



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0709/1
EAW:ahe

2019 BILL

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* 767.001 (5m) and 767.41
4 (4) (a) 3. of the statutes; **relating to:** the best interest of the child in
5 determining custody and 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:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Study Committee on Child Placement and Support. Generally, the bill adds to the standard that applies in determining or revising a physical placement schedule to specify that maximum involvement and cooperation of both parents is presumed to be in a child's best interest.

Under current law, a court must set a physical placement schedule that allows a child to have regularly occurring, meaningful periods of physical placement and that maximizes the amount of time for a child with each parent. The Wisconsin Supreme Court has stated that this standard does not require equal placement for a child with both

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parents. [Landwehr v. Landwehr, 2006 WI 64.] Also, in determining a physical placement schedule, a court must, in each case, consider a statutory list of best-interest factors.

First, the bill adds to that standard and specifies that any allocation of physical placement presumes that the maximum involvement and cooperation of both parents regarding the physical, mental, and emotional well-being of the child is in the best interest of the child. Also, in the introduction to the statutory best-interest factors, the bill reiterates that the factors are considered in a determination of “maximizing” the amount of time a child spends with each parent.

Second, the bill specifies that if a court does not order a shared physical placement schedule in a temporary or final order, specific findings of fact as to the reason shared physical placement is not in the best interest of the child must be entered. The bill defines “shared physical placement” as a court-ordered physical placement schedule under which both parents have periods of physical placement of at least 25%.

Third, the statutory best-interest factors are reorganized, and the considerations of stability in placement and availability of child care services are removed.

1 **SECTION 1.** 767.001 (5m) of the statutes is created to read:

2 767.001 (5m) “Shared physical placement” means a court-ordered placement
3 schedule under which both parents have periods of physical placement of at least 25
4 percent.

5 **SECTION 2.** 767.225 (1) (am) of the statutes is amended to read:

6 767.225 (1) (am) Upon the request of a party, granting periods of physical
7 placement to a party in a manner consistent with s. 767.41. The court shall make
8 a determination under this paragraph within 30 days after the request for a
9 temporary order regarding periods of physical placement is filed. If the court does
10 not order shared physical placement, the court shall enter specific findings of fact as
11 to the reason shared physical placement is not in the best interest of the child.

12 **SECTION 3.** 767.41 (4) (a) 2. of the statutes is amended to read:

13 767.41 (4) (a) 2. ~~In determining the allocation of periods of physical placement,~~
14 ~~the court shall consider each case on the basis of the factors in sub. (5) (am), subject~~
15 ~~to sub. (5) (bm).~~ The court shall set a placement schedule that allows the child to have
16 regularly occurring, meaningful periods of physical placement with each parent and
17 that maximizes the amount of time the child may spend with each parent, taking into

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1 account geographic separation and accommodations for different households. In
2 determining the allocation of periods of physical placement, the court shall consider
3 each case on the basis of the factors in sub. (5) (am), subject to sub. (5) (bm).

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

5 767.41 (4) (a) 3. Any allocation of physical placement presumes that the
6 maximum involvement and cooperation of both parents regarding the physical,
7 mental, and emotional well-being of the child is in the best interest of the child.

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

9 767.41 (5) (am) (intro.) Subject to pars. (bm) and (c), in determining legal
10 custody and periods of physical placement, the court shall consider all facts relevant
11 to the best interest of the child. The court may not prefer one parent or potential
12 custodian over the other on the basis of the sex or race of the parent or potential
13 custodian. Subject to pars. (bm) and (c), the court shall consider the following factors
14 in making its determination of maximizing the amount of time the child spends with
15 each parent:

16 **SECTION 6.** 767.41 (5) (am) 3. to 14. of the statutes are repealed and recreated
17 to read:

18 767.41 (5) (am) 3. The cooperation and communication between the parties and
19 whether either party unreasonably refuses to cooperate or communicate with the
20 other party.

21 4. Whether each party can support the other party's relationship with the child,
22 including encouraging and facilitating frequent and continuing contact with the
23 child, or whether one party is likely to unreasonably interfere with the child's
24 continuing relationship with the other party.

BILL**SECTION 6**

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

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

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

10 a. A party.

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

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

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

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

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

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

24 a. A party.

