



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

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

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

22 3. A presumption that the court should approve the plan of the parent  
23 proposing the relocation if the parent's move is related to abuse, as defined in s.

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1 813.122 (1) (a), of the child, as defined in s. 813.122 (1) (b); a pattern or serious  
2 incident of interspousal battery, as described under s. 940.19 or 940.20 (1m); or a  
3 pattern or serious incident of domestic abuse, as defined in s. 813.12 (1) (am).

\*\*\*\*NOTE: See the NOTE above regarding the definition of “child.”



4 (d) The court shall decide all contested relocation motions and all motions for  
5 modification of legal custody or physical placement filed in response to relocation  
6 motions in the best interest of the child. Both parents bear the burden of proof in  
7 contested relocation motions except in cases involving a presumption under par. (b)  
8 2. or 3. or (c) 2. or 3. In cases involving a presumption under par. (b) 2. or 3. or (c) 2.  
9 or 3., the parent objecting to the move shall have the burden of proof in  
10 demonstrating the proposed move is not in the child’s best interest.

11 (e) If the objecting parent files a responsive motion that seeks a substantial  
12 change in physical placement or a change in legal custody, and the parent proposing  
13 the relocation does not relocate or the court does not allow the relocation, the motion  
14 shall proceed under s. 767.451.

\*\*\*\*NOTE: This provision is confusing to me. I don’t understand the statement “and  
the parent proposing the relocation does not relocate.” Is that referring to not relocating  
after the initial hearing pending the final hearing? Does it mean the parent proposing  
the relocation decides to drop the motion? What time frame is meant? If the parent  
proposing the relocation decides not to do it, or if the court does not allow the relocation,  
wouldn’t it be likely that the other parent would drop the objection to the relocation so  
a proceeding under s. 767.451 would not be needed?



15 (5) STIPULATIONS. At any time after a motion is filed under sub. (1), if the parties  
16 agree that one parent may move more than 100 miles away from the other parent,  
17 the parties may file a stipulation with the court that specifies that neither parent has  
18 any objection to the planned move and that sets out any agreed upon modification  
19 to legal custody or periods of physical placement, including responsibility for  
20 transportation of the child between the parties under a proposed new placement

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Okay.

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This section is intended to cover situations in which a parent files a motion to move, the other parent files a responsive motion, then the moving parent drops their motion and doesn't move. The court should be able to proceed with the other parent's motion even though the moving parent dropped their motion and didn't move.

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1 schedule. The court shall incorporate the terms of the stipulation into a revised order  
2 of custody or placement unless the court finds that the modification is not in the best  
3 interest of the child.

\*\*\*\*NOTE: The proposed subsection above appeared to duplicate proposed sub. (1)  
(d). Therefore, I deleted sub. (1) (d).

\*\*\*\*NOTE: What if the stipulation does not modify custody or physical placement?  
Into what kind of an order would the stipulation be incorporated? An order allowing the  
relocation?



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

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

11 767.805 (4) (am) The information set forth in s. 767.41 (6) (h).

12 **SECTION 12.** 767.89 (3) (bm) of the statutes is created to read:

13 767.89 (3) (bm) The information set forth in s. 767.41 (6) (h).

14 **SECTION 13.** 814.61 (7) (b) of the statutes is amended to read:

15 814.61 (7) (b) Upon the filing of any petition, motion, or order to show cause  
16 by either party under s. 767.451 or 767.481, \$50. No fee may be collected under this  
17 paragraph for filing a petition, motion, or order to show cause for the revision of a  
18 judgment or order for legal custody or physical placement if both parties have  
19 stipulated to the revision of the judgment or order. Of the fees received by the clerk  
20 under this paragraph, the county treasurer shall pay 25% to the secretary of  
21 administration for deposit in the general fund, retain 25% for the use of the county,

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It is possible that the stipulation does not modify the custody and placement, but just allows for the move. For example if the moving parent moves 102 miles away, and the parents agree that they can still follow their pre-move placement schedule, they may not change anything about custody and placement.

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1 and deposit 50% in a separate account to be used by the county exclusively for the  
2 purposes specified in s. 767.405.

\*\*\*\*NOTE: Do you want to add filing an objection under s. 767.481 to the provision  
above? That would require a \$50 fee for filing an objection.



3 **SECTION 14. Initial applicability.**

4 (1) INFORMATION IN ORDERS REGARDING RELOCATIONS. The treatment of sections  
5 767.41 (4) (d) and (6) (h), 767.805 (4) (am), and 767.89 (3) (bm) of the statutes first  
6 applies to judgments or orders for legal custody of and physical placement with a  
7 child that are granted on the effective date of this subsection.

8 (2) MOTIONS TO RELOCATE WITH A CHILD. The treatment of sections 767.001 (1)  
9 (k), 767.225 (1) (bm), 767.407 (1) (am) 1., and 767.481 of the statutes first applies to  
10 motions to relocate with a child that are filed on the effective date of this subsection.

\*\*\*\*NOTE: I have concerns about the two initial applicability provisions above.  
When the actions to which these provisions apply were filed, the rules regarding moving  
with children were different. When the actions were filed, the petition stated the old rules  
(see s. 767.215 (2) (j)) and the parties were prohibited from violating the old rules (see s.  
767.117 (1) (c) and (2)). Do you want to change the rules for actions that were commenced  
when the old rules applied or do you want to start fresh and have the new rules apply in  
actions that are commenced on or after the effective date?



\*\*\*\*NOTE: Section 767.407 (1) (am) 1. was included in the initial applicability  
provision above in the proposed draft, but that section itself was not treated or included  
in the proposed draft. I have included that section in this version of the draft but only  
to highlight that it may need to be treated in some way.

11 (3) PROHIBITED ACTS DURING THE PENDENCY OF AN ACTION. The treatment of  
12 sections 767.117 (1) (c) and 767.215 (2) (j) 1. and 2. of the statutes first applies to  
13 actions affecting the family, other than actions for maintenance payments or  
14 property division, that are commenced on the effective date of this subsection.

15 (END)

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There should be no fee for a parent to file an objection.

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The new motion procedure should only apply to: 1) new cases filed after the effective date; and 2) custody/placement orders in old cases which are modified after the effective date. For custody and placement orders which are in place on the effective date and which do not get modified, if one parent wants to move the procedure in current law will apply. The current law about notice provisions only apply to cases in which the court has ordered the notice to be provided. For all orders which have this language, the parties are required to follow current procedure. There are also some paternity orders which do not include the notice language under current law (there is some disagreement about whether the language in current law it is required in paternity cases, so this varies from county to county). Both of those situations (current orders which do have the notice language and current orders which do not have the notice language) are ones in which the parties will be required to follow current law (unless their custody/placement order is modified after the effective date).

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