



WISCONSIN LEGISLATIVE COUNCIL STUDY COMMITTEE MEMORANDUM

TO: MEMBERS OF THE STUDY COMMITTEE ON CHILD PLACEMENT AND SUPPORT

FROM: Margit S. Kelley, Senior Staff Attorney, and Rachel E. Letzing, Principal Attorney

RE: Factors in Legal Custody and Physical Placement Determinations

DATE: December 11, 2018

During the meeting on November 20, 2018, members of the Study Committee on Child Placement and Support requested the statutory list of factors in legal custody and physical placement determinations, or “best interest factors,” in s. 767.41 (5) (am), Stats. The list was requested in order to inform the discussion of bill draft LRB-0709/1, relating to the best interest of the child in determining legal custody and physical placement.

Attached please find a chart which lists the best interest factors under s. 767.41 (5) (am), Stats., and the corresponding treatment of each factor under the bill draft.

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Attachment

Notes of Revisions Under Draft LRB-0709/1 to Best-Interest Factors
Under Current Law, in a Child Placement Determination

Factors Under Current Law, s. 767.41 (5) (am), Stats.	Revisions Under Draft LRB-0709/1
1. The wishes of the child's parent or parents, as shown by any stipulation between the parties, any proposed parenting plan or any legal custody or physical placement proposal submitted to the court at trial.	No change.
2. The wishes of the child, which may be communicated by the child or through the child's guardian ad litem or other appropriate professional.	No change.
3. The interaction and interrelationship of the child with his or her parent or parents, siblings, and any other person who may significantly affect the child's best interest.	Reference to parents is combined with subd. 4 and moved to subd. 6. Remaining parts are moved to subd. 5.
4. The amount and quality of time that each parent has spent with the child in the past, any necessary changes to the parents' custodial roles and any reasonable life-style changes that a parent proposes to make to be able to spend time with the child in the future.	Combined with reference to parents from subd. 3 and moved to subd. 6. The phrase "to spend time with" is revised to the phrase "to maximize placement with."
5. The child's adjustment to the home, school, religion and community.	Moved to subd. 8.
6. The age of the child and the child's developmental and educational needs at different ages.	Moved to subd. 9.
7. Whether the mental or physical health of a party, minor child, or other person living in a proposed custodial household negatively affects the child's intellectual, physical, or emotional well-being.	Moved to subd. 10.
8. The need for regularly occurring and meaningful periods of physical placement to provide predictability and stability for the child.	Removed.

9. The availability of public or private child care services.	Removed.
10. The cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party.	Moved to subd. 3.
11. Whether each party can support the other party's relationship with the child, including encouraging and facilitating frequent and continuing contact with the child, or whether one party is likely to unreasonably interfere with the child's continuing relationship with the other party.	Moved to subd. 4.
12. Whether there is evidence that a party engaged in abuse, as defined in s. 813.122 (1) (a), of the child, as defined in s. 813.122 (1) (b).	Combined with subd. 12m. and moved to subd. 11.
12m. Whether any of the following has a criminal record and whether there is evidence that any of the following has engaged in abuse, as defined in s. 813.122 (1) (a), of the child or any other child or neglected the child or any other child: a. A person with whom a parent of the child has a dating relationship, as defined in s. 813.12 (1) (ag). b. A person who resides, has resided, or will reside regularly or intermittently in a proposed custodial household.	Combined with subd. 12. and moved to subd. 11.
13. Whether there is evidence of interspousal battery as described under s. 940.19 or 940.20 (1m) or domestic abuse as defined in s. 813.12 (1) (am).	Moved to subd. 12.
14. Whether either party has or had a significant problem with alcohol or drug abuse.	Persons identified in subd. 12m. a. and b. are added and, as revised, the provision is moved to subd. 7.
15. The reports of appropriate professionals if admitted into evidence.	Moved to subd. 13.
16. Such other factors as the court may in each individual case determine to be relevant.	The sentence is simplified and moved to subd. 14.