



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0409/P3
EAW&SWB:emw

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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

4 **SECTION 1.** Chapter 324 of the statutes is created to read:

5 **CHAPTER 324**
6 **DEPLOYED PARENTS**
7 **CUSTODY AND VISITATION**
8 **SUBCHAPTER I**
9 **GENERAL PROVISIONS**

1 **324.01 Short title.** This chapter may be cited as the Uniform Deployed
2 Parents Custody and Visitation Act.

3 **324.02 Definitions.** In this chapter:

4 (1) “Adult” means an individual who has attained 18 years of age or who is an
5 emancipated minor.

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

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

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

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

15 (4) “Custodial responsibility” includes physical placement, legal custody, and
16 visitation.

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

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

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

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

23 (7) “Deployment” means the movement or mobilization of a service member for
24 more than 90 days but less than 18 months in accordance with service orders that
25 are designated as unaccompanied, do not authorize dependent travel, or otherwise

1 do not permit the movement of a child to the location to which the service member
2 is deployed.

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

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

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

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

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

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

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

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

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

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

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

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

20 (b) The merchant marine.

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

22 (d) The commissioned corps of the national oceanic and atmospheric
23 administration.

24 (e) The national guard of any state.

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

3 (a) Execute or adopt a tangible symbol.

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

6 (18) “State” means a state of the United States, the District of Columbia, the
7 commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or
8 possession of the United States.

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

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

17 **324.04 Jurisdiction.** (1) A court may issue an order regarding custodial
18 responsibility under this chapter only if the court has jurisdiction under ch. 822.

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

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

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

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

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

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

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

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

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

6 **324.06 Duty to notify of change of address.** (1) Except as provided in sub.
7 (2), an individual to whom custodial responsibility has been granted during
8 deployment under subch. II or III shall, until the grant is terminated, notify all of the
9 following of any change in the individual's mailing address or residence:

10 (a) The deploying parent.

11 (b) Any other individual with custodial responsibility for the child.

12 (c) Any court that has issued a custody or child support order concerning the
13 child that is in effect.

14 (2) If a court order currently in effect prohibits disclosure of the address or
15 contact information of an individual to whom custodial responsibility has been
16 granted, a notification under sub. (1) may be made only to the court that issued the
17 order. The court shall keep confidential the mailing address or residence of the
18 individual to whom custodial responsibility has been granted.

19 SUBCHAPTER II

20 AGREEMENT FOR CUSTODIAL

21 RESPONSIBILITY DURING DEPLOYMENT

22 **324.21 Form of agreement.** (1) The parents of a child may enter into a
23 temporary agreement under this subchapter granting custodial responsibility
24 during deployment.

1 **(2)** An agreement under sub. (1) shall be in writing and signed by both parents
2 and any nonparent to whom custodial responsibility is granted.

3 **(3)** Subject to sub. (4), an agreement under sub. (1) shall, if feasible, do all of
4 the following:

5 (a) Identify the destination, duration, and conditions of the deployment that
6 is the basis for the agreement.

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

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

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

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

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

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

21 (i) Provide that the agreement will terminate immediately after the deploying
22 parent returns from deployment under s. 767.451 (3m) unless otherwise stipulated
23 by all parties to the agreement.

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

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

3 **324.22 Nature of authority created by agreement.** (1) An agreement
4 under this subchapter is temporary and terminates immediately after the deploying
5 parent returns from deployment, unless the agreement has been terminated before
6 that time by court order, by modification under s. 324.23, or by stipulation under s.
7 324.21 (3) (i). The agreement does not create an independent, continuing right to
8 physical placement, legal custody, or visitation for an individual to whom custodial
9 responsibility is given.

10 (2) A nonparent who has physical placement, legal custody, or visitation by an
11 agreement under this subchapter has standing to enforce the agreement until it has
12 been terminated by court order, by modification under s. 324.23, by return of the
13 deployed parent under s. 767.451 (3m), or by stipulation under s. 324.21 (3) (i).

14 **324.23 Modification of agreement.** (1) By mutual consent, the parents of
15 a child may modify an agreement regarding custodial responsibility made under this
16 subchapter subject to any visitation rights granted by court order under s. 767.43.

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

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

23 **324.25 Filing agreement with court.** If a court order on custodial
24 responsibility or child support is in effect concerning a child who is the subject of an
25 agreement under this subchapter, the agreement shall be filed within a reasonable

1 time with that ordering court. The case number and heading of the underlying action
2 affecting the family under ch. 767 concerning custodial responsibility or child
3 support shall be provided to the court with the agreement.

4 SUBCHAPTER III

5 JUDICIAL PROCEDURE FOR GRANTING

6 CUSTODIAL RESPONSIBILITY

7 DURING DEPLOYMENT

8 **324.31 Proceeding for temporary deployment custody order.** (1) After
9 a deploying parent receives notice of deployment and until the deployment
10 terminates, a court may issue a temporary order granting custodial responsibility,
11 unless prohibited by the Servicemembers Civil Relief Act, 50 USC Appendix 521 and
12 522. A court may not issue a permanent order granting custodial responsibility
13 without the consent of the deploying parent.

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

21 **324.32 Expedited hearing.** If a motion to grant custodial responsibility is
22 filed under s. 324.31 (2) before a deploying parent deploys, the court shall conduct
23 a hearing within 30 days of filing.

24 **324.33 Testimony by electronic means.** In a proceeding under this
25 subchapter, a party or witness who is not reasonably available to appear personally

1 may appear, provide testimony, and present evidence by electronic means unless the
2 court finds good cause to require a personal appearance.

3 **324.34 Effect of prior judicial order or agreement.** In a proceeding for a
4 grant of custodial responsibility under this subchapter, all of the following apply:

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

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

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

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

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 terminates immediately upon the return from deployment by the deploying
14 parent, unless the grant has been terminated before that time by court order. The
15 grant does not create an independent, continuing right to physical placement, legal
16 custody, or visitation in an individual to whom it is granted.

17 **(2)** A nonparent granted physical placement, legal custody, or visitation under
18 this subchapter has standing to enforce the grant until it is terminated by court order
19 or upon return of the deployed parent.

20 **324.38 Content of temporary custodial responsibility order. (1)** An
21 order granting custodial responsibility under this subchapter shall do all of the
22 following:

23 (a) Designate the order as temporary.

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

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

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

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

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

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

14 (f) Provide that the order will terminate immediately after the deploying
15 parent returns from deployment under s. 767.451 (3m) unless otherwise stipulated
16 by all parties to the agreement.

17 **324.39 Order for child support.** If the court issues an order granting
18 physical placement under this subchapter, or an agreement granting physical
19 placement has been executed under subch. II, the court may enter a temporary order
20 for child support consistent with the law of this state other than this chapter if the
21 court has jurisdiction under ch. 769.

22 **324.395 Modifying or terminating grant of custodial responsibility to**
23 **nonparent.** Except for an order described in s. 324.34 (1), and consistent with the
24 Servicemembers Civil Relief Act, 50 USC Appendix 521 and 522, on the motion of a
25 deploying parent or other parent or any nonparent to whom physical placement,

1 legal custody, or visitation has been granted, the court may modify or terminate the
2 grant if the modification or termination is consistent with this subchapter and it is
3 in the best interest of the child. A modification is temporary and terminates
4 immediately after the deploying parent returns from deployment, unless the grant
5 has been terminated before that time by court order or otherwise stipulated by all
6 parties to the agreement.

7 SUBCHAPTER IV

8 MISCELLANEOUS PROVISIONS

9 **324.42 Uniformity of application and construction.** In applying and
10 construing this chapter, consideration shall be given to the need to promote
11 uniformity of the law with respect to its subject matter among states that enact the
12 Uniform Deployed Parents Custody and Visitation Act.

13 **324.43 Relation to Electronic Signatures in Global and National**
14 **Commerce Act.** This chapter modifies, limits, or supersedes the federal Electronic
15 Signatures in Global and National Commerce Act, 15 USC 7001 to 7031, except that
16 the chapter does not modify, limit, or supersede 15 USC 7001 (c) or authorize
17 electronic delivery of any of the notices described in 15 USC 7003 (b).

18 **324.44 Savings clause.** This chapter does not affect the validity of a
19 temporary court order concerning custodial responsibility during deployment that
20 was entered before the effective date of this section [LRB inserts date].

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

22 767.41 (2) (e) 1. In this paragraph, “service member” ~~means a member of the~~
23 ~~national guard or of a reserve unit of the U.S. armed forces~~ has the meaning given
24 in s. 324.02 (16).

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

1 767.41 (2) (e) 2. If Except as provided under ch. 324, if a party is a service
2 member, the court may not consider as a factor in determining the legal custody of
3 a child whether the service member has been or may be called to active duty in the
4 U.S. armed forces and consequently is, or in the future will be or may be, absent from
5 the service member's home.

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

7 767.41 (5) (c) If Except as provided under ch. 324, if a parent is a service
8 member, as defined in sub. (2) (e) 1., the court may not consider as a factor in
9 determining the legal custody of a child whether the service member has been or may
10 be called to active duty in the U.S. armed forces and consequently is, or in the future
11 will be or may be, absent from the service member's home.

12 **SECTION 5. Nonstatutory provisions.**

13 (1) The subcommittee of the Wisconsin Court Records Management Committee
14 that develops forms for use in the Wisconsin circuit courts is requested to review ch.
15 324 and develop and approve forms for an agreement for custodial responsibility
16 during deployment consistent with the requirements under subch. II of ch. 324 and
17 for a motion regarding custodial responsibility for a child during deployment
18 consistent with the requirements under subch. III of ch. 324.

19 **SECTION 6. Initial applicability.**

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

22 **(END)**