

State of Wisconsin



2021 Senate Bill 108

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2021 WISCONSIN ACT 161

AN ACT *to amend* 767.41 (2) (e) 1., 767.41 (2) (e) 2., 767.41 (5) (c) and 767.451 (3m); and *to create* chapter 324 of the statutes; **relating to:** a Uniform Deployed Parents Custody and Visitation Act.

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

SECTION 1. Chapter 324 of the statutes is created to read:

CHAPTER 324
DEPLOYED PARENTS
CUSTODY AND VISITATION
SUBCHAPTER I
GENERAL PROVISIONS

324.01 Short title. This chapter may be cited as the Uniform Deployed Parents Custody and Visitation Act.

324.02 Definitions. In this chapter:

(1) "Adult" means an individual who has attained 18 years of age or who is an emancipated minor.

(2) "Child" means any of the following:

(a) An individual who has not attained 18 years of age and who is not an emancipated minor.

(b) An adult son or daughter by birth or adoption, or under the law of this state other than this chapter, who is the subject of a court order concerning custodial responsibility.

(3) "Court" means a tribunal, including an administrative agency, that is authorized under the law of this state other than this chapter to make, enforce, or modify a decision regarding custodial responsibility.

(4) "Custodial responsibility" includes physical placement, legal custody, and visitation.

(5) "Deployed" means subject to a deployment.

(6) "Deploying parent" means a service member who is deployed, or who has been notified of impending deployment, and who is any of the following:

(a) A parent of a child under the law of this state other than this chapter.

(b) An individual who has custodial responsibility for a child under the law of this state other than this chapter.

(7) "Deployment" means the movement or mobilization of a service member for more than 30 days but less than 18 months in accordance with service orders that are designated as unaccompanied, do not authorize dependent travel, or otherwise do not permit the movement of a child to the location to which the service member is deployed.

(8) "Emancipated minor" has the meaning given in s. 48.375 (2) (e).

(9) "Family member" means a grandparent, great-grandparent, or stepparent.

(10) "Legal custody" has the meaning given in s. 767.001 (2).

(11) "Nonparent" means an individual other than a deploying parent or other parent.

(12) "Other parent" means an individual who, in common with a deploying parent, is any of the following:

(a) A parent of a child under the law of this state other than this chapter.

* 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."

(b) An individual who has custodial responsibility for a child under the law of this state other than this chapter.

(13) “Physical placement” has the meaning given in s. 767.001 (5).

(14) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) “Return from deployment” means the conclusion of a service member’s deployment as specified in service orders.

(16) “Service member” means a member of any of the following:

(a) The U.S. armed forces, including any reserve component.

(b) The merchant marine.

(c) The commissioned corps of the U.S. public health service.

(d) The commissioned corps of the national oceanic and atmospheric administration.

(e) The national guard of any state.

(17) “Sign” means to do any of the following with present intent to authenticate or adopt a record:

(a) Execute or adopt a tangible symbol.

(b) Attach to or logically associate with the record an electronic symbol, sound, or process.

(18) “State” means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or possession of the United States.

(19) “Visitation” means rights conferred to an individual to reasonable visitation with a child in accordance with s. 767.43.

324.03 Remedies for noncompliance. In addition to other remedies under the law of this state other than this chapter, if a court finds that a party to a proceeding under this chapter has acted in bad faith or intentionally failed to comply with this chapter or a court order issued under this chapter, the court may assess reasonable attorney fees and costs against the party and order other appropriate relief.

324.04 Jurisdiction. (1) A court may issue an order regarding custodial responsibility under this chapter only if the court has jurisdiction under ch. 822.

(2) If a court has issued a temporary order regarding custodial responsibility under subch. III, the residence of the deploying parent is not changed by reason of the deployment for purposes of ch. 822 during the deployment.

(3) If a court has issued a permanent order regarding custodial responsibility before notice of deployment and the parents modify that order temporarily by agreement under subch. II, the residence of the deploying parent is not changed by reason of the deployment for purposes of ch. 822.

(4) If a court in another state has issued a temporary order regarding custodial responsibility as a result of impending or current deployment, the residence of the deploying parent is not changed by reason of the deployment for purposes of ch. 822.

(5) This section does not prevent a court from exercising temporary emergency jurisdiction under s. 822.24.

324.05 Notification required by deploying parent.

(1) Except as provided in sub. (4) and subject to sub. (3), a deploying parent shall, in a record, notify the other parent of a pending deployment not later than 7 days after the deploying parent receives notice of deployment unless reasonably prevented from doing so by the circumstances of deployment. If the circumstances of deployment prevent giving notification within the 7 days, the deploying parent shall give the notification as soon as reasonably possible.

(2) Except as provided in sub. (4) and subject to sub. (3), the deploying parent and the other parent shall, in a record, provide each other with a plan for fulfilling their respective shares of custodial responsibility during deployment. Each parent shall provide the plan as soon as reasonably possible after the deploying parent gives notification of deployment under sub. (1).

(3) If a court order currently in effect prohibits disclosure of the address or contact information of the other parent, notification of deployment under sub. (1) or notification by the deploying parent of a plan for custodial responsibility during deployment under sub. (2) may be made only to the issuing court. If the address of the other parent is available to the issuing court, the court shall forward the notification to the other parent. The court shall keep confidential the address or contact information of the other parent.

(4) Notification in a record under sub. (1) or (2) is not required if the parents are living in the same residence and both parents have actual notice of the deployment or plan.

(5) In a proceeding regarding custodial responsibility, a court may consider the reasonableness of a parent’s efforts to comply with this section.

324.06 Duty to notify of change of address. (1)

Except as provided in sub. (2), an individual to whom custodial responsibility has been granted during deployment under subch. II or III shall, until the grant is terminated, notify all of the following of any change in the individual’s mailing address or residence:

(a) The deploying parent.

(b) Any other individual with custodial responsibility for the child.

(c) Any court that has issued a custody or child support order concerning the child that is in effect.

(2) If a court order currently in effect prohibits disclosure of the address or contact information of an individual to whom custodial responsibility has been granted, a

notification under sub. (1) may be made only to the court that issued the order. The court shall keep confidential the mailing address or residence of the individual to whom custodial responsibility has been granted.

SUBCHAPTER II

AGREEMENT FOR CUSTODIAL RESPONSIBILITY DURING DEPLOYMENT

324.21 Form of agreement. (1) The parents of a child may enter into a temporary agreement under this subchapter granting custodial responsibility during deployment.

(2) An agreement under sub. (1) shall be in writing and signed by both parents and any nonparent to whom custodial responsibility is granted.

(3) Subject to sub. (4), an agreement under sub. (1) shall, if feasible, do all of the following:

(a) Identify the destination, duration, and conditions of the deployment that is the basis for the agreement.

(b) Specify the allocation of physical placement and legal custody among the deploying parent, the other parent, and any nonparent.

(d) Specify any visitation rights of a nonparent.

(e) If, under the agreement, custodial responsibility is shared by 2 or more individuals, provide a process to resolve any dispute that may arise.

(f) Specify the frequency, duration, and means, including electronic means, by which the deploying parent may have contact with the child, any role to be played by the other parent or by a nonparent in facilitating the contact, and the allocation of any costs of contact.

(g) Specify the contact between the deploying parent and child during the time that the deploying parent is on leave or is otherwise available.

(h) Acknowledge that any party's child support obligation cannot be modified by the agreement and that changing the terms of the obligation during deployment requires modification in the appropriate court.

(i) Specify that the temporary arrangement will terminate in accordance with s. 324.22 (1).

(j) If the agreement is required to be filed under s. 324.25, specify which parent is required to file the agreement.

(4) The omission of any of the items specified in sub. (3) does not invalidate an agreement under this section.

324.22 Nature of authority created by agreement.

(1) An agreement under this subchapter is temporary and does not create an independent, continuing right to physical placement, legal custody, or visitation for an individual to whom custodial responsibility is given. The temporary agreement terminates according to one of the following:

(a) If deployment is for less than 6 months, the temporary agreement terminates immediately after the deploying parent returns.

(b) If deployment is for 6 months or more, the temporary agreement terminates 30 days after the deploying parent returns.

(c) The temporary agreement terminates on a date that has been stipulated by all of the parties to the agreement or by modification under s. 324.23.

(d) The temporary agreement terminates on a date ordered by the court.

(2) A nonparent who has physical placement, legal custody, or visitation by an agreement under this subchapter has standing to enforce the agreement until it has been terminated.

324.23 Modification of agreement. (1) By mutual consent, the parents of a child may modify an agreement regarding custodial responsibility made under this subchapter subject to any visitation rights granted by court order under s. 767.43.

(2) If an agreement is modified under sub. (1) before deployment of a deploying parent, the modification must be in writing and signed by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.

(3) If an agreement is modified under sub. (1) during deployment of a deploying parent, the modification must be agreed to in a record by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.

324.25 Filing agreement with court. If a court order on custodial responsibility or child support is in effect concerning a child who is the subject of an agreement under this subchapter, the agreement shall be filed within a reasonable time with that ordering court. The case number and heading of the underlying action affecting the family under ch. 767 concerning custodial responsibility or child support shall be provided to the court with the agreement.

SUBCHAPTER III

JUDICIAL PROCEDURE FOR GRANTING CUSTODIAL RESPONSIBILITY DURING DEPLOYMENT

324.31 Proceeding for temporary deployment custody order. (1) After a deploying parent receives notice of deployment and until the deployment terminates, a court may issue a temporary order granting custodial responsibility, unless prohibited by the Servicemembers Civil Relief Act, 50 USC Appendix 521 and 522. A court may not issue a permanent order granting custodial responsibility without the consent of the deploying parent.

(2) At any time after a deploying parent receives notice of deployment, the deploying parent or other parent may file a motion regarding custodial responsibility for a child during deployment. The motion shall be filed in an underlying action affecting the family under ch. 767

for custodial responsibility in a court with jurisdiction under s. 324.04 or, if there is no underlying action affecting the family under ch. 767 in a court with jurisdiction under s. 324.04, in a new action for granting custodial responsibility during deployment.

324.32 Expedited hearing. If a motion to grant custodial responsibility is filed under s. 324.31 (2) before a deploying parent deploys, the court shall conduct a hearing within 30 days of filing.

324.33 Testimony by electronic means. In a proceeding under this subchapter, a party or witness who is not reasonably available to appear personally may appear, provide testimony, and present evidence by electronic means unless the court finds good cause to require a personal appearance.

324.34 Effect of prior judicial order or agreement. In a proceeding for a grant of custodial responsibility under this subchapter, all of the following apply:

(1) A prior judicial order designating custodial responsibility in the event of deployment is binding on the court unless the circumstances meet the requirements of the law of this state other than this chapter for modifying a judicial order regarding custodial responsibility.

(2) The court shall enforce a prior written agreement between the parents for designating custodial responsibility in the event of deployment, including an agreement executed under subch. II, unless the court finds that the agreement is contrary to the best interest of the child.

324.345 Best interest of the child. In determining the best interest of the child under this chapter, the court shall consider the factors in custody and physical placement determinations under s. 767.41 (5), with a particular emphasis on maintaining sibling relationships. The court may not grant legal custody, physical placement, or visitation to an individual in a temporary legal custody or physical placement order under this chapter if that individual has previously been denied legal custody, physical placement, visitation, guardianship, or any other custodial rights for the child under ch. 48, 54, 55, or 767.

324.35 Grant of physical placement to nonparent.

(1) On the motion of a deploying parent and in accordance with the law of this state other than this chapter, if it is in the best interest of the child, a court may grant physical placement to a nonparent who is an adult family member of the child or an adult who has maintained a relationship similar to a parent–child relationship with the child.

(2) Unless a grant of physical placement to a nonparent under sub. (1) is agreed to by the other parent, the grant is limited to an amount of time not greater than either of the following:

(a) The amount of time granted to the deploying parent under a permanent legal custody or physical placement order, but the court may add unusual travel time necessary to transport the child.

(b) In the absence of a permanent legal custody or physical placement order that is currently in effect, the amount of time that the deploying parent habitually cared for the child before being notified of deployment, but the court may add unusual travel time necessary to transport the child.

324.37 Nature of authority created by temporary custodial responsibility order. (1) A grant of authority under this subchapter is temporary and does not create an independent, continuing right to physical placement, legal custody, or visitation in an individual to whom it is granted. The temporary order terminates according to one of the following:

(a) If deployment is for less than 6 months, the temporary order terminates immediately after the deploying parent returns.

(b) If deployment is for 6 months or more, the temporary order terminates 30 days after the deploying parent returns.

(c) The temporary order terminates on a date that has been stipulated by all of the parties to the proceeding.

(d) The temporary order terminates according to a modification or termination under s. 324.395.

(2) A nonparent granted physical placement, legal custody, or visitation under this subchapter has standing to enforce the grant until it is terminated.

324.38 Content of temporary custodial responsibility order. (1) An order granting custodial responsibility under this subchapter shall do all of the following:

(a) Designate the order as temporary.

(b) Identify to the extent feasible the destination, duration, and conditions of the deployment.

(2) If applicable, an order for custodial responsibility under this subchapter shall do all of the following:

(a) Specify the allocation of physical placement, legal custody, and visitation among the deploying parent, the other parent, and any nonparent.

(b) If custodial responsibility is shared by 2 or more individuals under the order, or the order grants physical placement to one or more individuals and visitation to other individuals, provide a process to resolve any dispute that may arise.

(c) Provide for liberal communication between the deploying parent and the child during deployment, including through electronic means, unless contrary to the best interest of the child, and allocate any costs of communications.

(d) Provide for liberal contact between the deploying parent and the child during the time the deploying parent is on leave or otherwise available, unless contrary to the best interest of the child.

(f) Provide that the order will terminate on the applicable date under s. 324.37 (1).

324.39 Order for child support. If the court issues an order granting physical placement under this sub-

chapter, or an agreement granting physical placement has been executed under subch. II, the court may enter a temporary order for child support consistent with the law of this state other than this chapter if the court has jurisdiction under ch. 769.

324.395 Modifying or terminating grant of custodial responsibility to nonparent. Except for an order described in s. 324.34 (1), and consistent with the Servicemembers Civil Relief Act, 50 USC Appendix 521 and 522, on the motion of a deploying parent or other parent or any nonparent to whom physical placement, legal custody, or visitation has been granted, the court may modify or terminate the grant if the modification or termination is consistent with this subchapter and it is in the best interest of the child.

SUBCHAPTER IV
MISCELLANEOUS PROVISIONS

324.42 Uniformity of application and construction. In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the Uniform Deployed Parents Custody and Visitation Act.

324.43 Relation to Electronic Signatures in Global and National Commerce Act. This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 USC 7001 to 7031, except that the chapter does not modify, limit, or supersede 15 USC 7001 (c) or authorize electronic delivery of any of the notices described in 15 USC 7003 (b).

324.44 Savings clause. This chapter does not affect the validity of a temporary court order concerning custodial responsibility during deployment that was entered before the effective date of this section [LRB inserts date].

SECTION 2. 767.41 (2) (e) 1. of the statutes is amended to read:

767.41 (2) (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 has the meaning given in s. 324.02 (16).

SECTION 3. 767.41 (2) (e) 2. of the statutes is amended to read:

767.41 (2) (e) 2. If Except as provided under ch. 324, 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.

SECTION 4. 767.41 (5) (c) of the statutes is amended to read:

767.41 (5) (c) If Except as provided under ch. 324, 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.

SECTION 5. 767.451 (3m) of the statutes is amended to read:

767.451 (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. This subsection does not apply to a temporary agreement or a temporary order under ch. 324.

SECTION 6. Nonstatutory provisions.

(1) The subcommittee of the Wisconsin Court Records Management Committee that develops forms for use in the Wisconsin circuit courts is requested to review ch. 324 and develop and approve forms for an agreement for custodial responsibility during deployment consistent with the requirements under subch. II of ch. 324 and for a motion regarding custodial responsibility for a child during deployment consistent with the requirements under subch. III of ch. 324.

SECTION 7. Initial applicability.

(1) This act first applies to deploying parents who receive notice of deployment, as defined in s. 324.02 (7), on the effective date of this subsection.