



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1037/1
EAW:ahc

2019 BILL

1 AN ACT to amend 767.41 (4) (a) 2.; and to create 767.001 (5m) and 767.41 (4)
2 (a) 3. of the statutes; relating to: requiring equalizing physical placement.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Study Committee on Child Placement and Support. Generally, the bill revises the standard that applies in determining or revising a physical placement schedule to require a court to set a shared placement schedule with substantially equalized periods of physical placement with each parent, subject to certain presumptions.

Under current law, a court must set a physical placement schedule that allows a child to have regularly occurring, meaningful periods of physical placement and that maximizes the amount of time for a child with each parent. The Wisconsin Supreme Court has stated that this standard does not require equal placement for a child with both parents. [Landwehr v. Landwehr, 2006 WI 64.] Also, in determining a physical placement schedule, a court must, in each case, consider a statutory list of best-interest factors.

The bill removes that standard and specifies, in its place, that a court must set a substantially equalized physical placement schedule, modified as appropriate after taking into account in each case the statutory best-interest factors. The bill specifies that

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this presumption is rebutted if a court finds by a preponderance of the evidence, after considering all of the statutory best-interest factors, that equalizing physical placement to the highest degree would not be in the child's best interest. The bill specifies that any allocation of physical placement presumes that the maximum involvement and cooperation of both parents regarding the physical, mental, and emotional well-being of the child is in the best interest of the child.

The bill also specifies that a non-shared physical placement schedule may be ordered only if physical placement of less than 25% to one parent is in the best interest of the child. If a court does not order a shared physical placement schedule in a final order, specific findings of fact as to the reason shared physical placement is not in the best interest of the child must be entered.

The bill defines "shared physical placement" as a court-ordered physical placement schedule under which both parents have periods of physical placement of at least 25%.

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

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

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

6 767.41 (4) (a) 2. ~~In determining the allocation of periods of physical placement,~~
7 ~~the court shall consider each case on the basis of the factors in sub. (5) (am), subject~~
8 ~~to sub. (5) (bm). The~~ Subject to sub. (5) (bm), the court shall set a shared physical
9 placement schedule that allows the child to have regularly occurring, meaningful
10 with substantially equalized periods of physical placement with each parent and
11 that maximizes the amount of time the child may spend with each parent, taking into
12 account geographic separation and accommodations for different households.,
13 modified as appropriate considering the factors under sub. (5) (am). This
14 presumption is rebutted if the court finds by a preponderance of the evidence, after
15 considering all of the factors in sub. (5) (am), subject to sub. (5) (bm), that equalizing
16 physical placement to the highest degree is not in the best interest of the child. The
17 court may not grant physical placement of less than 25 percent to one parent unless

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1 the court finds it is in the best interest of the child. If the court does not order shared
2 physical placement, the court shall enter specific findings of fact as to the reason
3 shared physical placement is not in the best interest of the child.

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

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

8 (END)