

West's Wisconsin Statutes Annotated  
Marriage and Family (Ch. 765 to 770)  
Chapter 767. Actions Affecting the Family (Refs & Annos)  
Subchapter V. Child Custody, Placement, and Visitation

W.S.A. 767.401

767.401. Educational programs and classes

Effective: January 1, 2007

[Currentness](#)

**(1) Programs: effects of dissolution on children; parenting skills.** (a) During the pendency of an action affecting the family in which a minor child is involved and in which the court determines that it is appropriate and in the best interest of the child, the court, on its own motion, may order the parties to attend a program specified by the court concerning the effects on a child of a dissolution of the marriage. If the court orders the parties to attend a program under this paragraph and there is evidence that one or both of the parties have engaged in interspousal battery, as described in [s. 940.19](#) or [940.20\(1m\)](#), or domestic abuse, as defined in [s. 813.12\(1\)\(am\)](#), the court may not require the parties to attend the program together or at the same time.

(b) During the pendency of an action to determine the paternity of a child, or an action affecting the family for which the underlying action was an action to determine the paternity of a child, if the court determines that it is appropriate and in the best interest of the child, the court, on its own motion, may order either or both of the parties to attend a program specified by the court providing training in parenting or coparenting skills, or both.

(c) A program under par. (a) or (b) shall be educational rather than therapeutic in nature and may not exceed a total of 4 hours in length. The parties shall be responsible for the cost, if any, of attendance at the program. The court may specifically assign responsibility for payment of any cost. No facts or information obtained in the course of the program, and no report resulting from the program, is admissible in any action or proceeding.

(d) Notwithstanding [s. 767.35\(1\)](#), the court may require the parties to an action affecting the family in which a minor child is involved to attend a program under par. (a) or (b) as a condition to the granting of a final judgment or order in the action affecting the family.

(e) A party who fails to attend a program ordered under par. (a) or (b) or pay costs specifically ordered under par. (c) may be proceeded against under ch. 785 for contempt of court.

**(2) Classes on parenting.** (a) During the pendency of a divorce or paternity action, the court may order the parties to attend a class that is approved by the court and that addresses such issues as child development, family dynamics, how parental separation affects a child's development, and what parents can do to make raising a child in a separated situation less stressful for the child.

(b) The court may not require the parties to attend a class under this subsection as a condition to the granting of the final judgment or order in the divorce or paternity action, however, the court may refuse to hear a custody or physical placement motion of a party who refuses to attend a class ordered under this subsection.

(c)1. Except as provided in subd. 2., the parties shall be responsible for any cost of attending the class.

2. If the court finds that a party is indigent, any costs that would be the responsibility of that party shall be paid by the county.

**Credits**

<<For credits, see Historical Note field.>>

W. S. A. 767.401, WI ST 767.401

Current through 2013 Wisconsin Act 19, published 6/28/2013.

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W.S.A. 767.405

767.405. Family court services

Effective: March 30, 2010

[Currentness](#)

**(1) Definitions.** In this section:

(a) “Mediation” means a cooperative process involving the parties and a mediator, the purpose of which is to help the parties, by applying communication and dispute resolution skills, define and resolve their own disagreements, with the best interest of the child as the paramount consideration.

(b) “Mediator” means a person with special skills and training in dispute resolution.

**(1m) Director.** (a) Except as provided in par. (b) and subject to approval by the chief judge of the judicial administrative district, the circuit judge or judges in each county shall designate a person meeting the qualifications under sub. (4) as the director of family court services in that county.

(b) If 2 or more contiguous counties enter into a cooperative agreement under sub. (3)(b), the circuit judges for the counties involved shall, subject to approval by the chief judge of the judicial administrative district, designate a person meeting the qualifications under sub. (4) as the director of family court services for those counties.

(c) A county or counties may designate the supervisor of the office of family court commissioner as the director under par. (a) or (b).

**(2) Duties.** A director of family court services designated under sub. (1m) shall administer a family court services office if such an office is established under sub. (3)(a) or (b). Regardless of whether the office is established, the director shall:

(a) Employ staff to perform mediation and to perform any legal custody and physical placement study services authorized under sub. (14), arrange and monitor staff training, and assign and monitor staff case load.

(b) Contract under sub. (3)(c) with a person or public or private entity to perform mediation and to perform any legal custody and physical placement study services authorized under sub. (14).

(c) Supervise and perform mediation and any legal custody and physical placement study services authorized under sub. (14), and evaluate the quality of the mediation or study services.

(d) Administer and manage funding for family court services.

**(3) Mediation provided.** Mediation shall be provided in every county in this state by any of the following means:

(a) A county may establish a family court services office to provide mediation in that county.

(b) Two or more contiguous counties may enter into a cooperative agreement to establish one family court services office to provide mediation in those counties.

(c) A director of family court services designated under sub. (1m) may contract with any person or public or private entity, located in a county in which the director administers family court services or in a contiguous county, to provide mediation in the county in which the person or entity is located.

**(4) Mediator qualifications.** Every mediator assigned under sub. (6)(a) shall have not less than 25 hours of mediation training or not less than 3 years of professional experience in dispute resolution. Every mediator assigned under sub. (6)(a) shall have training on the dynamics of domestic violence and the effects of domestic violence on victims of domestic violence and on children.

**(5) Mediation referrals.** (a) Except as provided in sub. (8)(b), in any action affecting the family, including a revision of judgment or order under [s. 767.451](#) or [767.59](#), in which it appears that legal custody or physical placement is contested, the court shall refer the parties to the director of family court services for possible mediation of those contested issues. The court shall inform the parties of all of the following:

1. That the confidentiality of communications in mediation is waived if the parties stipulate under sub. (14)(c) that the person who provided mediation to the parties may also conduct the legal custody or physical placement study under sub. (14).

2. That the court may waive the requirement to attend at least one mediation session if the court determines that attending the session will cause undue hardship or would endanger the health or safety of one of the parties and the bases on which the court may make its determination.

(b) If both parties to any action affecting the family wish to have joint legal custody of a child, either party may request that the court refer the parties to the director of family court services for assistance in resolving any problem relating to joint legal custody and physical placement of the child. Upon request, the court shall so refer the parties.

(c) A person who is awarded periods of physical placement or a child of that person, a person with visitation rights, or a person with physical custody of a child may notify a circuit court commissioner of any problem he or she has relating to any of these matters. Upon notification, the circuit court commissioner may refer any person involved in the matter to the director of family court services for assistance in resolving the problem.

**(6) Action upon referral.** (a) Whenever a court refers a party to the director of family court services for possible mediation, the director shall assign a mediator to the case. The mediator shall provide mediation if he or she determines that it is appropriate. If the mediator determines that mediation is not appropriate, he or she shall so notify the court. Whenever a court refers a party to the director of family court services for any other family court service, the director shall take appropriate action to provide the service.

(b) Any intake form that the family court services requires the parties to complete before commencement of mediation shall ask each party whether either of the parties has engaged in interspousal battery, as described in [s. 940.19](#) or [940.20\(1m\)](#), or domestic abuse, as defined in [s. 813.12\(1\)\(am\)](#).

**(7) Private mediator.** The parties to any action affecting the family may, at their own expense, receive mediation services from a mediator other than one who provides services under sub. (3). Parties who receive services from a mediator under this subsection shall sign and file with the director of family court services and with the court a written notice stating the mediator's name and the date of the first meeting with the mediator.

**(8) Initial session of mediation required.** (a) Except as provided in par. (b), in any action affecting the family, including an action for revision of judgment or order under [s. 767.451](#) or [767.59](#), in which it appears that legal custody or physical placement is contested, the parties shall attend at least one session with a mediator assigned under sub. (6)(a) or contracted with under sub. (7) and, if the parties and the mediator determine that continued mediation is appropriate, no court may hold a trial of or a final hearing on legal custody or physical placement until after mediation is completed or terminated.

(b) A court may, in its discretion, hold a trial or hearing without requiring attendance at the session under par. (a) if the court finds that attending the session will cause undue hardship or would endanger the health or safety of one of the parties. In making its determination of whether attendance at the session would endanger the health or safety of one of the parties, the court shall consider evidence of the following:

1. That a party engaged in abuse, as defined in [s. 813.122\(1\)\(a\)](#), of the child, as defined in [s. 48.02\(2\)](#).
2. Interspousal battery as described under [s. 940.19](#) or [940.20\(1m\)](#) or domestic abuse as defined in [s. 813.12\(1\)\(am\)](#).
3. That either party has a significant problem with alcohol or drug abuse.
4. Any other evidence indicating that a party's health or safety will be endangered by attending the session.

(c) The initial session under par. (a) shall be a screening and evaluation mediation session to determine whether mediation is appropriate and whether both parties wish to continue in mediation. At the initial session, the mediator shall review with the parties the nonfinancial provisions that must be included in the parenting plan under [s. 767.41\(1m\)](#).

**(9) Prohibited issues in mediation.** If mediation is provided by a mediator assigned under sub. (6)(a), no issue relating to property division, maintenance, or child support may be considered during the mediation unless all of the following apply:

- (a) The property division, maintenance or child support issue is directly related to the legal custody or physical placement issue.
- (b) The parties agree in writing to consider the property division, maintenance or child support issue.

**(10) Powers and duties of mediator.** A mediator assigned under sub. (6)(a) shall be guided by the best interest of the child and may do any of the following, at his or her discretion:

- (a) Include the counsel of any party or any appointed guardian ad litem in the mediation.
- (b) Interview any child of the parties, with or without a party present.
- (c) Require a party to provide written disclosure of facts relating to any legal custody or physical placement issue addressed in mediation, including any financial issue permitted to be considered.
- (d) Suspend mediation when necessary to enable a party to obtain an appropriate court order or appropriate therapy.
- (e) Terminate mediation if a party does not cooperate or if mediation is not appropriate or if any of the following facts exist:
  1. There is evidence that a party engaged in abuse, as defined in s. 813.122(1)(a), of the child, as defined in s. 48.02(2).
  2. 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).
  3. Either party has a significant problem with alcohol or drug abuse.
  4. Other evidence which indicates one of the parties' health or safety will be endangered if mediation is not terminated.

**(12) Mediation agreement.** (a) Any agreement that resolves issues of legal custody or periods of physical placement between the parties and that is reached as a result of mediation under this section shall be prepared in writing, reviewed by the attorney, if any, for each party and by any appointed guardian ad litem, and submitted to the court to be included in the court order as a stipulation. Any reviewing attorney or guardian ad litem shall certify on the mediation agreement that he or she reviewed it, and the guardian ad litem, if any, shall comment on the agreement based on the best interest of the child. The mediator shall certify that the written mediation agreement accurately reflects the agreement made between the parties. The court may approve or reject the agreement, based on the best interest of the child. The court shall state in writing its reasons for rejecting an agreement.

(b) If after mediation under this section the parties do not reach agreement on legal custody or periods of physical placement, the parties or the mediator shall so notify the court. Except as provided in s. 767.407(1)(am), the court shall promptly appoint a guardian ad litem under s. 767.407. Regardless of whether the court appoints a guardian ad litem, the court shall, if appropriate, refer the matter for a legal custody or physical placement study under sub. (14). If the parties come to agreement on legal

custody or physical placement after the matter has been referred for a study, the study shall be terminated. The parties may return to mediation at any time before any trial of or final hearing on legal custody or periods of physical placement. If the parties return to mediation, the county shall collect any applicable fee under [s. 814.615](#).

**(13) Powers of court.** Except as provided in sub. (8), referring parties to mediation under this section does not affect the power of the court to make any necessary order relating to the parties during the course of the mediation.

**(14) Legal custody and physical placement study.** (a) A county or 2 or more contiguous counties shall provide legal custody and physical placement study services. The county or counties may elect to provide these services by any of the means set forth in sub. (3) with respect to mediation. Regardless of whether a county so elects, whenever legal custody or physical placement of a minor child is contested and mediation under this section is not used or does not result in agreement between the parties, or at any other time the court considers it appropriate, the court may order a person or entity designated by the county to investigate the following matters relating to the parties:

1. The conditions of the child's home.

2. Each party's performance of parental duties and responsibilities relating to the child.

2m. Whether either party has engaged in interspousal battery, as described in [s. 940.19](#) or [940.20\(1m\)](#), or domestic abuse, as defined in [s. 813.12\(1\)\(am\)](#).

3. Any other matter relevant to the best interest of the child.

(b)1. The person or entity investigating the parties under par. (a) shall complete the investigation, prepare a report of the results, and, at least 10 days before the report is introduced into evidence under subd. 2., submit the report to the court and to both parties. The court may review the report, but may not rely upon it as evidence before it is properly introduced under subd. 2.

2. The report under subd. 1. shall be offered in accordance with the rules of evidence and shall be a part of the record in the action if it is so offered and admitted into evidence.

(c) No person who provided mediation to the parties under this section may investigate the parties under this subsection unless each party personally so consents by written stipulation after mediation has ended and after receiving notice from the person who provided mediation that consent waives the inadmissibility of communications in mediation under [s. 904.085](#).

#### **Credits**

<<For credits, see Historical Note field.>>

#### **Editors' Notes**

**COMMENTS--2005 ACT 443, §§ 8, 57**

Notes: [Section 8] relocates definitions of “mediation” and “mediator” in the current general definitions section of ch. 767 to the section in the chapter relating to family court services. With the exception of 2 cross-references to the terms in other sections in this chapter, this is the only section in the chapter in which those terms appear.

[Section 57] deletes current requirement that the mediator certify that the written mediation agreement is “in the best interest of the child” based on the information presented to the mediator. Reflects concern that a mediator, in general, does not have the expertise necessary, or sufficient knowledge of the information presented, to certify that the agreement is in the best interest of the child. The mediator will still be required to certify that the written mediation agreement accurately reflects the agreement made between the parties.

#### [Notes of Decisions \(2\)](#)

W. S. A. 767.405, WI ST 767.405

Current through 2013 Wisconsin Act 19, published 6/28/2013.

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Subchapter V. Child Custody, Placement, and Visitation

W.S.A. 767.407

767.407. Guardian ad litem for minor children

Effective: July 1, 2008

[Currentness](#)

**(1) Appointment.** (a) The court shall appoint a guardian ad litem for a minor child in any action affecting the family if any of the following conditions exists:

1. The court has reason for special concern as to the welfare of a minor child.
2. Except as provided in par. (am), the legal custody or physical placement of the child is contested.

(am) The court is not required to appoint a guardian ad litem under par. (a)2. if all of the following apply:

1. Legal custody or physical placement is contested in an action to modify legal custody or physical placement under [s. 767.451](#) or [767.481](#).
2. The modification sought would not substantially alter the amount of time that a parent may spend with his or her child.
3. The court determines any of the following:
  - a. That the appointment of a guardian ad litem will not assist the court in the determination regarding legal custody or physical placement because the facts or circumstances of the case make the likely determination clear.
  - b. That a party seeks the appointment of a guardian ad litem solely for a tactical purpose, or for the sole purpose of delay, and not for a purpose that is in the best interest of the child.
- (b) The court may appoint a guardian ad litem for a minor child in any action affecting the family if the child's legal custody or physical placement is stipulated to be with any person or agency other than a parent of the child or, if at the time of the action, the child is in the legal custody of, or physically placed with, any person or agency other than the child's parent by prior order or by stipulation in this or any other action.
- (c) The attorney responsible for support enforcement under [s. 59.53\(6\)\(a\)](#) may request that the court appoint a guardian ad litem to bring an action or motion on behalf of a minor who is a nonmarital child whose paternity has not been acknowledged under

s. 767.805(1) or a substantially similar law of another state or adjudicated for the purpose of determining the paternity of the child, and the court shall appoint a guardian ad litem, if any of the following applies:

1. Aid is provided under s. 48.57(3m) or (3n), 48.645, 49.19, or 49.45 on behalf of the child, or benefits are provided to the child's custodial parent under ss. 49.141 to 49.161, but the state and its delegate under s. 49.22(7) are barred by a statute of limitations from commencing an action under s. 767.80 on behalf of the child.

2. An application for legal services has been filed with the child support program under s. 49.22 on behalf of the child, but the state and its delegate under s. 49.22(7) are barred by a statute of limitations from commencing an action under s. 767.80 on behalf of the child.

(d) A guardian ad litem appointed under par. (c) shall bring an action or motion for the determination of the child's paternity if the guardian ad litem determines that the determination of the child's paternity is in the child's best interest.

(e) Nothing in this subsection prohibits the court from making a temporary order under s. 767.225 that concerns the child before a guardian ad litem is appointed or before the guardian ad litem has made a recommendation to the court, if the court determines that the temporary order is in the best interest of the child.

**(2) Time for appointment.** The court shall appoint a guardian ad litem under sub. (1)(a)1. or (b) whenever the court deems it appropriate. The court shall appoint a guardian ad litem under sub. (1)(a)2. at the time specified in s. 767.405(12)(b), unless upon motion by a party or its own motion the court determines that earlier appointment is necessary.

**(3) Qualifications.** The guardian ad litem shall be an attorney admitted to practice in this state. No person who is an interested party in a proceeding, appears as counsel in a proceeding on behalf of any party or is a relative or representative of an interested party may be appointed guardian ad litem in that proceeding.

**(4) Responsibilities.** The guardian ad litem shall be an advocate for the best interests of a minor child as to paternity, legal custody, physical placement, and support. The guardian ad litem shall function independently, in the same manner as an attorney for a party to the action, and shall consider, but shall not be bound by, the wishes of the minor child or the positions of others as to the best interests of the minor child. The guardian ad litem shall consider the factors under s. 767.41(5)(am), subject to s. 767.41(5)(bm), and custody studies under s. 767.405(14). The guardian ad litem shall investigate whether there is evidence that either parent has engaged in interspousal battery, as described in s. 940.19 or 940.20(1m), or domestic abuse, as defined in s. 813.12(1)(am), and shall report to the court on the results of the investigation. The guardian ad litem shall review and comment to the court on any mediation agreement and stipulation made under s. 767.405(12) and on any parenting plan filed under s. 767.41(1m). Unless the child otherwise requests, the guardian ad litem shall communicate to the court the wishes of the child as to the child's legal custody or physical placement under s. 767.41(5)(am)2. The guardian ad litem has none of the rights or duties of a general guardian.

**(4m) Status hearing.** (a) Subject to par. (b), at any time after 120 days after a guardian ad litem is appointed under this section, a party may request that the court schedule a status hearing related to the actions taken and work performed by the guardian ad litem in the matter.

(b) A party may, not sooner than 120 days after a status hearing under this subsection is held, request that the court schedule another status hearing on the actions taken and work performed by the guardian ad litem in the matter.

**(5) Termination and extension of appointment.** The appointment of a guardian ad litem under sub. (1) terminates upon the entry of the court's final order or upon the termination of any appeal in which the guardian ad litem participates. The guardian ad litem may appeal, may participate in an appeal or may do neither. If an appeal is taken by any party and the guardian ad litem chooses not to participate in that appeal, he or she shall file with the appellate court a statement of reasons for not participating. Irrespective of the guardian ad litem's decision not to participate in an appeal, the appellate court may order the guardian ad litem to participate in the appeal. At any time, the guardian ad litem, any party or the person for whom the appointment is made may request in writing that the court extend or terminate the appointment or reappointment. The court may extend that appointment, or reappoint a guardian ad litem appointed under this section, after the final order or after the termination of the appeal, but the court shall specifically state the scope of the responsibilities of the guardian ad litem during the period of that extension or reappointment.

**(6) Compensation.** The guardian ad litem shall be compensated at a rate that the court determines is reasonable. The court shall order either or both parties to pay all or any part of the compensation of the guardian ad litem. In addition, upon motion by the guardian ad litem, the court shall order either or both parties to pay the fee for an expert witness used by the guardian ad litem, if the guardian ad litem shows that the use of the expert is necessary to assist the guardian ad litem in performing his or her functions or duties under this chapter. If both parties are indigent, the court may direct that the county of venue pay the compensation and fees. If the court orders a county to pay the compensation of the guardian ad litem, the amount ordered may not exceed the compensation paid to private attorneys under s. 977.08(4m)(b). The court may order a separate judgment for the amount of the reimbursement in favor of the county and against the party or parties responsible for the reimbursement. The court may enforce its orders under this subsection by means of its contempt power.

#### Credits

<<For credits, see Historical Note field.>>

#### [Notes of Decisions \(52\)](#)

W. S. A. 767.407, WI ST 767.407

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Subchapter V. Child Custody, Placement, and Visitation

W.S.A. 767.41

767.41. Custody and physical placement

Effective: January 1, 2011

[Currentness](#)

**(1) General provisions.** (a) Subject to ch. 822, the question of a child's custody may be determined as an incident of any action affecting the family or in an independent action for custody. The effect of any determination of a child's custody is not binding personally against any parent or guardian unless the parent or guardian has been made personally subject to the jurisdiction of the court in the action as provided under ch. 801 or has been notified under [s. 822.08](#), as provided in [s. 822.06](#). Nothing in this chapter may be construed to foreclose a person other than a parent who has physical custody of a child from proceeding under ch. 822.

(b) In rendering a judgment of annulment, divorce, legal separation, or paternity, or in rendering a judgment in an action under [s. 767.001\(1\)\(e\)](#), [767.501](#), or [767.805\(3\)](#), the court shall make such provisions as it deems just and reasonable concerning the legal custody and physical placement of any minor child of the parties, as provided in this section.

**(1m) Parenting plan.** Unless the court orders otherwise, in an action for annulment, divorce, or legal separation, an action to determine paternity, or an action under [s. 767.001\(1\)\(e\)](#), [767.501](#), or [767.805\(3\)](#), in which legal custody or physical placement is contested, a party seeking sole or joint legal custody or periods of physical placement shall file a parenting plan with the court if the court waives the requirement to attend mediation under [s. 767.405\(8\)\(b\)](#) or if the parties attend mediation and the mediator notifies the court under [s. 767.405\(12\)\(b\)](#) that the parties have not reached an agreement. Unless the court orders otherwise, the parenting plan shall be filed within 60 days after the court waives the mediation requirement or the mediator notifies the court that no agreement has been reached. Except for cause shown, a party required to file a parenting plan under this subsection who does not timely file a parenting plan waives the right to object to the other party's parenting plan. A parenting plan shall provide information about the following questions:

(a) What legal custody or physical placement the parent is seeking.

(b) Where the parent lives currently and where the parent intends to live during the next 2 years. If there is evidence that the other parent engaged in interspousal battery, as described under [s. 940.19](#) or [940.20\(1m\)](#), or domestic abuse, as defined in [s. 813.12\(1\)\(am\)](#), with respect to the parent providing the parenting plan, the parent providing the parenting plan is not required to disclose the specific address but only a general description of where he or she currently lives and intends to live during the next 2 years.

(c) Where the parent works and the hours of employment. If there is evidence that the other parent engaged in interspousal battery, as described under [s. 940.19](#) or [940.20\(1m\)](#), or domestic abuse, as defined in [s. 813.12\(1\)\(am\)](#), with respect to the parent providing the parenting plan, the parent providing the parenting plan is not required to disclose the specific address but only a general description of where he or she works.

- (d) Who will provide any necessary child care when the parent cannot and who will pay for the child care.
  - (e) Where the child will go to school.
  - (f) What doctor or health care facility will provide medical care for the child.
  - (g) How the child's medical expenses will be paid.
  - (h) What the child's religious commitment will be, if any.
  - (i) Who will make decisions about the child's education, medical care, choice of child care providers and extracurricular activities.
  - (j) How the holidays will be divided.
  - (k) What the child's summer schedule will be.
  - (L) Whether and how the child will be able to contact the other parent when the child has physical placement with the parent providing the parenting plan, and what electronic communication, if any, the parent is seeking.
  - (Lm) Whether equipment for providing electronic communication is reasonably available to both parents.
  - (m) How the parent proposes to resolve disagreements related to matters over which the court orders joint decision making.
  - (n) What child support, family support, maintenance or other income transfer there will be.
  - (o) If there is evidence that either party engaged in interspousal battery, as described under [s. 940.19](#) or [940.20\(1m\)](#), or domestic abuse, as defined in [s. 813.12\(1\)\(am\)](#), with respect to the other party, how the child will be transferred between the parties for the exercise of physical placement to ensure the safety of the child and the parties.
- (2) Custody to party; joint or sole.** (a) Subject to pars. (am) to (e), based on the best interest of the child and after considering the factors under sub. (5)(am), subject to sub. (5)(bm), the court may give joint legal custody or sole legal custody of a minor child.
- (am) Except as provided in par. (d), the court shall presume that joint legal custody is in the best interest of the child.
- (b) Except as provided in par. (d) and subject to par. (e), the court may give sole legal custody only if it finds that doing so is in the child's best interest and that either of the following applies:

1. Both parties agree to sole legal custody with the same party.
2. The parties do not agree to sole legal custody with the same party, but at least one party requests sole legal custody and the court specifically finds any of the following:
  - a. One party is not capable of performing parental duties and responsibilities or does not wish to have an active role in raising the child.
  - b. One or more conditions exist at that time that would substantially interfere with the exercise of joint legal custody.
  - c. The parties will not be able to cooperate in the future decision making required under an award of joint legal custody. In making this finding the court shall consider, along with any other pertinent items, any reasons offered by a party objecting to joint legal custody. Evidence that either party engaged in abuse, as defined in s. 813.122(1)(a), of the child, as defined in s. 48.02(2), or 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), creates a rebuttable presumption that the parties will not be able to cooperate in the future decision making required.
  - (c) Except as provided in par. (d), the court may not give sole legal custody to a parent who refuses to cooperate with the other parent if the court finds that the refusal to cooperate is unreasonable.
  - (d)1. Except as provided in subd. 4., if the court finds by a preponderance of the evidence that a party has engaged in a pattern or serious incident of interspousal battery, as described under s. 940.19 or 940.20(1m), or domestic abuse, as defined in s. 813.12(1)(am), pars. (am), (b), and (c) do not apply and there is a rebuttable presumption that it is detrimental to the child and contrary to the best interest of the child to award joint or sole legal custody to that party. The presumption under this subdivision may be rebutted only by a preponderance of evidence of all of the following:
    - a. The party who committed the battery or abuse has successfully completed treatment for batterers provided through a certified treatment program or by a certified treatment provider and is not abusing alcohol or any other drug.
    - b. It is in the best interest of the child for the party who committed the battery or abuse to be awarded joint or sole legal custody based on a consideration of the factors under sub. (5)(am).
2. If the court finds under subd. 1. that both parties engaged in a pattern or serious incident of interspousal battery, as described under s. 940.19 or 940.20(1m), or domestic abuse, as defined in s. 813.12(1)(am), the party who engaged in the battery or abuse for purposes of the presumption under subd. 1. is the party that the court determines was the primary physical aggressor. Except as provided in subd. 3., in determining which party was the primary physical aggressor, the court shall consider all of the following:
  - a. Prior acts of domestic violence between the parties.
  - b. The relative severity of the injuries, if any, inflicted upon a party by the other party in any of the prior acts of domestic violence under subd. 2. a.

c. The likelihood of future injury to either of the parties resulting from acts of domestic violence.

d. Whether either of the parties acted in self-defense in any of the prior acts of domestic violence under subd. 2. a.

e. Whether there is or has been a pattern of coercive and abusive behavior between the parties.

f. Any other factor that the court considers relevant to the determination under this subdivision.

3. If the court must determine under subd. 2. which party was the primary physical aggressor and one, but not both, of the parties has been convicted of a crime that was an act of domestic abuse, as defined in [s. 813.12\(1\)\(am\)](#), with respect to the other party, the court shall find the party who was convicted of the crime to be the primary physical aggressor.

4. The presumption under subd. 1. does not apply if the court finds that both parties engaged in a pattern or serious incident of interspousal battery or domestic abuse but the court determines that neither party was the primary physical aggressor.

(e)1. In this paragraph, “service member” means a member of the national guard or of a reserve unit of the U.S. armed forces.

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

**(3) Custody to agency or relative.** (a) If the interest of any child demands it, and if the court finds that neither parent is able to care for the child adequately or that neither parent is fit and proper to have the care and custody of the child, the court may declare the child to be in need of protection or services and transfer legal custody of the child to a relative of the child, as defined in [s. 48.02\(15\)](#), to a county department, as defined under [s. 48.02\(2g\)](#), to a licensed child welfare agency, or, in a county having a population of 500,000 or more, the department of children and families. If the court transfers legal custody of a child under this subsection, in its order the court shall notify the parents of any applicable grounds for termination of parental rights under [s. 48.415](#). If the court transfers legal custody under this section to an agency, the court shall also refer the matter to the court intake worker, as defined in [s. 48.02\(3\)](#), who shall conduct an inquiry under [s. 48.24](#) to determine whether a petition should be filed under [s. 48.13](#).

(am) If the court transfers legal custody of a child under this subsection, the order transferring custody shall include a finding that placement of the child in his or her home would be contrary to the welfare of the child and a finding that reasonable efforts have been made to prevent the removal of the child from the home, while assuring that the health and safety of the child are the paramount concerns, unless any of the circumstances specified in [s. 48.355\(2d\)\(b\)1. to 5.](#) applies. If the legal custodian appointed under par. (a) is a county department, the court shall order the child into the placement and care responsibility of the county department as required under [42 USC 672\(a\)\(2\)](#) and shall assign the county department primary responsibility for providing services to the child. The court shall make the findings specified in this paragraph on a case-by-case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the court order. A court order that merely references this paragraph without documenting or referencing that specific

information in the court order or an amended court order that retroactively corrects an earlier court order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(b) If the legal custodian appointed under par. (a) is an agency, the agency shall report to the court on the status of the child at least once each year until the child reaches 18 years of age, is returned to the custody of a parent or is placed under the guardianship of an agency. The agency shall file an annual report no less than 30 days before the anniversary of the date of the order. An agency may file an additional report at any time if it determines that more frequent reporting is appropriate. A report shall summarize the child's permanency plan and the recommendations of the review panel under [s. 48.38\(5\)](#), if any.

(c) The court shall hold a hearing to review the permanency plan within 30 days after receiving a report under par. (b). At least 10 days before the date of the hearing, the court shall provide notice of the time, place, and purpose of the hearing to the agency that prepared the report; the child; the child's parents, guardian, and legal custodian; and the child's foster parent, the operator of the facility in which the child is living, or the relative with whom the child is living.

(d) Following the hearing, the court shall make all of the determinations specified under [s. 48.38\(5\)\(c\)](#) and, if it determines that an alternative placement is in the child's best interest, may amend the order to transfer legal custody of the child to another relative, other than a parent, or to another agency specified under par. (a).

(e) The charges for care furnished to a child whose custody is transferred under this subsection shall be pursuant to the procedure under [s. 48.36\(1\)](#) or [938.36\(1\)](#) except as provided in [s. 767.57\(3\)](#).

**(4) Allocation of physical placement.** (a)1. Except as provided under par. (b), if the court orders sole or joint legal custody under sub. (2), the court shall allocate periods of physical placement between the parties in accordance with this subsection.

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

(b) A child is entitled to periods of physical placement with both parents unless, after a hearing, the court finds that physical placement with a parent would endanger the child's physical, mental or emotional health.

(c) No court may deny periods of physical placement for failure to meet, or grant periods of physical placement for meeting, any financial obligation to the child or, if the parties were married, to the former spouse.

(cm) If a court denies periods of physical placement under this section, the court shall give the parent that was denied periods of physical placement the warning provided under [s. 48.356](#).

(d) If the court grants periods of physical placement to more than one parent, it shall order a parent with legal custody and physical placement rights to provide the notice required under [s. 767.481\(1\)](#).

(e) If the court grants periods of physical placement to more than one parent, the court may grant to either or both parents a reasonable amount of electronic communication at reasonable hours during the other parent's periods of physical placement with the child. Electronic communication with the child may be used only to supplement a parent's periods of physical placement with the child. Electronic communication may not be used as a replacement or as a substitute for a parent's periods of physical placement with the child. Granting a parent electronic communication with the child during the other parent's periods of physical placement shall be based on whether it is in the child's best interest and whether equipment for providing electronic communication is reasonably available to both parents. If the court grants electronic communication to a parent whose physical placement with the child is supervised, the court shall also require that the parent's electronic communication with the child be supervised.

**(5) Factors in custody and physical placement determinations.** (am) Subject to pars. (bm) and (c), in determining legal custody and periods of physical placement, the court shall consider all facts relevant to the best interest of the child. The court may not prefer one parent or potential custodian over the other on the basis of the sex or race of the parent or potential custodian. Subject to pars. (bm) and (c), the court shall consider the following factors in making its determination:

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.
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.
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.
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.
5. The child's adjustment to the home, school, religion and community.
6. The age of the child and the child's developmental and educational needs at different ages.
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.
8. The need for regularly occurring and meaningful periods of physical placement to provide predictability and stability for the child.
9. The availability of public or private child care services.

10. The cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party.

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.

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. 48.02(2).

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.

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).

14. Whether either party has or had a significant problem with alcohol or drug abuse.

15. The reports of appropriate professionals if admitted into evidence.

16. Such other factors as the court may in each individual case determine to be relevant.

(bm) If the court finds under sub. (2)(d) that a parent has engaged in a pattern or serious incident of interspousal battery, as described under s. 940.19 or 940.20(1m), or domestic abuse, as defined in s. 813.12(1)(am), the safety and well-being of the child and the safety of the parent who was the victim of the battery or abuse shall be the paramount concerns in determining legal custody and periods of physical placement.

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

**(6) Final order.** (a) If legal custody or physical placement is contested, the court shall state in writing why its findings relating to legal custody or physical placement are in the best interest of the child.

(am) In making an order of joint legal custody, upon the request of one parent the court shall specify major decisions in addition to those specified under s. 767.001(2m).

(b) Notwithstanding s. 767.001(1s), in making an order of joint legal custody, the court may give one party sole power to make specified decisions, while both parties retain equal rights and responsibilities for other decisions.

(c) In making an order of joint legal custody and periods of physical placement, the court may specify one parent as the primary caretaker of the child and one home as the primary home of the child, for the purpose of determining eligibility for aid under s. 49.19 or benefits under ss. 49.141 to 49.161 or for any other purpose the court considers appropriate.

(d) No party awarded joint legal custody may take any action inconsistent with any applicable physical placement order, unless the court expressly authorizes that action.

(e) In an order of physical placement, the court shall specify the right of each party to the physical control of the child in sufficient detail to enable a party deprived of that control to implement any law providing relief for interference with custody or parental rights.

(f) If the court finds under sub. (2)(d) that a party has engaged in a pattern or serious incident of interspousal battery, as described under s. 940.19 or 940.20(1m), or domestic abuse, as defined in s. 813.12(1)(am), the court shall state in writing whether the presumption against awarding joint or sole legal custody to that party is rebutted and, if so, what evidence rebutted the presumption, and why its findings relating to legal custody and physical placement are in the best interest of the child.

(g) If the court finds under sub. (2)(d) that a party has engaged in a pattern or serious incident of interspousal battery, as described under s. 940.19 or 940.20(1m), or domestic abuse, as defined in s. 813.12(1)(am), and the court awards periods of physical placement to both parties, the court shall provide for the safety and well-being of the child and for the safety of the party who was the victim of the battery or abuse. For that purpose the court, giving consideration to the availability of services or programs and to the ability of the party who committed the battery or abuse to pay for those services or programs, shall impose one or more of the following, as appropriate:

1. Requiring the exchange of the child to occur in a protected setting or in the presence of an appropriate 3rd party who agrees by affidavit or other supporting evidence to assume the responsibility assigned by the court and to be accountable to the court for his or her actions with respect to the responsibility.
2. Requiring the child's periods of physical placement with the party who committed the battery or abuse to be supervised by an appropriate 3rd party who agrees by affidavit or other supporting evidence to assume the responsibility assigned by the court and to be accountable to the court for his or her actions with respect to the responsibility.
3. Requiring the party who committed the battery or abuse to pay the costs of supervised physical placement.
4. Requiring the party who committed the battery or abuse to attend and complete, to the satisfaction of the court, treatment for batterers provided through a certified treatment program or by a certified treatment provider as a condition of exercising his or her periods of physical placement.

5. If the party who committed the battery or abuse has a significant problem with alcohol or drug abuse, prohibiting that party from being under the influence of alcohol or any controlled substance when the parties exchange the child for periods of physical placement and from possessing or consuming alcohol or any controlled substance during his or her periods of physical placement.

6. Prohibiting the party who committed the battery or abuse from having overnight physical placement with the child.

7. Requiring the party who committed the battery or abuse to post a bond for the return and safety of the child.

8. Imposing any condition not specified in subs. 1. to 7. that the court determines is necessary for the safety and well-being of the child or the safety of the party who was the victim of the battery or abuse.

**(7) Access to records.** (a) Except under par. (b) or unless otherwise ordered by the court, access to a child's medical, dental and school records is available to a parent regardless of whether the parent has legal custody of the child.

(b) A parent who has been denied periods of physical placement with a child under this section is subject to [s. 118.125\(2\)\(m\)](#) with respect to that child's school records, [s. 51.30\(5\)\(bm\)](#) with respect to the child's court or treatment records, [s. 55.23](#) with respect to the child's records relating to protective services, and [s. 146.835](#) with respect to the child's patient health care records.

**(7m) Medical and medical history information.** (a) In making an order of legal custody, the court shall order a parent who is not granted legal custody of a child to provide to the court medical and medical history information that is known to the parent. The court shall send the information to the physician or other health care provider with primary responsibility for the treatment and care of the child, as designated by the parent who is granted legal custody of the child, and advise the physician or other health care provider of the identity of the child to whom the information relates. The information provided shall include all of the following:

1. The known medical history of the parent providing the information, including specific information about stillbirths or congenital anomalies in the parent's family, and the medical histories, if known, of the parents and siblings of the parent and any sibling of the child who is a child of the parent, except that medical history information need not be provided for a sibling of the child if the parent or other person who is granted legal custody of the child also has legal custody, including joint legal custody, of that sibling.

2. A report of any medical examination that the parent providing the information had within one year before the date of the order.

(am) The physician or other health care provider designated under par. (a) shall keep the information separate from other records kept by the physician or other health care provider. The information shall be assigned an identification number and maintained under the name of the parent who provided the information to the court. The patient health care records of the child that are kept by the physician or other health care provider shall include a reference to that name and identification number. If the child's patient health care records are transferred to another physician or other health care provider or another health care facility, the records containing the information provided under par. (a) shall be transferred along with the child's patient health care records. Notwithstanding [s. 146.819](#), the information provided under par. (a) need not be maintained by a physician or other health care provider after the child reaches age 18.

(b) Notwithstanding [ss. 146.81](#) to [146.835](#), the information shall be kept confidential, except only as follows:

1. The physician or other health care provider with custody of the information, or any other record custodian at the request of the physician or other health care provider, shall have access to the information if, in the professional judgment of the physician or other health care provider, the information may be relevant to the child's medical condition.
2. The physician or other health care provider may release only that portion of the information, and only to a person, that the physician or other health care provider determines is relevant to the child's medical condition.

**(8) Notice in judgment.** A judgment which determines the legal custody or physical placement rights of any person to a minor child shall include notification of the contents of [s. 948.31](#).

**Credits**

<<For credits, see Historical Note field.>>

[Notes of Decisions \(464\)](#)

W. S. A. 767.41, WI ST 767.41

Current through 2013 Wisconsin Act 19, published 6/28/2013.

West's Wisconsin Statutes Annotated  
Marriage and Family (Ch. 765 to 770)  
Chapter 767. Actions Affecting the Family (Refs & Annos)  
Subchapter V. Child Custody, Placement, and Visitation

W.S.A. 767.43

767.43. Visitation rights of certain persons

Effective: January 1, 2007

[Currentness](#)

**(1) Petition; who may file.** Except as provided in subs. (1m) and (2m), upon petition by a grandparent, greatgrandparent, stepparent or person who has maintained a relationship similar to a parent-child relationship with the child, the court may grant reasonable visitation rights to that person if the parents have notice of the hearing and if the court determines that visitation is in the best interest of the child.

**(1m) Exception; homicide conviction.** (a) Except as provided in par. (b), the court may not grant visitation rights under sub. (1) to a person who has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated.

(b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child. The court shall consider the wishes of the child in making the determination.

**(2) Wishes of the child.** Whenever possible, in making a determination under sub. (1), the court shall consider the wishes of the child.

**(2m) When special grandparent provision applicable.** Subsection (3), rather than sub. (1), applies to a grandparent requesting visitation rights under this section if sub. (3)(a) to (c) applies to the child.

**(3) Special grandparent visitation provision.** The court may grant reasonable visitation rights, with respect to a child, to a grandparent of the child if the child's parents have notice of the hearing and the court determines all of the following:

(a) The child is a nonmarital child whose parents have not subsequently married each other.

(b) Except as provided in sub. (4), the paternity of the child has been determined under the laws of this state or another jurisdiction if the grandparent filing the petition is a parent of the child's father.

(c) The child has not been adopted.

(d) The grandparent has maintained a relationship with the child or has attempted to maintain a relationship with the child but has been prevented from doing so by a parent who has legal custody of the child.

(e) The grandparent is not likely to act in a manner that is contrary to decisions that are made by a parent who has legal custody of the child and that are related to the child's physical, emotional, educational or spiritual welfare.

(f) The visitation is in the best interest of the child.

**(3c) Action in which petition filed; alternatives.** A grandparent requesting visitation under sub. (3) may file a petition to commence an independent action for visitation under this chapter or may file a petition for visitation in an underlying action affecting the family under this chapter that affects the child.

**(3m) Pretrial hearing; recommendations.** (a) A pretrial hearing shall be held before the court in an action under sub. (3). At the pretrial hearing the parties may present and cross-examine witnesses and present other evidence relevant to the determination of visitation rights. A record or minutes of the proceeding shall be kept.

(b) On the basis of the information produced at the pretrial hearing, the court shall evaluate the probability of granting visitation rights to a grandparent in a trial and shall so advise the parties. On the basis of the evaluation, the court may make an appropriate recommendation for settlement to the parties.

(c) If a party or the guardian ad litem refuses to accept a recommendation under this subsection, the action shall be set for trial.

(d) The informal hearing under this subsection may be terminated and the action set for trial if the court finds it unlikely that all parties will accept a recommendation under this subsection.

**(4) Paternity determination.** If the paternity of the child has not yet been determined in an action under sub. (3) that is commenced by a person other than a parent of the child's mother but the person filing the petition under sub. (3) has, in conjunction with that petition, filed a petition or motion under [s. 767.80\(1\)\(k\)](#), the court shall make a determination as to paternity before determining visitation rights under sub. (3).

**(5) Interference with visitation rights.** Any person who interferes with visitation rights granted under sub. (1) or (3) may be proceeded against for contempt of court under ch. 785, except that a court may impose only the remedial sanctions specified in [s. 785.04\(1\)\(a\) and \(c\)](#) against that person.

**(6) Modification of order if homicide conviction.** (a) If a person granted visitation rights with a child under this section is convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, the court shall modify the visitation order by denying visitation with the child upon petition, motion or order to show cause by a parent or guardian of the child, or upon the court's own motion, and upon notice to the person granted visitation rights.

(b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child. The court shall consider the wishes of the child in making that determination.

**Credits**

<<For credits, see Historical Note field.>>

[Notes of Decisions \(74\)](#)

W. S. A. 767.43, WI ST 767.43

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West's Wisconsin Statutes Annotated  
Marriage and Family (Ch. 765 to 770)  
Chapter 767. Actions Affecting the Family (Refs & Annos)  
Subchapter V. Child Custody, Placement, and Visitation

W.S.A. 767.44

767.44. Prohibiting visitation or physical placement if a parent kills other parent

Effective: January 1, 2007

[Currentness](#)

**(1) When prohibited.** Notwithstanding [ss. 767.225\(1\)\(am\)](#), [767.41\(1\)](#), [\(4\)](#), and [\(5\)](#), [767.805\(4\)\(a\)](#), and [767.89\(3\)](#) and except as provided in sub. (2), in an action under this chapter that affects a minor child, a court may not grant to the child's parent visitation or physical placement rights with the child if the parent has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of the child's other parent, and the conviction has not been reversed, set aside or vacated.

**(2) When not applicable.** Subsection (1) does not apply if the court determines by clear and convincing evidence that the visitation or periods of physical placement would be in the best interests of the child. The court shall consider the wishes of the child in making the determination.

**Credits**

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W. S. A. 767.44, WI ST 767.44

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Marriage and Family (Ch. 765 to 770)  
Chapter 767. Actions Affecting the Family (Refs & Annos)  
Subchapter V. Child Custody, Placement, and Visitation

W.S.A. 767.451

767.451. Revision of legal custody and physical placement orders

Effective: July 1, 2008

[Currentness](#)

Except for matters under [s. 767.461](#) or [767.481](#), the following provisions are applicable to modifications of legal custody and physical placement orders:

**(1) Substantial modifications.** (a) *Within 2 years after final judgment.* Except as provided under sub. (2), a court may not modify any of the following orders before 2 years after the final judgment determining legal custody or physical placement is entered under [s. 767.41](#), unless a party seeking the modification, upon petition, motion, or order to show cause, shows by substantial evidence that the modification is necessary because the current custodial conditions are physically or emotionally harmful to the best interest of the child:

1. An order of legal custody.
2. An order of physical placement if the modification would substantially alter the time a parent may spend with his or her child.

(b) *After 2-year period.* 1. Except as provided under par. (a) and sub. (2), upon petition, motion or order to show cause by a party, a court may modify an order of legal custody or an order of physical placement where the modification would substantially alter the time a parent may spend with his or her child if the court finds all of the following:

- a. The modification is in the best interest of the child.
- b. There has been a substantial change of circumstances since the entry of the last order affecting legal custody or the last order substantially affecting physical placement.

2. With respect to subd. 1, there is a rebuttable presumption that:

- a. Continuing the current allocation of decision making under a legal custody order is in the best interest of the child.
- b. Continuing the child's physical placement with the parent with whom the child resides for the greater period of time is in the best interest of the child.

3. A change in the economic circumstances or marital status of either party is not sufficient to meet the standards for modification under subd. 1.

**(2) Modification of substantially equal physical placement orders.** Notwithstanding sub. (1):

(a) If the parties have substantially equal periods of physical placement pursuant to a court order and circumstances make it impractical for the parties to continue to have substantially equal physical placement, a court, upon petition, motion, or order to show cause by a party, may modify the order if it is in the best interest of the child.

(b) In any case in which par. (a) does not apply and in which the parties have substantially equal periods of physical placement pursuant to a court order, a court, upon petition, motion, or order to show cause of a party, may modify the order based on the appropriate standard under sub. (1). However, under sub. (1)(b)2., there is a rebuttable presumption that having substantially equal periods of physical placement is in the best interest of the child.

**(2m) Modification of periods of physical placement for failure to exercise physical placement.** Notwithstanding subs. (1) and (2), upon petition, motion or order to show cause by a party, a court may modify an order of physical placement at any time with respect to periods of physical placement if it finds that a parent has repeatedly and unreasonably failed to exercise periods of physical placement awarded under an order of physical placement that allocates specific times for the exercise of periods of physical placement.

**(3) Modification of other physical placement orders.** Except as provided under subs. (1) and (2), upon petition, motion or order to show cause by a party, a court may modify an order of physical placement which does not substantially alter the amount of time a parent may spend with his or her child if the court finds that the modification is in the best interest of the child.

**(3m) Reinstatement of former physical placement allocation and schedule.** If a party is a service member, as defined in [s. 767.41\(2\)\(e\)1.](#), and the court modifies an order of physical placement on the basis that the service member has been or will be called to active duty in the U.S. armed forces, notwithstanding sub. (1) the court shall require in the order that the allocation of periods of physical placement and, if applicable, the physical placement schedule that were in effect before the modification are reinstated immediately upon the service member's discharge or release from active duty.

**(4) Denial of physical placement.** Upon petition, motion or order to show cause by a party or on its own motion, a court may deny a parent's physical placement rights at any time if it finds that the physical placement rights would endanger the child's physical, mental or emotional health.

**(4m) Denial of physical placement for killing other parent.** (a) Notwithstanding subs. (1) to (4), upon petition, motion or order to show cause by a party or on its own motion, a court shall modify a physical placement order by denying a parent physical placement with a child if the parent has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of the child's other parent, and the conviction has not been reversed, set aside or vacated.

(b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that physical placement with the parent would be in the best interests of the child. The court shall consider the wishes of the child in making the determination.

**(5) Reasons for modification.** If either party opposes modification or termination of a legal custody or physical placement order under this section the court shall state, in writing, its reasons for the modification or termination.

**(5m) Factors to consider.** (a) Subject to pars. (b) and (c), in all actions to modify legal custody or physical placement orders, the court shall consider the factors under [s. 767.41\(5\)\(am\)](#), subject to [s. 767.41\(5\)\(bm\)](#), and shall make its determination in a manner consistent with [s. 767.41](#).

(b) In determining the best interest of the child under this section, in addition to the factor under [s. 767.41\(5\)\(am\)12m.](#), the court shall consider whether a stepparent of the child has a criminal record and whether there is evidence that a stepparent of the child 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.

(c) In an action to modify a legal custody order, if a party is a service member, as defined in [s. 767.41\(2\)\(e\)1.](#), the court may not consider as a factor in making a determination whether the service member has been or may be called to active duty in the U.S. armed forces and consequently is, or in the future will be or may be, absent from the service member's home.

**(6) Notice.** No court may enter an order for modification under this section until notice of the petition, motion or order to show cause requesting modification has been given to the child's parents, if they can be found, and to any relative or agency having custody of the child.

**(6m) Parenting plan.** In any action to modify a legal custody or physical placement order under sub. (1), the court may require the party seeking the modification to file with the court a parenting plan under [s. 767.41\(1m\)](#) before any hearing is held.

**(7) Transfer to department.** The court may order custody transferred to the department only if the department agrees to accept custody. If the court orders custody transferred to the department, the order transferring custody shall include the findings and order specified in [s. 767.41\(3\)\(am\)](#).

**(8) Petition, motion, or order to show cause.** A petition, motion, or order to show cause under this section shall include notification of the availability of information under [s. 767.105\(2\)](#).

#### Credits

<<For credits, see Historical Note field.>>

#### [Notes of Decisions \(84\)](#)

W. S. A. 767.451, WI ST 767.451

Current through 2013 Wisconsin Act 19, published 6/28/2013.

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W.S.A. 767.461

767.461. Revisions agreed to by stipulation

Effective: January 1, 2007

[Currentness](#)

If after an initial order is entered under [s. 767.41](#) the parties agree to a modification in an order of physical placement or legal custody and file a stipulation with the court that specifies the agreed upon modification, the court shall incorporate the terms of the stipulation into a revised order of physical placement or legal custody unless the court finds that the modification is not in the best interest of the child.

**Credits**

<<For credits, see Historical Note field.>>

**Editors' Notes**

**COMMENTS--2005 ACT 443, § 166**

Note: Provides an exception to the requirement that the court incorporate the terms of a stipulation to modify physical placement or legal custody into the revised order: unless the court finds the modification is not in the best interest of the child. The exception is based on a court of appeals decision holding that acceptance of a stipulation is not mandatory and that the trial court is not prohibited from examining the best interests of the child. [*Paternity of S.A.*, 165 Wis. 2d 530, 478 N.W.2d 21 (Ct. App. 1991).]

[Notes of Decisions \(2\)](#)

W. S. A. 767.461, WI ST 767.461

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W.S.A. 767.47

767.47. Renumbered 767.87 and amended by 2005 Act 443, § 207, eff. Jan. 1, 2007

[Currentness](#)

**Credits**

<<For credits, see Historical Note field.>>

W. S. A. 767.47, WI ST 767.47

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W.S.A. 767.471

767.471. Enforcement of physical placement orders

Effective: January 1, 2007

[Currentness](#)

**(1) Definitions.** In this section:

(a) “Moving party” means the parent filing a motion under this section, regardless of whether that parent was the petitioner in the action in which periods of physical placement were awarded under [s. 767.41](#).

(b) “Responding party” means the parent upon whom a motion under this section is served, regardless of whether that parent was the respondent in the action in which periods of physical placement were awarded under [s. 767.41](#).

**(2) Who may file.** A parent who has been awarded periods of physical placement under [s. 767.41](#) may file a motion under sub. (3) if any of the following applies:

(a) The parent has had one or more periods of physical placement denied by the other parent.

(b) The parent has had one or more periods of physical placement substantially interfered with by the other parent.

(c) The parent has incurred a financial loss or expenses as a result of the other parent's intentional failure to exercise one or more periods of physical placement under an order allocating specific times for the exercise of periods of physical placement.

**(3) Motion.** (a) The motion shall allege facts sufficient to show the following:

1. The name of the moving party and that the moving party has been awarded periods of physical placement.

2. The name of the responding party.

3. That one or more of the criteria in sub. (2) apply.

(b) The motion shall request the imposition of a remedy or any combination of remedies under sub. (5)(b) and (c). This paragraph does not prohibit a court from imposing a remedy under sub. (5)(b) or (c) if the remedy was not requested in the motion.

(c) A court shall accept any legible motion for an order under this section.

(d) The motion shall be filed under the principal action under which the periods of physical placement were awarded.

(e) A motion under this section is a motion for remedial sanction for purposes of [s. 785.03\(1\)\(a\)](#).

**(4) Service on responding party; response.** Upon the filing of a motion under sub. (3), the moving party shall serve a copy of the motion upon the responding party by personal service in the same manner as a summons is served under [s. 801.11](#). The responding party may respond to the motion either in writing before or at the hearing under sub. (5)(a) or orally at that hearing.

**(5) Hearing; remedies.** (a) The court shall hold a hearing on the motion no later than 30 days after the motion has been served, unless the time is extended by mutual agreement of the parties or upon the motion of a guardian ad litem and the approval of the court. The court may, on its own motion or the motion of any party, order that a guardian ad litem be appointed for the child prior to the hearing.

(b) If at the conclusion of the hearing the court finds that the responding party has intentionally and unreasonably denied the moving party one or more periods of physical placement or that the responding party has intentionally and unreasonably interfered with one or more of the moving party's periods of physical placement, the court :

1. Shall do all of the following:

- a. Issue an order granting additional periods of physical placement to replace those denied or interfered with.
- b. Award the moving party a reasonable amount for the cost of maintaining an action under this section and for attorney fees.

2. May do one or more of the following:

- a. If the underlying order or judgment relating to periods of physical placement does not provide for specific times for the exercise of periods of physical placement, issue an order specifying the times for the exercise of periods of physical placement.
- b. Find the responding party in contempt of court under ch. 785.
- c. Grant an injunction ordering the responding party to strictly comply with the judgment or order relating to the award of physical placement. In determining whether to issue an injunction, the court shall consider whether alternative remedies requested by the moving party would be as effective in obtaining compliance with the order or judgment relating to physical placement.

(c) If at the conclusion of the hearing the court finds that the moving party has incurred a financial loss or expenses as a result of the responding party's failure, intentionally and unreasonably and without adequate notice to the moving party, to exercise one or more periods of physical placement under an order allocating specific times for the exercise of periods of physical placement, the court may issue an order requiring the responding party to pay to the moving party a sum of money sufficient to compensate the moving party for the financial loss or expenses.

(d) Except as provided in par. (b)1. a. and 2. a., the court may not modify an order of legal custody or physical placement in an action under this section.

(e) An injunction issued under par. (b)2. c. is effective according to its terms for the period of time that the moving party requests, but not more than 2 years.

**(6) Enforcement assistance.** (a) If an injunction is issued under sub. (5)(b)2. c., upon request by the moving party the court shall order the sheriff to assist the moving party in executing or serving the injunction.

(b) Within 24 hours after a request by the moving party, the clerk of the circuit court shall send a copy of an injunction issued under sub. (5)(b)2. c. to the sheriff or to any other local law enforcement agency that is the central repository for orders and that has jurisdiction over the responding party's residence. If the responding party does not reside in this state, the clerk shall send a copy of the injunction to the sheriff of the county in which the circuit court is located.

(c) The sheriff or other appropriate local law enforcement agency under par. (b) shall make available to other law enforcement agencies, through a verification system, information on the existence and status of any injunction issued under sub. (5)(b)2.c. The information need not be maintained after the injunction is no longer in effect.

**(8) Penalty.** Whoever intentionally violates an injunction issued under sub. (5)(b)2. c. is guilty of a Class I felony.

#### Credits

<<For credits, see Historical Note field.>>

#### Editors' Notes

#### COMMENTS--2005 ACT 443, § 100

Note: Replaces “petition” with “motion”, “petitioner” with “ moving party”, and “respondent” with “responding party”. This change is intended to avoid the current confusion resulting from using “petition”, “ petitioner”, and “respondent” with reference to both the original petition in the action in which physical placement was ordered and the petition to enforce that order under this section, current [s. 767.242](#).

#### [Notes of Decisions \(6\)](#)

W. S. A. 767.471, WI ST 767.471

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Subchapter V. Child Custody, Placement, and Visitation

W.S.A. 767.481

767.481. Moving the child's residence within or outside the state

Effective: January 1, 2007

[Currentness](#)

**(1) Notice to other parent.** (a) If the court grants periods of physical placement to more than one parent, it shall order a parent with legal custody of and physical placement rights to a child to provide not less than 60 days' written notice to the other parent, with a copy to the court, of his or her intent to:

1. Establish his or her legal residence with the child at any location outside the state.
2. Establish his or her legal residence with the child at any location within this state that is at a distance of 150 miles or more from the other parent.
3. Remove the child from this state for more than 90 consecutive days.

(b) The parent shall send the notice under par. (a) by certified mail. The notice shall state the parent's proposed action, including the specific date and location of the move or specific beginning and ending dates and location of the removal, and that the other parent may object within the time specified in sub. (2)(a).

**(2) Objection; prohibition; mediation.** (a) Within 15 days after receiving the notice under sub. (1), the other parent may send to the parent proposing the move or removal, with a copy to the court, a written notice of objection to the proposed action.

(b) If the parent who is proposing the move or removal receives a notice of objection under par. (a) within 20 days after sending a notice under sub. (1)(a), the parent may not move with or remove the child pending resolution of the dispute, or final order of the court under sub. (3), unless the parent obtains a temporary order to do so under [s. 767.225\(1\)\(bm\)](#).

(c) Upon receipt of a copy of a notice of objection under par. (a), the court shall promptly refer the parents for mediation or other family court services under [s. 767.405](#) and may appoint a guardian ad litem. Unless the parents agree to extend the time period, if mediation or family court services do not resolve the dispute within 30 days after referral, the matter shall proceed under subs. (3) to (5).

**(3) Standards for modification or prohibition if move or removal contested.** (a)1. Except as provided under par. (b), if the parent proposing the move or removal has sole legal or joint legal custody of the child and the child resides with that parent for the greater period of time, the parent objecting to the move or removal may file a petition, motion or order to show cause for

modification of the legal custody or physical placement order affecting the child. The court may modify the legal custody or physical placement order if, after considering the factors under sub. (5), the court finds all of the following:

a. The modification is in the best interest of the child.

b. The move or removal will result in a substantial change of circumstances since the entry of the last order affecting legal custody or the last order substantially affecting physical placement.

2. With respect to subd. 1.:

a. There is a rebuttable presumption that continuing the current allocation of decision making under a legal custody order or continuing the child's physical placement with the parent with whom the child resides for the greater period of time is in the best interest of the child. This presumption may be overcome by a showing that the move or removal is unreasonable and not in the best interest of the child.

b. A change in the economic circumstances or marital status of either party is not sufficient to meet the standards for modification under that subdivision.

3. Under this paragraph, the burden of proof is on the parent objecting to the move or removal.

(b)1. If the parents have joint legal custody and substantially equal periods of physical placement with the child, either parent may file a petition, motion or order to show cause for modification of the legal custody or physical placement order. The court may modify an order of legal custody or physical placement if, after considering the factors under sub. (5), the court finds all of the following:

a. Circumstances make it impractical for the parties to continue to have substantially equal periods of physical placement.

b. The modification is in the best interest of the child.

2. Under this paragraph, the burden of proof is on the parent filing the petition, motion or order to show cause.

(c)1. If the parent proposing the move or removal has sole legal or joint legal custody of the child and the child resides with that parent for the greater period of time or the parents have substantially equal periods of physical placement with the child, as an alternative to the petition, motion or order to show cause under par. (a) or (b), the parent objecting to the move or removal may file a petition, motion or order to show cause for an order prohibiting the move or removal. The court may prohibit the move or removal if, after considering the factors under sub. (5), the court finds that the prohibition is in the best interest of the child.

2. Under this paragraph, the burden of proof is on the parent objecting to the move or removal.

**(4) Guardian ad litem; prompt hearing.** After a petition, motion, or order to show cause is filed under sub. (3), the court shall appoint a guardian ad litem, unless s. 767.407(1)(am) applies, and shall hold a hearing as soon as possible.

**(5) Factors in court's determination.** In making its determination under sub. (3), the court shall consider all of the following factors:

- (a) Whether the purpose of the proposed action is reasonable.
- (b) The nature and extent of the child's relationship with the other parent and the disruption to that relationship which the proposed action may cause.
- (c) The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent.

**(5m) Other factors.** In making a determination under sub. (3):

- (a) The court may consider the child's adjustment to the home, school, religion and community.
- (b) The court may not use the availability of electronic communication as a factor in support of a modification of a physical placement order or in support of a refusal to prohibit a move.

**(6) Notice required for other removals.** (a) Unless the parents agree otherwise, a parent with legal custody and physical placement rights shall notify the other parent before removing the child from his or her primary residence for a period of not less than 14 days.

(b) Notwithstanding par. (a), if notice is required under sub. (1), a parent shall comply with sub. (1).

(c) Except as provided in par. (b), subs. (1) to (5) do not apply to a notice provided under par. (a).

#### **Credits**

<<For credits, see Historical Note field.>>

#### [Notes of Decisions \(9\)](#)

W. S. A. 767.481, WI ST 767.481

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