

1971 Assembly Bill 402

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CHAPTER 149, Laws of 1971

AN ACT to amend 245.02 (2), 247.23 (1) and 247.24 of the statutes, relating to guardianship powers through award of child custody in family court.

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

SECTION 1. 245.02 (2) of the statutes is amended to read:

245.02 (2) If either of the contracting parties is under the age of 21 years if a male, or between the age of 16 and 18 years if a female, no license shall be issued without the consent of his or her parents or guardian and any relative who is appointed as custodian under s. 247.23 (1) or 247.24, or of the parent having the actual care, custody and control of said party, given before the county clerk under oath, or certified under the hand of such parents ~~or guardian or custodian~~ as aforesaid, and properly verified by affidavit (or affirmation) before a notary public or other official authorized by law to take affidavits, which certificate shall be filed of record in the office of said county clerk at the time of application for said license. If there is no guardian ~~or parent or custodian~~ having the actual care, custody and control of said party, or if the custodian is an agency or department, then the judge of the court having probate jurisdiction in the county where the application is pending may, after notice to any agency or department appointed as custodian and hearing upon proper cause shown, make an order allowing the marriage of said party, but in counties having a population of 500,000 or more the application shall be made to the family court under s. 252.017 (1).

SECTION 2. 247.23 (1) of the statutes is amended to read:

247.23 (1) In every action affecting marriage, the court or family court commissioner may, during the pendency thereof, make such temporary orders concerning the care, custody and suitable maintenance of the minor children, requiring the husband to pay such sums for the support of the wife and the minor children in her custody and enabling her to carry on or defend the action, and in relation to the persons or property of the parties as in its discretion shall be deemed just and reasonable and may prohibit either spouse from imposing any restraint on the personal liberty of the other. The award of custody of a child under this subsection shall give to the custodian: a) the power and duty to authorize necessary medical, surgical, hospital, dental, institutional or psychiatric care for such child where there is no existing guardian for the child appointed under ch. 48 or 319; and b) the right to give or withhold consent for such child to marry under s. 245.02 (2), in addition to the consent of the parents or guardian of such child required therein. Any such order may be based upon the written stipulation of the parties, subject to the approval of the family court commissioner or the court.

SECTION 3. 247.24 of the statutes is amended to read:

247.24 In rendering a judgment of annulment, divorce or legal separation, the court may make such further provisions therein as it deems just and reasonable concerning the care, custody, maintenance

and education of the minor children of the parties, and give the care and custody of the children of such marriage to one of the parties to the action, or may, if the interest of any such child demands it, and if the court finds either that the parents are unable to adequately care for any such child or are not fit and proper persons to have the care and custody thereof, may declare such child a dependent and give the care and custody of such child to a relative (as defined in ch. 48) of the child, a county agency specified in s. 48.56 (1), a licensed child welfare agency, or the department of health and social services. The charges for such care shall be pursuant to the procedure under s. 48.27. Whenever the welfare of any such child will be promoted thereby, the court granting such judgment shall always have the power to change the care and custody of any such child, either by giving it to or taking it from such parent, relative or agency, provided that no order changing the custody of any child shall be entered until after notice of such application has been given the parents of such child, if they can be found, and also to the relative or agency that then has the custody of such child. The award of custody of a child under this section shall give to the custodian: a) the power and duty to authorize necessary medical, surgical, hospital, dental, institutional or psychiatric care for such child where there is no existing guardian for the child appointed under ch. 48 or 319; and b) the right to give or withhold consent for such child to marry under s. 245.02 (2), in addition to the consent of the parents or guardian of such child required therein.
