



2005 ASSEMBLY BILL 1026

February 16, 2006 - Introduced by Representatives GUNDRUM, MUSSER, ZIEGELBAUER, KESTELL, PETTIS, KRAWCZYK, TURNER, F. LASEE, AINSWORTH, WOOD, GUNDERSON, OTT, STONE, ALBERS, PETROWSKI and JESKEWITZ, cosponsored by Senators ZIEN, BROWN, REYNOLDS and ROESSLER. Referred to Committee on Family Law.

1 **AN ACT to amend** 767.24 (2) (a), 767.24 (2) (b) (intro.), 767.24 (5) (am) (intro.) and
2 767.325 (5m) (a); and **to create** 767.24 (2) (e), 767.24 (5) (c), 767.325 (3m) and
3 767.325 (5m) (c) of the statutes; **relating to:** prohibiting a court from
4 considering a parent's active duty in the U.S. armed forces when determining
5 or modifying the legal custody of a child and reinstating periods of physical
6 placement upon a parent's discharge from active duty.

Analysis by the Legislative Reference Bureau

Under current law, in an action affecting the family, such as a divorce or a paternity action, a court must determine the legal custody of a child based on the best interest of the child and must allocate periods of physical placement between the parents that maximizes the amount of time the child may spend with each parent, taking into account geographic separation and accommodations for different households. Although the court may grant sole legal custody to one parent or joint legal custody to both parents, the court must presume that joint legal custody is in the child's best interest. In making the legal custody and physical placement decisions, the court must consider a number of factors that are set out in the statutes, including: the wishes of the parents and of the child; the interaction of the child with the parents; the amount of time that each parent has spent with the child in the past and any lifestyle changes that a parent proposes to make to be able to spend more time with the child in the future; the child's adjustment to home, school, religion, and

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community; the child's age and developmental and educational needs at different ages; and any other factors that the court considers relevant.

Also under current law, the court may not modify a legal custody or physical placement order within two years after the initial order unless the court finds that the modification is necessary because current custodial conditions are physically or emotionally harmful to the best interest of the child. After two years after the initial order, the court, generally, may modify a legal custody or physical placement order if the court finds that there has been a substantial change of circumstances since the last custody or physical placement order was entered and that the modification is in the best interest of the child. Generally, in determining whether to modify a legal custody or physical placement order, the court must consider the same factors that the court considers when initially deciding legal custody and physical placement.

This bill provides that, if a parent is a service member (defined as a member of the national guard or of a reserve unit of the U.S. armed forces), when initially determining a child's legal custody or in an action to modify a legal custody order the court may not consider whether the parent who is a service member has been or may be called to active duty in the U.S. armed forces, and consequently is or will be or may be absent from home. The bill also provides that, if a parent is a service member and the court modifies a physical placement order on the basis that the service member has been or will be called to active duty, the court must require that the allocation and schedule of periods of physical placement that were in effect before the modification be reinstated upon the service member's discharge from active duty.

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

1 **SECTION 1.** 767.24 (2) (a) of the statutes is amended to read:

2 767.24 (2) (a) Subject to pars. (am), ~~(b), (c), and (d)~~ to (e), based on the best
3 interest of the child and after considering the factors under sub. (5) (am), subject to
4 sub. (5) (bm), the court may give joint legal custody or sole legal custody of a minor
5 child.

6 **SECTION 2.** 767.24 (2) (b) (intro.) of the statutes is amended to read:

7 767.24 (2) (b) (intro.) Except as provided in par. (d) and subject to par. (e), the
8 court may give sole legal custody only if it finds that doing so is in the child's best
9 interest and that either of the following applies:

10 **SECTION 3.** 767.24 (2) (e) of the statutes is created to read:

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1 767.24 (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.

3 2. If a party is a service member, the court may not consider as a factor in
4 determining the legal custody of a child whether the service member has been or may
5 be called to active duty in the U.S. armed forces and consequently is, or in the future
6 will be or may be, absent from the service member’s home.

7 **SECTION 4.** 767.24 (5) (am) (intro.) of the statutes is amended to read:

8 767.24 (5) (am) (intro.) Subject to ~~par. pars.~~ (bm) and (c), in determining legal
9 custody and periods of physical placement, the court shall consider all facts relevant
10 to the best interest of the child. The court may not prefer one parent or potential
11 custodian over the other on the basis of the sex or race of the parent or potential
12 custodian. Subject to ~~par. pars.~~ (bm) and (c), the court shall consider the following
13 factors in making its determination:

14 **SECTION 5.** 767.24 (5) (c) of the statutes is created to read:

15 767.24 (5) (c) If a parent is a service member, as defined in sub. (2) (e) 1., the
16 court may not consider as a factor in determining the legal custody of a child whether
17 the service member has been or may be called to active duty in the U.S. armed forces
18 and consequently is, or in the future will be or may be, absent from the service
19 member’s home.

20 **SECTION 6.** 767.325 (3m) of the statutes is created to read:

21 767.325 (3m) REINSTATEMENT OF FORMER PHYSICAL PLACEMENT ALLOCATION AND
22 SCHEDULE. If a party is a service member, as defined in s. 767.24 (2) (e) 1., and the
23 court modifies an order of physical placement on the basis that the service member
24 has been or will be called to active duty in the U.S. armed forces, notwithstanding
25 sub. (1) the court shall require in the order that the allocation of periods of physical

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1 placement and, if applicable, the physical placement schedule that were in effect
2 before the modification are reinstated immediately upon the service member's
3 discharge or release from active duty.

4 **SECTION 7.** 767.325 (5m) (a) of the statutes, as affected by 2005 Wisconsin Act
5 101, is amended to read:

6 767.325 (5m) (a) Subject to ~~par.~~ pars. (b) and (c), in all actions to modify legal
7 custody or physical placement orders, the court shall consider the factors under s.
8 767.24 (5) (am), subject to s. 767.24 (5) (bm), and shall make its determination in a
9 manner consistent with s. 767.24.

10 **SECTION 8.** 767.325 (5m) (c) of the statutes is created to read:

11 767.325 (5m) (c) In an action to modify a legal custody order, if a party is a
12 service member, as defined in s. 767.24 (2) (e) 1., the court may not consider as a factor
13 in making a determination whether the service member has been or may be called
14 to active duty in the U.S. armed forces and consequently is, or in the future will be
15 or may be, absent from the service member's home.

16 **SECTION 9. Initial applicability.**

17 (1) This act first applies to orders awarding legal custody, and orders modifying
18 legal custody or physical placement orders previously entered, that are granted on
19 the effective date of this subsection.

20 (END)