



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0409/1
EAW&SWB:emw

2019 ASSEMBLY BILL 93

March 22, 2019 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Family Law.

1 **AN ACT to amend** 767.41 (2) (e) 1., 767.41 (2) (e) 2., 767.41 (5) (c) and 767.451
2 (3m); and **to create** chapter 324 of the statutes; **relating to:** a Uniform
3 Deployed Parents Custody and Visitation Act.

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. The bill adopts the Uniform Deployed Parents Custody and Visitation Act (UDPCVA), by the Uniform Law Commission, to provide a process and standards for a temporary delegation of custodial responsibilities when a parent is deployed in military or other national service. A description of current law and a summary of the bill's key provisions are provided below.

Under current law, in a legal custody determination, a court is prohibited from considering whether a service member has been or will be absent from the home for a call to active duty. In a physical placement determination, a court may allocate a service member's physical placement periods to the other parent for the service member's call to active duty, if the order requires immediate reinstatement of the prior physical placement schedule upon the service member's return.

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Additionally, under current law, parents may together sign a power of attorney for a temporary delegation of parental powers for the care and custody of a child to another person. However, as stated in a Wisconsin Court of Appeals decision, a court has no authority to delegate a service member's allocation of physical placement periods to another person without the other parent's agreement. [Lubinski v. Lubinski, 2008 WI App 151.]

This bill maintains the current law provisions relating to determining or revising a legal custody or physical placement order between the parents but creates a new standard for temporary arrangements with another person during a parent's deployment. Specifically, the bill provides two methods for creating a temporary delegation of custodial responsibilities during deployment: a temporary agreement between the parents or a temporary court order following a hearing.

Agreement

Under a temporary agreement entered into by the parents, custodial responsibilities or visitation may be shared with any agreed-upon person. The agreement must identify the specific arrangements for custodial responsibility or visitation, a process to resolve any dispute that may arise, and arrangements for the deploying parent's contact with the child during the deployment and while on leave.

The temporary agreement must be signed by both parents and any other person with whom custodial responsibility is shared, and, if the child is the subject of an underlying action affecting the family, the agreement must be filed with the court that has jurisdiction in that action.

Court Order

Under proceedings for a temporary court order, unless a proceeding is prohibited by the Servicemembers Civil Relief Act, custodial responsibilities or visitation may be granted upon a deploying parent's request to a stepparent, grandparent, or great-grandparent or to an adult who has a parent-like relationship with the child. The arrangements must be found to be in the best interests of the child, using the best-interest factors identified in current state law for legal custody and physical placement determinations, placing particular emphasis on maintaining sibling relationships.

Under the bill, a delegation of physical placement periods cannot be greater than a child's habitual or court-ordered physical placement with the deploying parent unless otherwise agreed to by the other parent or as needed to add any unusual travel time. Additionally, a delegation of custodial responsibilities or visitation cannot be granted to a person who was previously denied those rights.

Similar to a temporary agreement, a temporary court order must identify the specific arrangements for custodial responsibility or visitation, a process to resolve any dispute that may arise, and arrangements for the deploying parent's contact with the child during the deployment and while on leave. If a court issues a temporary order, or a temporary agreement has been filed, a court may enter a temporary order for child support.

When a court receives a motion for a temporary delegation of custodial responsibilities during deployment, the court must conduct a hearing within 30 days and must allow a parent or other person to appear by electronic means if the person is not available to personally appear, unless there is good cause to require a personal appearance.

General Procedures

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1 **(2)** “Child” means any of the following:

2 (a) An individual who has not attained 18 years of age and who is not an
3 emancipated minor.

4 (b) An adult son or daughter by birth or adoption, or under the law of this state
5 other than this chapter, who is the subject of a court order concerning custodial
6 responsibility.

7 **(3)** “Court” means a tribunal, including an administrative agency, that is
8 authorized under the law of this state other than this chapter to make, enforce, or
9 modify a decision regarding custodial responsibility.

10 **(4)** “Custodial responsibility” includes physical placement, legal custody, and
11 visitation.

12 **(5)** “Deployed” means subject to a deployment.

13 **(6)** “Deploying parent” means a service member who is deployed, or who has
14 been notified of impending deployment, and who is any of the following:

15 (a) A parent of a child under the law of this state other than this chapter.

16 (b) An individual who has custodial responsibility for a child under the law of
17 this state other than this chapter.

18 **(7)** “Deployment” means the movement or mobilization of a service member for
19 more than 30 days but less than 18 months in accordance with service orders that
20 are designated as unaccompanied, do not authorize dependent travel, or otherwise
21 do not permit the movement of a child to the location to which the service member
22 is deployed.

23 **(8)** “Emancipated minor” has the meaning given in s. 48.375 (2) (e).

24 **(9)** “Family member” means a grandparent, great-grandparent, or stepparent.

25 **(10)** “Legal custody” has the meaning given in s. 767.001 (2).

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1 **(11)** “Nonparent” means an individual other than a deploying parent or other
2 parent.

3 **(12)** “Other parent” means an individual who, in common with a deploying
4 parent, is any of the following:

5 (a) A parent of a child under the law of this state other than this chapter.

6 (b) An individual who has custodial responsibility for a child under the law of
7 this state other than this chapter.

8 **(13)** “Physical placement” has the meaning given in s. 767.001 (5).

9 **(14)** “Record” means information that is inscribed on a tangible medium or that
10 is stored in an electronic or other medium and is retrievable in perceivable form.

11 **(15)** “Return from deployment” means the conclusion of a service member’s
12 deployment as specified in service orders.

13 **(16)** “Service member” means a member of any of the following:

14 (a) The U.S. armed forces, including any reserve component.

15 (b) The merchant marine.

16 (c) The commissioned corps of the U.S. public health service.

17 (d) The commissioned corps of the national oceanic and atmospheric
18 administration.

19 (e) The national guard of any state.

20 **(17)** “Sign” means to do any of the following with present intent to authenticate
21 or adopt a record:

22 (a) Execute or adopt a tangible symbol.

23 (b) Attach to or logically associate with the record an electronic symbol, sound,
24 or process.

ASSEMBLY BILL 93**SECTION 1**

1 **(18)** “State” means a state of the United States, the District of Columbia, the
2 commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or
3 possession of the United States.

4 **(19)** “Visitation” means rights conferred to an individual to reasonable
5 visitation with a child in accordance with s. 767.43.

6 **324.03 Remedies for noncompliance.** In addition to other remedies under
7 the law of this state other than this chapter, if a court finds that a party to a
8 proceeding under this chapter has acted in bad faith or intentionally failed to comply
9 with this chapter or a court order issued under this chapter, the court may assess
10 reasonable attorney fees and costs against the party and order other appropriate
11 relief.

12 **324.04 Jurisdiction.** **(1)** A court may issue an order regarding custodial
13 responsibility under this chapter only if the court has jurisdiction under ch. 822.

14 **(2)** If a court has issued a temporary order regarding custodial responsibility
15 under subch. III, the residence of the deploying parent is not changed by reason of
16 the deployment for purposes of ch. 822 during the deployment.

17 **(3)** If a court has issued a permanent order regarding custodial responsibility
18 before notice of deployment and the parents modify that order temporarily by
19 agreement under subch. II, the residence of the deploying parent is not changed by
20 reason of the deployment for purposes of ch. 822.

21 **(4)** If a court in another state has issued a temporary order regarding custodial
22 responsibility as a result of impending or current deployment, the residence of the
23 deploying parent is not changed by reason of the deployment for purposes of ch. 822.

24 **(5)** This section does not prevent a court from exercising temporary emergency
25 jurisdiction under s. 822.24.

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1 **324.05 Notification required by deploying parent. (1)** Except as provided
2 in sub. (4) and subject to sub. (3), a deploying parent shall, in a record, notify the other
3 parent of a pending deployment not later than 7 days after the deploying parent
4 receives notice of deployment unless reasonably prevented from doing so by the
5 circumstances of deployment. If the circumstances of deployment prevent giving
6 notification within the 7 days, the deploying parent shall give the notification as soon
7 as reasonably possible.

8 **(2)** Except as provided in sub. (4) and subject to sub. (3), the deploying parent
9 and the other parent shall, in a record, provide each other with a plan for fulfilling
10 their respective shares of custodial responsibility during deployment. Each parent
11 shall provide the plan as soon as reasonably possible after the deploying parent gives
12 notification of deployment under sub. (1).

13 **(3)** If a court order currently in effect prohibits disclosure of the address or
14 contact information of the other parent, notification of deployment under sub. (1) or
15 notification by the deploying parent of a plan for custodial responsibility during
16 deployment under sub. (2) may be made only to the issuing court. If the address of
17 the other parent is available to the issuing court, the court shall forward the
18 notification to the other parent. The court shall keep confidential the address or
19 contact information of the other parent.

20 **(4)** Notification in a record under sub. (1) or (2) is not required if the parents
21 are living in the same residence and both parents have actual notice of the
22 deployment or plan.

23 **(5)** In a proceeding regarding custodial responsibility, a court may consider the
24 reasonableness of a parent's efforts to comply with this section.

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1 (b) Specify the allocation of physical placement and legal custody among the
2 deploying parent, the other parent, and any nonparent.

3 (d) Specify any visitation rights of a nonparent.

4 (e) If, under the agreement, custodial responsibility is shared by 2 or more
5 individuals, provide a process to resolve any dispute that may arise.

6 (f) Specify the frequency, duration, and means, including electronic means, by
7 which the deploying parent may have contact with the child, any role to be played
8 by the other parent or by a nonparent in facilitating the contact, and the allocation
9 of any costs of contact.

10 (g) Specify the contact between the deploying parent and child during the time
11 that the deploying parent is on leave or is otherwise available.

12 (h) Acknowledge that any party's child support obligation cannot be modified
13 by the agreement and that changing the terms of the obligation during deployment
14 requires modification in the appropriate court.

15 (i) Specify that the temporary arrangement will terminate in accordance with
16 s. 324.22 (1).

17 (j) If the agreement is required to be filed under s. 324.25, specify which parent
18 is required to file the agreement.

19 (4) The omission of any of the items specified in sub. (3) does not invalidate an
20 agreement under this section.

21 **324.22 Nature of authority created by agreement.** (1) An agreement
22 under this subchapter is temporary and does not create an independent, continuing
23 right to physical placement, legal custody, or visitation for an individual to whom
24 custodial responsibility is given. The temporary agreement terminates according to
25 one of the following:

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1 (a) If deployment is for less than 6 months, the temporary agreement
2 terminates immediately after the deploying parent returns.

3 (b) If deployment is for 6 months or more, the temporary agreement terminates
4 30 days after the deploying parent returns.

5 (c) The temporary agreement terminates on a date that has been stipulated by
6 all of the parties to the agreement or by modification under s. 324.23.

7 (d) The temporary agreement terminates on a date ordered by the court.

8 (2) A nonparent who has physical placement, legal custody, or visitation by an
9 agreement under this subchapter has standing to enforce the agreement until it has
10 been terminated.

11 **324.23 Modification of agreement.** (1) By mutual consent, the parents of
12 a child may modify an agreement regarding custodial responsibility made under this
13 subchapter subject to any visitation rights granted by court order under s. 767.43.

14 (2) If an agreement is modified under sub. (1) before deployment of a deploying
15 parent, the modification must be in writing and signed by both parents and any
16 nonparent who will exercise custodial responsibility under the modified agreement.

17 (3) If an agreement is modified under sub. (1) during deployment of a deploying
18 parent, the modification must be agreed to in a record by both parents and any
19 nonparent who will exercise custodial responsibility under the modified agreement.

20 **324.25 Filing agreement with court.** If a court order on custodial
21 responsibility or child support is in effect concerning a child who is the subject of an
22 agreement under this subchapter, the agreement shall be filed within a reasonable
23 time with that ordering court. The case number and heading of the underlying action
24 affecting the family under ch. 767 concerning custodial responsibility or child
25 support shall be provided to the court with the agreement.

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SUBCHAPTER III

JUDICIAL PROCEDURE FOR GRANTING

CUSTODIAL RESPONSIBILITY

DURING DEPLOYMENT

324.31 Proceeding for temporary deployment custody order. (1) After a deploying parent receives notice of deployment and until the deployment terminates, a court may issue a temporary order granting custodial responsibility, unless prohibited by the Servicemembers Civil Relief Act, 50 USC Appendix 521 and 522. A court may not issue a permanent order granting custodial responsibility without the consent of the deploying parent.

(2) At any time after a deploying parent receives notice of deployment, the deploying parent or other parent may file a motion regarding custodial responsibility for a child during deployment. The motion shall be filed in an underlying action affecting the family under ch. 767 for custodial responsibility in a court with jurisdiction under s. 324.04 or, if there is no underlying action affecting the family under ch. 767 in a court with jurisdiction under s. 324.04, in a new action for granting custodial responsibility during deployment.

324.32 Expedited hearing. If a motion to grant custodial responsibility is filed under s. 324.31 (2) before a deploying parent deploys, the court shall conduct a hearing within 30 days of filing.

324.33 Testimony by electronic means. In a proceeding under this subchapter, a party or witness who is not reasonably available to appear personally may appear, provide testimony, and present evidence by electronic means unless the court finds good cause to require a personal appearance.

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1 **324.34 Effect of prior judicial order or agreement.** In a proceeding for a
2 grant of custodial responsibility under this subchapter, all of the following apply:

3 **(1)** A prior judicial order designating custodial responsibility in the event of
4 deployment is binding on the court unless the circumstances meet the requirements
5 of the law of this state other than this chapter for modifying a judicial order regarding
6 custodial responsibility.

7 **(2)** The court shall enforce a prior written agreement between the parents for
8 designating custodial responsibility in the event of deployment, including an
9 agreement executed under subch. II, unless the court finds that the agreement is
10 contrary to the best interest of the child.

11 **324.345 Best interest of the child.** In determining the best interest of the
12 child under this chapter, the court shall consider the factors in custody and physical
13 placement determinations under s. 767.41 (5), with a particular emphasis on
14 maintaining sibling relationships. The court may not grant legal custody, physical
15 placement, or visitation to an individual in a temporary legal custody or physical
16 placement order under this chapter if that individual has previously been denied
17 legal custody, physical placement, visitation, guardianship, or any other custodial
18 rights for the child under ch. 48, 54, 55, or 767.

19 **324.35 Grant of physical placement to nonparent.** **(1)** On the motion of
20 a deploying parent and in accordance with the law of this state other than this
21 chapter, if it is in the best interest of the child, a court may grant physical placement
22 to a nonparent who is an adult family member of the child or an adult who has
23 maintained a relationship similar to a parent-child relationship with the child.

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1 (2) Unless a grant of physical placement to a nonparent under sub. (1) is agreed
2 to by the other parent, the grant is limited to an amount of time not greater than
3 either of the following:

4 (a) The amount of time granted to the deploying parent under a permanent
5 legal custody or physical placement order, but the court may add unusual travel time
6 necessary to transport the child.

7 (b) In the absence of a permanent legal custody or physical placement order
8 that is currently in effect, the amount of time that the deploying parent habitually
9 cared for the child before being notified of deployment, but the court may add
10 unusual travel time necessary to transport the child.

11 **324.37 Nature of authority created by temporary custodial**
12 **responsibility order. (1)** A grant of authority under this subchapter is temporary
13 and does not create an independent, continuing right to physical placement, legal
14 custody, or visitation in an individual to whom it is granted. The temporary order
15 terminates according to one of the following:

16 (a) If deployment is for less than 6 months, the temporary order terminates
17 immediately after the deploying parent returns.

18 (b) If deployment is for 6 months or more, the temporary order terminates 30
19 days after the deploying parent returns.

20 (c) The temporary order terminates on a date that has been stipulated by all
21 of the parties to the proceeding.

22 (d) The temporary order terminates according to a modification or termination
23 under s. 324.395.

24 (2) A nonparent granted physical placement, legal custody, or visitation under
25 this subchapter has standing to enforce the grant until it is terminated.

ASSEMBLY BILL 93**SECTION 1**

1 **324.38 Content of temporary custodial responsibility order.** (1) An
2 order granting custodial responsibility under this subchapter shall do all of the
3 following:

4 (a) Designate the order as temporary.

5 (b) Identify to the extent feasible the destination, duration, and conditions of
6 the deployment.

7 **(2)** If applicable, an order for custodial responsibility under this subchapter
8 shall do all of the following:

9 (a) Specify the allocation of physical placement, legal custody, and visitation
10 among the deploying parent, the other parent, and any nonparent.

11 (b) If custodial responsibility is shared by 2 or more individuals under the order,
12 or the order grants physical placement to one or more individuals and visitation to
13 other individuals, provide a process to resolve any dispute that may arise.

14 (c) Provide for liberal communication between the deploying parent and the
15 child during deployment, including through electronic means, unless contrary to the
16 best interest of the child, and allocate any costs of communications.

17 (d) Provide for liberal contact between the deploying parent and the child
18 during the time the deploying parent is on leave or otherwise available, unless
19 contrary to the best interest of the child.

20 (f) Provide that the order will terminate on the applicable date under s. 324.37
21 (1).

22 **324.39 Order for child support.** If the court issues an order granting
23 physical placement under this subchapter, or an agreement granting physical
24 placement has been executed under subch. II, the court may enter a temporary order

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1 for child support consistent with the law of this state other than this chapter if the
2 court has jurisdiction under ch. 769.

3 **324.395 Modifying or terminating grant of custodial responsibility to**
4 **nonparent.** Except for an order described in s. 324.34 (1), and consistent with the
5 Servicemembers Civil Relief Act, 50 USC Appendix 521 and 522, on the motion of a
6 deploying parent or other parent or any nonparent to whom physical placement,
7 legal custody, or visitation has been granted, the court may modify or terminate the
8 grant if the modification or termination is consistent with this subchapter and it is
9 in the best interest of the child.

SUBCHAPTER IV

MISCELLANEOUS PROVISIONS

12 **324.42 Uniformity of application and construction.** In applying and
13 construing this chapter, consideration shall be given to the need to promote
14 uniformity of the law with respect to its subject matter among states that enact the
15 Uniform Deployed Parents Custody and Visitation Act.

16 **324.43 Relation to Electronic Signatures in Global and National**
17 **Commerce Act.** This chapter modifies, limits, or supersedes the federal Electronic
18 Signatures in Global and National Commerce Act, 15 USC 7001 to 7031, except that
19 the chapter does not modify, limit, or supersede 15 USC 7001 (c) or authorize
20 electronic delivery of any of the notices described in 15 USC 7003 (b).

21 **324.44 Savings clause.** This chapter does not affect the validity of a
22 temporary court order concerning custodial responsibility during deployment that
23 was entered before the effective date of this section [LRB inserts date].

24 **SECTION 2.** 767.41 (2) (e) 1. of the statutes is amended to read:

ASSEMBLY BILL 93**SECTION 2**

1 767.41 (2) (e) 1. In this paragraph, “service member” ~~means a member of the~~
2 ~~national guard or of a reserve unit of the U.S. armed forces~~ has the meaning given
3 in s. 324.02 (16).

4 **SECTION 3.** 767.41 (2) (e) 2. of the statutes is amended to read:

5 767.41 (2) (e) 2. If Except as provided under ch. 324, if a party is a service
6 member, the court may not consider as a factor in determining the legal custody of
7 a child whether the service member has been or may be called to active duty in the
8 U.S. armed forces and consequently is, or in the future will be or may be, absent from
9 the service member’s home.

10 **SECTION 4.** 767.41 (5) (c) of the statutes is amended to read:

11 767.41 (5) (c) If Except as provided under ch. 324, if a parent is a service
12 member, as defined in sub. (2) (e) 1., the court may not consider as a factor in
13 determining the legal custody of a child whether the service member has been or may
14 be called to active duty in the U.S. armed forces and consequently is, or in the future
15 will be or may be, absent from the service member’s home.

16 **SECTION 5.** 767.451 (3m) of the statutes is amended to read:

17 767.451 (3m) REINSTATEMENT OF FORMER PHYSICAL PLACEMENT ALLOCATION AND
18 SCHEDULE. If a party is a service member, as defined in s. 767.41 (2) (e) 1., and the
19 court modifies an order of physical placement on the basis that the service member
20 has been or will be called to active duty in the U.S. armed forces, notwithstanding
21 sub. (1) the court shall require in the order that the allocation of periods of physical
22 placement and, if applicable, the physical placement schedule that were in effect
23 before the modification are reinstated immediately upon the service member’s
24 discharge or release from active duty. This subsection does not apply to a temporary
25 agreement or a temporary order under ch. 324.

ASSEMBLY BILL 93**1 SECTION 6. Nonstatutory provisions.**

2 (1) The subcommittee of the Wisconsin Court Records Management Committee
3 that develops forms for use in the Wisconsin circuit courts is requested to review ch.
4 324 and develop and approve forms for an agreement for custodial responsibility
5 during deployment consistent with the requirements under subch. II of ch. 324 and
6 for a motion regarding custodial responsibility for a child during deployment
7 consistent with the requirements under subch. III of ch. 324.

8 SECTION 7. Initial applicability.

9 (1) This act first applies to deploying parents who receive notice of deployment
10 on the effective date of this subsection.

11 (END)