



**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2005 Assembly Bill 897

**Assembly
Amendment 2**

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Current Law and the Bill: Modifications After Two-Year Period

The bill **eliminates** the following provisions in current law:

- **Substantial change in circumstances; legal custody or physical placement modifications after two years.** The provision that allows the court to modify legal custody or physical placement after two years after the initial determination if the court finds that the modification is in the best interest of the child and that there has been a “substantial change in circumstances” since the last order was made. By repealing this provision, the bill also eliminates the current **rebuttable presumption** that continuing the current allocation of decision making concerning the child and continuing the child’s physical placement with the parent with whom the child resides for the greater period of time is in the best interest of the child.
- **Substantially equal periods of physical placement.** The provision that allows the court to modify physical placement if it is in the best interest of the child if the parties have substantially equal periods of physical placement with the child but circumstances make it impractical for that to continue.

With respect to modifications after the two-year period, the bill’s provisions specify that, with limited exceptions, in all actions to modify legal custody or physical placement orders, the court **must make its determination in a manner consistent with s. 767.24, as revised by the bill** (s. 767.24 is the provision relating to initial determinations of legal custody and physical placement in divorce and other actions affecting the family). With this change in the bill (and its requirement that the court make its determination in a manner consistent with s.767.24), the following will occur:

- A substantial change in circumstances will not be required for modifying a legal custody or physical placement order more than two years after the initial order **and** there will be no

presumption in favor of continuing the current allocation of decision making or time spent with each parent.

- For **physical placement** modifications **after two years** after the initial determination, except for those specific situations related to modifying physical placement that are retained from current law, the court will be required to set a physical placement schedule that equalizes to the highest degree possible the time each parent spends with his or her child.
- For **legal custody** modifications **after two years** after the initial order, there will be a **presumption** that **joint legal custody** is in the child's best interest.

Assembly Amendment 2

Assembly Amendment 2 **retains the current “substantial change of circumstances” standard for legal custody or physical placement modifications after the two-year period.** The amendment specifies that, with respect to orders after the two-year period, the court “may not modify a legal custody or physical placement order unless the court finds that there has been a substantial change of circumstances since the entry of the last order affecting legal custody or the last order substantially affecting physical placement.” [Note: The language in the amendment is inserted after the language in the bill that specifies that, with limited exceptions, “in all actions to modify legal custody or physical placement orders after the 2-year period, the court must make its determination in a manner consistent with s. 767.24,” as revised by the bill.]

Legislative History

On March 1, 2006, the Assembly Committee on Family Law, in executive session, voted to adopt Assembly Amendment 2 (introduced by Representative Albers) on a vote of Ayes, 4; Noes, 2. The committee then voted to recommend passage of the bill, as amended, on a vote of Ayes, 4; Noes, 2.

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