
Wisconsin Legislative Council

ACT MEMO



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April 7, 2022

2021 Wisconsin Act 204
[2021 Assembly Bill 722]

**Entry of Stipulations as
Enforceable Orders Prior to
Judgment in Family Court**

BACKGROUND

In divorce cases or other actions affecting the family, state law requires the final judgment to address various issues, if applicable, such as legal custody, physical placement, division of property, child support, and maintenance. The court may determine these issues and enter a judgment following a trial to the court.

Alternatively, the parties may avoid trial and instead negotiate an agreement that addresses some or all of the issues and submit that agreement to the court for approval. Specifically, under *Keller v. Keller*, 214 Wis. 2d 32 (Ct. App. 1997), a stipulation on legal custody and physical placement that is submitted to the court during the pendency of an action affecting the family is considered to address those issues with finality once approved and entered as a court order.

2021 WISCONSIN ACT 204

2021 Wisconsin Act 204 codifies a court's authority to approve stipulations as a court order during the pendency of certain actions affecting the family and creates a statutory procedure governing the approval of such stipulations. The act generally allows such stipulations, once approved after a required hearing, to serve as enforceable initial orders prior to the final judgment.

Procedure

Under the act, the parties may, prior to obtaining a judgment of divorce, annulment, or legal separation, file a stipulation with the court specifying any agreed-upon terms relating to physical placement, legal custody, child support, property division, maintenance, or related provisions. Before approving the stipulation, the court must hold a hearing on the record with both parties and the child support agency, if a party, to determine the parties' understanding of the stipulation and ensure that both parties intend for its terms to constitute the initial order on the issues addressed. The act requires that each party attend the hearing, though the hearing may be held by telephone, video, or electronic means.

Requirements

With respect to stipulations governing legal custody or physical placement, if approved, the court must incorporate and enter the terms of the stipulation as an enforceable initial order, unless it finds that the terms are not in the child's best interest. Moreover, if the judge finds a parent has engaged in a pattern or serious incident of interspousal battery or domestic abuse, the child's safety and well-being and the victim-parent's safety must be paramount concerns in determining custody and placement. The act

specifies that the current law timelines relating to modification of such orders commence on the date of the order's entry, not the date of the final judgment.¹

For stipulations regarding child support, maintenance, and property division, the act requires the court to comply with other applicable statutory requirements governing those issues before entering the stipulation as an order. After entry, a party seeking modification of a stipulation regarding child support or maintenance must comply with the state law provisions governing modification of judgments or orders addressing those issues. A party seeking relief from a stipulation regarding the division of property must comply with the applicable statute governing relief from judgments or orders, which generally allows a party to re-open a judgment or order based on certain limited grounds, such as fraud or misrepresentation.

Effective date: March 20, 2022

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¹ Current law generally prohibits a court from modifying an initial custody or placement order within two years after the final judgment unless the current conditions are physically or emotionally harmful to the child's best interest.