



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-1931/1
EAW:amn

2021 SENATE BILL 112

February 18, 2021 - Introduced by Senators BERNIER, BALLWEG, WIMBERGER and NASS, cosponsored by Representatives BROOKS, BRANDTJEN, DITTRICH, MOSES, MURPHY, MURSAU, SKOWRONSKI, TUSLER, WICHGERS and SPIROS. Referred to Committee on Human Services, Children and Families.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to repeal* 767.41 (5) (am) 15. and 16.; *to amend* 767.225 (1) (am), 767.41
2 (5) (am) (intro.), 767.41 (6) (a) and 767.451 (5m) (b); and *to repeal and*
3 *recreate* 767.41 (5) (am) 3. to 14. of the statutes; **relating to:** factors relating
4 to the physical placement of a child.

Analysis by the Legislative Reference Bureau

Under current law, in an action affecting a family that involves a child, the court is required to determine the legal custody and the physical placement of the child. Current law requires the court to set a physical placement schedule that allows a child to have regularly occurring, meaningful periods of physical placement with each parent and that maximizes the amount of time for a child with each parent. In determining a physical placement schedule, a court must, in each case, consider a statutory list of best-interest factors.

This bill specifies that if a court grants less than 25 percent of physical placement to one parent in a temporary or final order in an action affecting the family, specific findings of fact must be entered as to the reason greater physical placement with that parent is not in the best interest of the child.

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The bill also reorganizes the statutory best-interest factors, removing two considerations: the stability in placement and availability of child care services. The bill also specifies that the factors are not necessarily listed in order of importance.

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

1 **SECTION 1.** 767.225 (1) (am) of the statutes is amended to read:

2 767.225 (1) (am) Upon the request of a party, granting periods of physical
3 placement to a party in a manner consistent with s. 767.41. The court shall make
4 a determination under this paragraph within 30 days after the request for a
5 temporary order regarding periods of physical placement is filed. If the court grants
6 physical placement to one parent for less than 25 percent of the time, as determined
7 under s. 49.22 (9), the court shall enter specific findings of fact as to the reasons that
8 a greater allocation of physical placement with that parent is not in the best interests
9 of the child.

10 **SECTION 2.** 767.41 (5) (am) (intro.) of the statutes is amended to read:

11 767.41 (5) (am) (intro.) Subject to pars. (bm) and (c), in determining legal
12 custody and periods of physical placement, the court shall consider all facts relevant
13 to the best interest of the child. The court may not prefer one parent or potential
14 custodian over the other on the basis of the sex or race of the parent or potential
15 custodian. Subject to pars. (bm) and (c), the court shall consider all of the following
16 factors, which are not necessarily listed in order of importance, in making its
17 determination:

18 **SECTION 3.** 767.41 (5) (am) 3. to 14. of the statutes are repealed and recreated
19 to read:

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1 767.41 (5) (am) 3. The cooperation and communication between the parties and
2 whether either party unreasonably refuses to cooperate or communicate with the
3 other party.

4 4. Whether each party can support the other party's relationship with the child,
5 including encouraging and facilitating frequent and continuing contact with the
6 child, or whether one party is likely to unreasonably interfere with the child's
7 continuing relationship with the other party.

8 5. The interaction and interrelationship of the child with his or her siblings,
9 and any other person who may significantly affect the child's best interest.

10 6. The interaction and interrelationship of the child with his or her parent or
11 parents and the amount and quality of time that each parent has spent with the child
12 in the past, any necessary changes to the parents' custodial roles, and any reasonable
13 lifestyle changes that a parent proposes to make to maximize placement with the
14 child.

15 7. Whether any of the following has or had a significant problem with alcohol
16 or drug abuse:

17 a. A party.

18 b. A person with whom a parent of the child has a dating relationship, as
19 defined in s. 813.12 (1) (ag).

20 c. A person who resides, has resided, or will reside regularly or intermittently
21 in a proposed custodial household.

22 8. The child's adjustment to the home, school, religion, and community.

23 9. The age of the child and the child's developmental and educational needs at
24 different ages.

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1 10. Whether the mental or physical health of a party, minor child, or other
2 person living in a proposed custodial household negatively affects the child's
3 intellectual, physical, or emotional well-being.

4 11. Whether any of the following has a criminal record or whether there is
5 evidence that any of the following has engaged in abuse, as defined in s. 813.122 (1)
6 (a), of the child or any other child or neglected the child or any other child:

7 a. A party.

8 b. A person with whom a parent of the child has a dating relationship, as
9 defined in s. 813.12 (1) (ag).

10 c. A person who resides, has resided, or will reside regularly or intermittently
11 in a proposed custodial household.

12 12. Whether there is evidence of interspousal battery, as described under s.
13 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am).

14 13. The reports of appropriate professionals if admitted into evidence.

15 14. Any other factor that the court determines to be relevant.

16 **SECTION 4.** 767.41 (5) (am) 15. and 16. of the statutes are repealed.

17 **SECTION 5.** 767.41 (6) (a) of the statutes is amended to read:

18 767.41 (6) (a) If legal custody or physical placement is contested, the court shall
19 state in writing why its findings relating to legal custody or physical placement are
20 in the best interest of the child. If the court grants physical placement to one parent
21 for less than 25 percent of the time, as determined under s. 49.22 (9), the court shall
22 enter specific findings of fact as to the reasons that a greater allocation of physical
23 placement with that parent is not in the best interests of the child.

24 **SECTION 6.** 767.451 (5m) (b) of the statutes is amended to read:

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1 767.451 **(5m)** (b) In determining the best interest of the child under this
2 section, in addition to the factor under s. 767.41 (5) (am) ~~12m.~~ 11., the court shall
3 consider whether a stepparent of the child has a criminal record and whether there
4 is evidence that a stepparent of the child has engaged in abuse, as defined in s.
5 813.122 (1) (a), of the child or any other child or neglected the child or any other child.

6 **SECTION 7. Initial applicability.**

7 (1) This act first applies to an order regarding physical placement issued on the
8 effective date of this subsection.

9 **SECTION 8. Effective date.**

10 (1) This act takes effect on the first day of the 7th month beginning after
11 publication.

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(END)