



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0709/P1
EAW:ahe

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to repeal* 767.41 (5) (am) 15. and 16.; *to amend* 767.225 (1) (am), 767.41
2 (4) (a) 2., 767.41 (5) (am) (intro.), 767.41 (6) (a) and 767.451 (5m) (b); *to repeal*
3 **and recreate** 767.41 (5) (am) 3. to 14.; and *to create* 767.41 (4) (a) 3. of the
4 statutes; **relating to:** the best interest of the child in determining custody and
5 physical placement.

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:

6 **SECTION 1.** 767.225 (1) (am) of the statutes is amended to read:
7 767.225 (1) (am) Upon the request of a party, granting periods of physical
8 placement to a party in a manner consistent with s. 767.41. The court shall make
9 a determination under this paragraph within 30 days after the request for a

1 temporary order regarding periods of physical placement is filed. If the court does
2 not order shared physical placement, the court shall enter specific findings of fact as
3 to the reason shared physical placement is not in the best interest of the child.

****NOTE: Do you want to define "shared physical placement" in this bill?

4 **SECTION 2.** 767.41 (4) (a) 2. of the statutes is amended to read:

5 767.41 (4) (a) 2. ~~In determining the allocation of periods of physical placement,~~
6 ~~the court shall consider each case on the basis of the factors in sub. (5) (am), subject~~
7 ~~to sub. (5) (bm).~~ The court shall set a placement schedule that allows the child to have
8 regularly occurring, meaningful periods of physical placement with each parent and
9 that maximizes the amount of time the child may spend with each parent, taking into
10 account geographic separation and accommodations for different households. In
11 determining the allocation of periods of physical placement, the court shall consider
12 each case on the basis of the factors in sub. (5) (am), subject to sub. (5) (bm).

13 **SECTION 3.** 767.41 (4) (a) 3. of the statutes is created to read:

14 767.41 (4) (a) 3. Any allocation of physical placement presumes that the
15 maximum involvement and cooperation of both parents regarding the physical,
16 mental, and emotional well-being of the child is in the best interest of the child.

17 **SECTION 4.** 767.41 (5) (am) (intro.) of the statutes is amended to read:

18 767.41 (5) (am) (intro.) Subject to pars. (bm) and (c), in determining legal
19 custody and periods of physical placement, the court shall consider all facts relevant
20 to the best interest of the child. The court may not prefer one parent or potential
21 custodian over the other on the basis of the sex or race of the parent or potential
22 custodian. Subject to pars. (bm) and (c), the court shall consider the following factors
23 in making its determination of maximizing the amount of time the child spends with
24 each parent:

1 **SECTION 5.** 767.41 (5) (am) 3. to 14. of the statutes are repealed and recreated
2 to read:

3 767.41 (5) (am) 3. The cooperation and communication between the parties and
4 whether either party unreasonably refuses to cooperate or communicate with the
5 other party.

6 4. Whether each party can support the other party's relationship with the child,
7 including encouraging and facilitating frequent and continuing contact with the
8 child, or whether one party is likely to unreasonably interfere with the child's
9 continuing relationship with the other party.

10 5. The interaction and interrelationship of the child with his or her siblings,
11 and any other person who may significantly affect the child's best interest.

12 6. The interaction and interrelationship of the child with his or her parent or
13 parents and the amount and quality of time that each parent has spent with the child
14 in the past, any necessary changes to the parents' custodial roles, and any reasonable
15 lifestyle changes that a parent proposes to make to maximize placement with the
16 child.

17 7. Whether any of the following has or had a significant problem with alcohol
18 or drug abuse:

19 a. A party.

20 b. A person with whom a parent of the child has a dating relationship, as
21 defined in s. 813.12 (1) (ag).

22 c. A person who resides, has resided, or will reside regularly or intermittently
23 in a proposed custodial household.

24 8. The child's adjustment to the home, school, religion, and community.

1 9. The age of the child and the child's developmental and educational needs at
2 different ages.

3 10. Whether the mental or physical health of a party, minor child, or other
4 person living in a proposed custodial household negatively affects the child's
5 intellectual, physical, or emotional well-being.

6 11. Whether any of the following has a criminal record or whether there is
7 evidence that any of the following has engaged in abuse, as defined under s. 813.122
8 (1) (a), of the child or any other child or neglected the child or any other child:

9 a. A party.

10 b. A person with whom a parent of the child has a dating relationship, as
11 defined in s. 813.12 (1) (ag).

12 c. A person who resides, has resided, or will reside regularly or intermittently
13 in a proposed custodial household.

14 12. Whether there is evidence of interspousal battery as described under s.
15 940.19 or 940.20 (1m) or domestic abuse as defined in s. 813.12 (1) (am).

16 13. The reports of appropriate professionals if admitted into evidence.

17 14. Any other factor that the court determines to be relevant.

18 **SECTION 6.** 767.41 (5) (am) 15. and 16. of the statutes are repealed.

19 **SECTION 7.** 767.41 (6) (a) of the statutes is amended to read:

20 767.41 (6) (a) If legal custody or physical placement is contested, the court shall
21 state in writing why its findings relating to legal custody or physical placement are
22 in the best interest of the child. If the court does not order shared physical placement,
23 the court shall enter specific findings of fact as to the reason shared physical
24 placement is not in the best interest of the child.

25 **SECTION 8.** 767.451 (5m) (b) of the statutes is amended to read:

1 767.451 **(5m)** (b) In determining the best interest of the child under this
2 section, in addition to the factor under s. 767.41 (5) (am) ~~12m.~~ 11., the court shall
3 consider whether a stepparent of the child has a criminal record and whether there
4 is evidence that a stepparent of the child has engaged in abuse, as defined in s.
5 813.122 (1) (a), of the child or any other child or neglected the child or any other child.

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(END)