

2019 DRAFTING REQUEST**Bill**For: **Legislative Council -study cmmte 504-5717** Drafter: **ewheeler**By: **Margit** Secondary Drafters:Date: **10/30/2018** May Contact:

Same as LRB:

Submit via email: **YES**
 Requester's email: **Margit.Kelley@legis.wisconsin.gov**
 Carbon copy (CC) to: **Elizabeth.Wheeler@legis.wisconsin.gov**
sarah.walkenhorstbarber@legis.wisconsin.gov
rachel.letzing@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Allowing custody and placement orders based on a future contingency

Instructions:

Redraft 2017 AB 586

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	ewheeler 10/30/2018	kfollett 11/2/2018			
/P1	ewheeler 11/13/2018	kfollett 11/13/2018	lparisi 11/2/2018		
/P2	ewheeler 12/6/2018	aernstr 12/7/2018	dwalker 11/13/2018		
/P3			dwalker 12/7/2018		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1			lparisi 12/10/2018	mbarman 3/6/2019	

FE Sent For:

Not Needed

<END>

Wheeler, Elizabeth

From: Kelley, Margit
Sent: Tuesday, October 30, 2018 11:23 AM
To: Wheeler, Elizabeth; Walkenhorst Barber, Sarah
Cc: Letzing, Rachel
Subject: ch. 767

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Elizabeth and Sarah,

For the study committee on child placement and support, could you prepare a bill draft as follows by Nov. 12?

- o Redraft 2017 AB 586 re contingent placement arrangements

Margit Kelley
Senior Staff Attorney
Wisconsin Legislative Council
608-504-5717



today please
11/13

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Just analysis
change

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

JLC note

Analysis by the Legislative Reference Bureau

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

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

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

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

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

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

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

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

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

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

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

Wheeler, Elizabeth

From: Letzing, Rachel
Sent: Monday, December 03, 2018 4:24 PM
To: Wheeler, Elizabeth
Cc: Kelley, Margit
Subject: For LRB-0660/P2, relating to contingent placement

Hi Elizabeth, Please make the following changes to this draft and issue a new preliminary draft:

1. Revise the draft to limit the events that are “reasonably certain to occur” to only life events of the parties or child, or developmental and educational needs of the child. Specify that contingent placement stipulations cannot be based on anticipated behavior modifications by a party.
2. Add the following prefatory note:

This bill was prepared for the Joint Legislative Council’s Study Committee on Child Placement and Support.

Under current law, a court cannot modify an order for legal custody or physical placement that would substantially alter a child’s time with each parent within two years of the final judgment, unless custodial conditions are physically or emotionally harmful to the best interests of the child. After the first two years, a court may modify an order for legal custody or physical placement if: (1) there has been a substantial change in circumstances; and (2) the court has determined that the modification is in the best interests of the child. A court must presume that maintaining the status quo allocation of decision-making and physical placement is in the child’s best interests, unless rebutted by the parent seeking the modification.

This bill authorizes a court to approve a stipulated agreement between the parties for modifications to legal custody or physical placement upon the occurrence of life events of the adult parties or child, or developmental and educational needs of the child, that are reasonably certain to occur within 2 years of the date of the stipulation. The bill authorizes the court to approve such a stipulation if it is filed in an action initially determining, modifying, or revising a legal custody and physical placement order. The bill prohibits stipulated agreements between the parties that are based on anticipated behavior modifications by a party.

Thanks!

Rachel

Rachel Letzing
Wisconsin Legislative Council
(608) 504-5719
rachel.letzing@legis.wisconsin.gov



PS
ahz

Due 12/7 if possible

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

insert

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

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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

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

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

A court may not approve a stipulation under this section that is based on an anticipated behavior modification of a parent.
change in the developmental or educational needs of the child or in anticipated behavior of the child or parent.

INS 1-4

INS 1-6

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

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

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

9 767.451 (3r) APPROVAL OF STIPULATION FOR MODIFICATIONS CONTINGENT ON FUTURE
10 EVENT. Notwithstanding sub. (1), in an action to modify a legal custody or physical
11 placement order, the court may approve a stipulation for further modifications to
12 legal custody or physical placement upon the occurrence of a specified future event
13 that is reasonably certain to occur within 2 years of the date of the stipulation and
14 incorporate the terms of the stipulation into any revised legal custody or physical
15 placement order granted by the court.

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

17 **767.461 Revisions agreed to by stipulation.** If after an initial order is
18 entered under s. 767.41 the parties agree to a modification in an order of physical
19 placement or legal custody and file a stipulation with the court that specifies the
20 agreed upon modification, including a modification to physical placement or legal
21 custody upon the occurrence of a specified future event that is reasonably certain to
22 occur within 2 years of the date of the stipulation, the court shall incorporate the
23 terms of the stipulation into a revised order of physical placement or legal custody
24 unless the court finds that the modification is not in the best interest of the child.

25 SECTION 5. Initial applicability.

AS defined under s. 767.34 (3)(a).

The court may not approve a stipulation under this subsection that is based on an anticipated behavior modification of a party.

The court may not incorporate the terms of a stipulation that is based on an anticipated behavior modification of a party.

2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0660/P2ins
EAW:cjs

INS 1-4

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Study Committee on Child Placement and Support.

Under current law, a court cannot modify an order for legal custody or physical placement that would substantially alter a child's time with each parent within two years of the final judgment, unless custodial conditions are physically or emotionally harmful to the best interests of the child. After the first two years, a court may modify an order for legal custody or physical placement if: (1) there has been a substantial change in circumstances; and (2) the court has determined that the modification is in the best interests of the child. A court must presume that maintaining the status quo allocation of decision-making and physical placement is in the child's best interests, unless rebutted by the parent seeking the modification.

two This bill authorizes a court to approve a stipulated agreement between the parties for modifications to legal custody or physical placement upon the occurrence of life events of the adult parties or child, or developmental and educational needs of the child, that are reasonably certain to occur within 2 years of the date of the stipulation. The bill authorizes the court to approve such a stipulation if it is filed in an action initially determining, modifying, or revising a legal custody and physical placement order. The bill prohibits stipulated agreements between the parties that are based on anticipated behavior modifications by a party.

INS 1-6

(a) In this subsection, "future event" means a life event of a party or of the child or an anticipated change in the developmental or educational needs of the child.

~~"Future event" does not include anticipated behavior modifications by a party.~~

(b)

Wheeler, Elizabeth

From: Letzing, Rachel
Sent: Friday, December 07, 2018 12:36 PM
To: Wheeler, Elizabeth
Subject: LRB-0660/P3

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Elizabeth, Could you please convert draft LRB-0660/P3 to a slash-1?

Thank you!

Rachel

Rachel Letzing
Wisconsin Legislative Council
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rachel.letzing@legis.wisconsin.gov



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0660/P3
EAW:cjs&ahe

11
No
Changes

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Study Committee on Child Placement and Support.

Under current law, a court cannot modify an order for legal custody or physical placement that would substantially alter a child's time with each parent within two years of the final judgment, unless custodial conditions are physically or emotionally harmful to the best interests of the child. After the first two years, a court may modify an order for legal custody or physical placement if: (1) there has been a substantial change in circumstances; and (2) the court has determined that the modification is in the best interests of the child. A court must presume that maintaining the status quo allocation of decision-making and physical placement is in the child's best interests, unless rebutted by the parent seeking the modification.

This bill authorizes a court to approve a stipulated agreement between the parties for modifications to legal custody or physical placement upon the occurrence of life events

1 legal custody or physical placement upon the occurrence of a specified future event,
2 as defined under s. 767.34 (3) (a), that is reasonably certain to occur within 2 years
3 of the date of the stipulation and incorporate the terms of the stipulation into any
4 revised legal custody or physical placement order granted by the court. The court
5 may not approve a stipulation under this subsection that is based on an anticipated
6 behavior modification of a party.

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

8 **767.461 Revisions agreed to by stipulation.** If after an initial order is
9 entered under s. 767.41 the parties agree to a modification in an order of physical
10 placement or legal custody and file a stipulation with the court that specifies the
11 agreed upon modification, including a modification to physical placement or legal
12 custody upon the occurrence of a specified future event, as defined under s. 767.34
13 (3) (a), that is reasonably certain to occur within 2 years of the date of the stipulation,
14 the court shall incorporate the terms of the stipulation into a revised order of physical
15 placement or legal custody unless the court finds that the modification is not in the
16 best interest of the child. The court may not incorporate the terms of a stipulation
17 that is based on an anticipated behavior modification of a party.

18 **SECTION 5. Initial applicability.**

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

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

25 (END)

Barman, Mike

From: Wheeler, Elizabeth
Sent: Wednesday, March 06, 2019 2:32 PM
To: LRB.Legal
Subject: FW: Bill jackets

Jacket request – see below. Thanks.

Elizabeth Wheeler
Legislative Attorney
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From: Kelley, Margit <Margit.Kelley@legis.wisconsin.gov>
Sent: Wednesday, March 06, 2019 2:29 PM
To: Wheeler, Elizabeth <Elizabeth.Wheeler@legis.wisconsin.gov>
Cc: Letzing, Rachel <Rachel.Letzing@legis.wisconsin.gov>
Subject: Bill jackets

Hi Elizabeth,

Could you send us Assembly jackets for all of the following bill drafts that had been prepared for the study committee on child placement and support?

0410/1
0707/1
0409/1
0660/1
1984/1
1985/1

Sorry if the first couple are a duplicate request. I tried using the link within the bill draft email to request the jackets, but it just opened a Google dialog box and it didn't seem like anything transmitted. After a couple of tries I gave up. ☺

Thank you for all your work on these and the other drafts for the study committee!

Margit Kelley
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608-504-5717