

State of Wisconsin



2017 Assembly Bill 551

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2017 WISCONSIN ACT 203

AN ACT *to repeal* 767.41 (4) (d); *to amend* 767.001 (1) (k), 767.117 (1) (c), 767.215 (2) (j) 1., 767.225 (1) (bm) and 767.89 (6); *to repeal and recreate* 767.481; and *to create* 767.14, 767.41 (6) (h), 767.805 (4) (am) and 767.89 (3) (bm) of the statutes; **relating to:** relocating with a child who is the subject of a legal custody or physical placement order.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 767.001 (1) (k) of the statutes is amended to read:

767.001 (1) (k) Concerning periods of physical placement or visitation rights to children, including an action to ~~prohibit a move with or the removal of~~ relocate and reside with a child under s. 767.481 ~~(3) (e)~~.

SECTION 2. 767.117 (1) (c) of the statutes is amended to read:

767.117 (1) (c) Unless the action is one under s. 767.001 (1) (g) or (h), without the consent of the other party or an order of the court, relocating and establishing a residence with a minor child of the parties ~~outside the state or more than 150 100 miles from the residence of the other party within the state~~, removing a minor child of the parties from the state for more than 90 consecutive days, or concealing a minor child of the parties from the other party.

SECTION 3. 767.14 of the statutes is created to read:

767.14 Change of address. Within 5 business days after receiving notice of an address change by a party to an action affecting the family, the clerk of circuit court shall enter the new address in the case file for the action.

SECTION 4. 767.215 (2) (j) 1. of the statutes is amended to read:

767.215 (2) (j) 1. ~~Establishing~~ Relocating and establishing a residence with a minor child of the parties ~~outside the state or more than 150 100 miles from the residence of the other party within the state~~.

SECTION 5. 767.225 (1) (bm) of the statutes is amended to read:

767.225 (1) (bm) Allowing a party to ~~move with or remove~~ relocate and reside with a child ~~after a notice of objection has been filed pending a final hearing~~ under s. 767.481 ~~(2) (a) (3)~~.

SECTION 6. 767.41 (4) (d) of the statutes is repealed.

SECTION 7. 767.41 (6) (h) of the statutes is created to read:

767.41 (6) (h) In making an order of legal custody and periods of physical placement, the court shall in writing inform the parents, and any other person granted legal custody of the child, of all of the following:

1. That each parent must notify the other parent, the child support agency, and the clerk of court of the address at which they may be served within 10 business days of moving to that address. The address may be a street or post office address.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

2. That the address provided to the court is the address on which the other parties may rely for service of any motion relating to modification of legal custody or physical placement or to relocating the child's residence.

3. That a parent granted periods of physical placement with the child must obtain a court order before relocating with the child 100 miles or more from the other parent if the other parent also has court-ordered periods of physical placement with the child.

SECTION 8. 767.481 of the statutes is repealed and recreated to read:

767.481 Relocating a child's residence. (1) MOTION; FILING AND SERVING. (a) Except as provided in par. (d), if the court grants any periods of physical placement with a child to both parents and one parent intends to relocate and reside with the child 100 miles or more from the other parent, the parent who intends to relocate and reside with the child shall file a motion with the court seeking permission for the child's relocation.

(b) The motion under par. (a) shall include all of the following:

1. A relocation plan including:
 - a. The date of the proposed relocation.
 - b. The municipality and state of the proposed new residence.
 - c. The reason for the relocation.
 - d. If applicable, a proposed new placement schedule, including placement during the school year, summers, and holidays.
 - e. The proposed responsibility and allocation of costs for each parent for transportation of the child between the parties under any proposed new placement schedule.

2. If applicable, a request for a change in legal custody.

3. Notice to the other parent that, if he or she objects to the relocation, he or she must file and serve, no later than 5 days before the initial hearing, an objection to the relocation and any alternate proposal, including a modification of physical placement or legal custody.

4. An attached "Objection to Relocation" form, furnished by the court, for use by the other parent if he or she objects to the relocation.

(c) The parent filing the motion shall serve a copy of the motion by mail on the other parent at his or her most recent address on file with the court. If the parent filing the motion has actual knowledge that the other parent has a different address from the one on file, the motion shall be served by mail at both addresses.

(d) The requirement to file a motion under par. (a) does not apply if the child's parents already live more than 100 miles apart when a parent proposes to relocate and reside with the child. If the parents already live more than 100 miles apart, the parent who intends to relocate with the child shall serve written notice of his or her intent to relocate on the other parent at least 60 days before relocation. Such written notice shall include the date on

which the parent intends to relocate and the parent's new address.

(2) INITIAL HEARING. (a) Upon the filing of a motion under sub. (1) (a), the court shall schedule an initial hearing to be held within 30 days after the motion is filed and shall provide notice to the parents of the date of the initial hearing. The child may not be relocated pending the initial hearing.

(b) If the court finds at the initial hearing that the parent not filing the motion was properly served and does not appear at the hearing, or appears at the hearing but does not object to the proposed relocation plan, the court shall approve the proposed relocation plan submitted by the parent filing the motion unless the court finds that the proposed relocation plan is not in the best interest of the child.

(c) If the parent not filing the motion appears at the initial hearing and objects to the relocation plan, the court shall do all of the following:

1. Require the parent who objects to respond by stating in writing within 5 business days, if he or she has not already done so, the basis for the objection and his or her proposals for a new placement schedule and transportation responsibilities and costs under sub. (1) (b) 4. and 5. in the event that the court grants the parent filing the motion permission to relocate with the child. The parent who objects shall file the response with the court and serve a copy of the response by mail on the other parent at his or her most recent address on file with the court. If the parent filing the response has actual knowledge that the other parent has a different address from the one on file, the response shall be served by mail to both addresses.

2. Refer the parties to mediation, unless the court finds that attending mediation would cause undue hardship or endanger the health or safety of a party as provided in s. 767.405 (8) (b).

3. Except as provided in s. 767.407 (1) (am), appoint a guardian ad litem for the child. The court shall provide in the order for appointment, however, that if a mediator is ordered under subd. 2. the guardian ad litem is not required to commence investigation on behalf of the child unless the mediator notifies the court that the parties are unable to reach an agreement on the issue.

4. Set the matter for a further hearing to be held within 60 days.

(3) RELOCATION PENDING FINAL HEARING. (a) At the initial hearing, or at any time after the initial hearing but before the final hearing, the court may issue a temporary order under s. 767.225 (1) (bm) to allow the parent proposing the relocation to relocate with the child if the court finds that the relocation is in the child's immediate best interest. The court shall inform the parties, however, that approval of the relocation is subject to revision at the final hearing.

(b) If a court commissioner makes a determination, order, or ruling regarding relocation pending the final hearing under par. (a), either party may seek a review by hearing de novo under s. 757.69 (8). The motion requesting the de novo hearing must be filed with the court within 10 days after the court commissioner orally issues the determination, order, or ruling. The judge shall hold the de novo hearing within 30 days after the motion requesting the de novo hearing is filed, unless the court finds good cause for an extension.

(4) STANDARDS FOR DECIDING RELOCATION MOTIONS. At the final hearing, the court shall decide the matter as follows:

(a) If the proposed relocation only minimally changes or affects the current placement schedule or does not affect or change the current placement schedule, the court shall approve the proposed relocation, set a new placement schedule if appropriate, and allocate the costs of and responsibility for transportation of the child between the parties under the new placement schedule.

(b) In cases other than that specified in par. (a), the court shall, in determining whether to approve the proposed relocation and a new placement schedule, use the following factors:

1. The factors under s. 767.41 (5).

2. A presumption that the court should approve the plan of the parent proposing the relocation if the court determines that the objecting parent has not significantly exercised court-ordered physical placement.

3. A presumption that the court should approve the relocation plan if the court determines that the parent's relocation is related to abuse, as defined in s. 813.122 (1) (a), of the child, as defined in s. 813.122 (1) (b); a pattern or serious incident of interspousal battery, as described under s. 940.19 or 940.20 (1m); or a pattern or serious incident of domestic abuse, as defined in s. 813.12 (1) (am).

(c) If the objecting parent files a responsive motion that seeks a substantial change in physical placement or a change in legal custody, the court shall, in deciding the motion of the objecting parent, use the following factors:

1. The factors under s. 767.41 (5).

2. A presumption against transferring legal custody or the residence of the child to a parent who the court determines has significantly failed to exercise court-ordered physical placement.

3. A presumption that the court should approve the plan of the parent proposing the relocation if the court determines that the parent's relocation is related to abuse, as defined in s. 813.122 (1) (a), of the child, as defined in s. 813.122 (1) (b); a pattern or serious incident of interspousal battery, as described under s. 940.19 or 940.20 (1m); or a pattern or serious incident of domestic abuse, as defined in s. 813.12 (1) (am).

(d) The court shall decide all contested relocation motions and all related motions for modification of legal

custody or physical placement in the best interest of the child. The movant bears the burden of proof in a contested relocation motion or a related motion for modification of legal custody or physical placement except in cases involving a presumption under par. (b) 2. or 3. or (c) 2. or 3. In cases involving a presumption under par. (b) 2. or 3. or (c) 2. or 3., the parent objecting to the relocation shall have the burden of proof in demonstrating the proposed relocation is not in the child's best interest.

(e) If the objecting parent files a responsive motion that seeks a substantial change in physical placement or a change in legal custody, and the parent proposing the relocation withdraws or otherwise fails to pursue his or her relocation motion or the court does not allow the relocation, the court shall proceed on the objecting parent's responsive motion under s. 767.451.

(5) STIPULATIONS. At any time after a motion is filed under sub. (1), if the parties agree that one parent may relocate more than 100 miles away from the other parent, the parties may file a stipulation with the court that specifies that neither parent has any objection to the planned relocation and that sets out any agreed upon modification to legal custody or periods of physical placement, including responsibility and costs for transportation of the child between the parties under a proposed new placement schedule. The court shall incorporate the terms of the stipulation into an order for the relocation or a revised order of legal custody or physical placement, as appropriate, unless the court finds that the modification is not in the best interest of the child.

(6) OTHER NOTICE REQUIRED FOR REMOVALS. Except as otherwise provided in an order or judgment allocating periods of physical placement with a child, a person who has legal custody of and periods of physical placement with the child shall notify any other person who has periods of physical placement with the child before removing the child from the child's residence for a period of more than 14 consecutive days.

(7) APPLICABILITY. (a) The requirements and procedures under this section apply to relocations with or removals of a child in any of the following cases:

1. Cases that are originally commenced on or after the effective date of this subdivision [LRB inserts date].

2. Cases that were originally commenced before the effective date of this subdivision [LRB inserts date], but in which a legal custody or physical placement order is modified on or after the effective date of this subdivision [LRB inserts date].

(b) Except as provided in par. (a) 2., the requirements and procedures under s. 767.481, 2015 stats., apply to moves with or removals of a child in cases that were originally commenced before the effective date of this paragraph [LRB inserts date].

SECTION 9. 767.805 (4) (am) of the statutes is created to read:

767.805 (4) (am) The information set forth in s. 767.41 (6) (h).

SECTION 10. 767.89 (3) (bm) of the statutes is created to read:

767.89 (3) (bm) The information set forth in s. 767.41 (6) (h).

SECTION 11. 767.89 (6) of the statutes is amended to read:

767.89 (6) OTHER APPLICABLE PROVISIONS. Sections 767.41, 767.43, 767.451, 767.481, 767.57, 767.58, 767.59, 767.71, 767.75, 767.76, 767.77, and 767.78, where applicable, apply to a judgment or order under this section.

SECTION 12. Initial applicability.

(1) INFORMATION IN ORDERS REGARDING RELOCATIONS. The treatment of sections 767.41 (4) (d) and (6) (h), 767.805 (4) (am), and 767.89 (3) (bm) of the statutes first applies to judgments or orders for legal custody of and physical placement with a child that are granted in

actions affecting the family, including actions to modify judgments or orders previously granted, that are commenced on the effective date of this subsection.

(2) MOTIONS TO RELOCATE WITH A CHILD. The treatment of sections 767.001 (1) (k) and 767.225 (1) (bm) of the statutes first applies to motions to relocate with a child that are filed in any of the following:

(a) Cases originally commenced on the effective date of this paragraph.

(b) Cases in which legal custody or physical placement is modified on the effective date of this paragraph.

(3) PROHIBITED ACTS DURING THE PENDENCY OF AN ACTION. The treatment of sections 767.117 (1) (c) and 767.215 (2) (j) 1. of the statutes first applies to actions affecting the family, excluding actions for maintenance payments or property division, but including actions to modify judgments or orders previously granted, that are commenced on the effective date of this subsection.