

2015–16 WISCONSIN STATUTES & ANNOTATIONS

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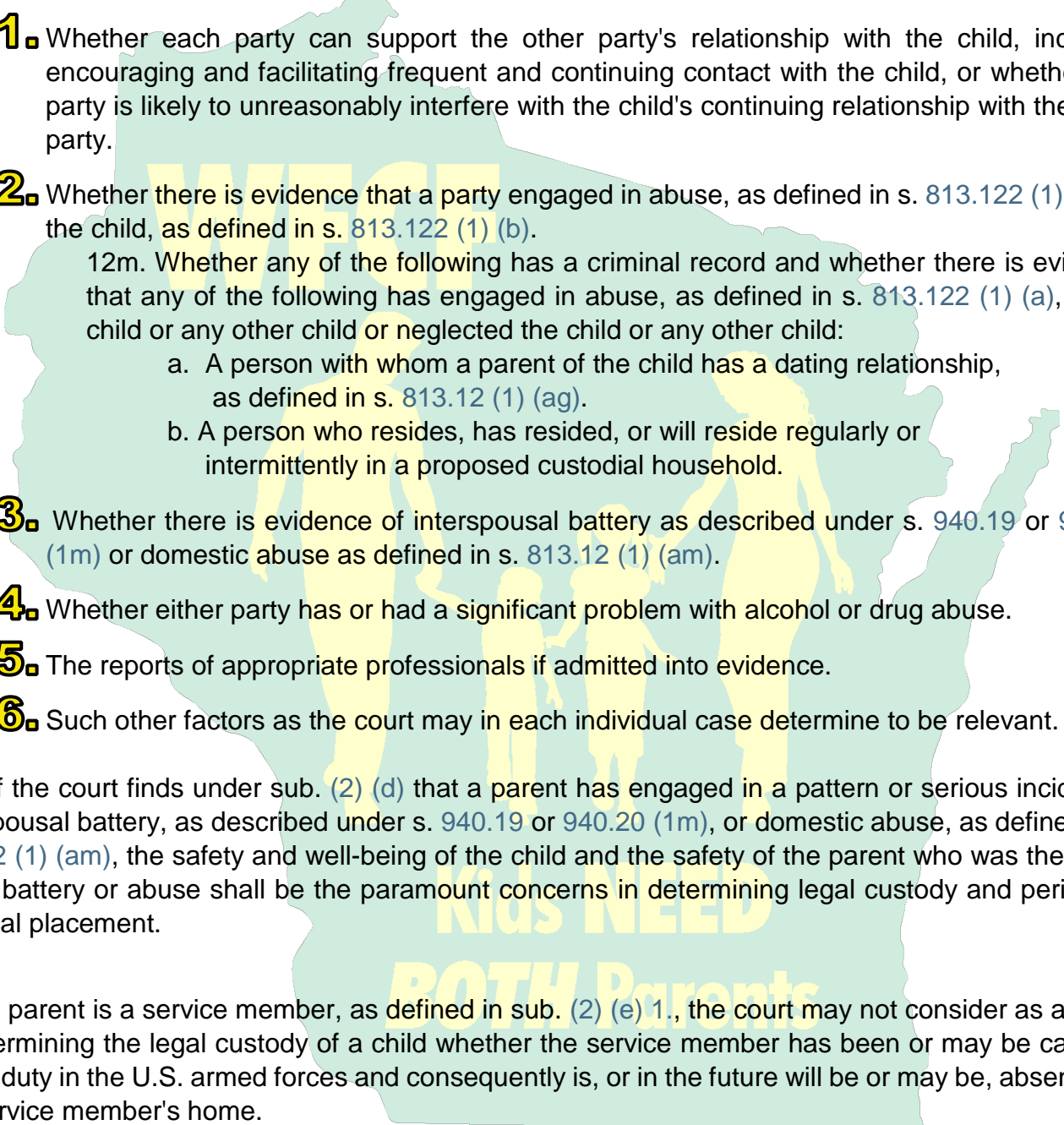
CHAPTER 767 ACTIONS AFFECTING THE FAMILY SUBCHAPTER V CHILD CUSTODY, PLACEMENT, AND VISITATION

767.41(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.

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- 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. 813.122 (1) (b).
 - 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.

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CHAPTER 767

ACTIONS AFFECTING THE FAMILY

SUBCHAPTER V
CHILD CUSTODY, PLACEMENT, AND VISITATION

767.41 Custody and physical placement.

NOTE: Chapter 767 was substantially renumbered and revised by 2005 Wis. Act 443. Explanatory notes are contained in the Act.

(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. 813.122 (1) (b), 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.

(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.

(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.