



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2001 Assembly Bill 651

Assembly Amendment 1

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Assembly Bill 651

Under current law, in an action affecting the family where custody is at issue, the court must presume that joint legal custody is in the best interest of the child. The court may give sole legal custody only if it finds sole custody is in the best interest of the child and that both parties agree to sole legal custody, or, if they do not agree, one party requests the legal custody and the court makes one of three findings. One of these findings is that the parties are unable to cooperate in future decision-making. Evidence of child abuse, interspousal battery or domestic abuse creates a rebuttable presumption that the parties will not be able to cooperate.

Under Assembly Bill 651, the presumption of joint legal custody, and the findings required to award sole legal custody when the parties do not agree on the custodian, do not apply if the court finds, by a preponderance of the evidence, that a party has engaged in interspousal battery or domestic abuse. If such a finding is made by the court, there is a rebuttable presumption that it is detrimental to the child and not in the child's best interest to award joint legal custody or sole legal custody to that party. This presumption may be rebutted by clear and convincing evidence of all of the following:

- The party who committed the abuse has successfully completed a certified treatment program for batterers and is not abusing alcohol or other drugs.
- It is in the best interest of the child for the party who committed the abuse to be awarded custody, because of the absence, mental illness or alcohol or other drug abuse of the party who was the abuse victim, or such other circumstances that affect the best interest of the child, but only if the absence, mental illness, alcohol or other drug abuse or other circumstance of the victim are not the result of the abuse.

Under the bill, when issuing a temporary order for custody, if the court determines by a preponderance of the evidence that a party has engaged in domestic abuse, and makes a temporary order

giving that party sole or joint legal custody, the court must make specific findings as to whether, and by what evidence, the presumption against joint legal custody was rebutted by the party. In addition, the court must explain why the court's decision to give temporary custody to that party is in the best interest of the child. Further, if appropriate, the court must make protective orders guaranteeing the child's safety. One of the protective orders that may be made is to require the continued appointment of a guardian ad litem for the child, or require an investigation by an attorney or a guardian ad litem for the child.

Finally, the bill requires the court when issuing the final custody order, to make findings if it awards custody to a party found to have engaged in interspousal battery or domestic abuse. In such a case, the court must impose protective orders to guarantee the child's safety if it awards periods of physical placement to the person found to have committed such abuse. As with temporary orders, one of the protective orders available to the court is to require the continued appointment of a guardian ad litem for the child or to require an investigation by an attorney or guardian ad litem for the child.

Assembly Amendment 1

Assembly Amendment 1 makes the following changes to the bill:

- Changes the burden of proof in one part of the bill from the "clear and convincing" standard to the "preponderance of the evidence" standard, to make it consistent with the rest of the bill.
- Requires the party found to have committed the abuse, in attempting to rebut the presumption that custody with that party is not in the best interest of the child, to successfully complete either treatment for batterers provided through a certified treatment program *or* by a certified treatment provider. The bill permits this requirement to be satisfied only by the completion of a certified treatment program.
- Changes one of the protective orders that can be made by a court to require the continued appointment of a guardian ad litem, as opposed to the continued appointment of a guardian ad litem or an investigation by an attorney or a guardian ad litem.
- Changes the criteria under which a person found to have committed abuse may be given custody. Instead of considering the absence, mental illness or substance abuse or other circumstances of the other parent, the court must consider the 15 factors under current law that it currently considers in making custody decisions. [See s. 767.24 (5), Stats.]

The Assembly Committee on Family Law recommended adoption of Assembly Amendment 1 by a vote of Ayes, 6; Noes, 0 on February 28, 2002. It recommended passage of the bill, as amended, on that same date by a vote of Ayes, 5; Noes, 1.

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