



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to amend** 767.41 (4) (a) 2.; and **to create** 767.41 (5) (am) 5m. of the
2 statutes; **relating to:** a presumption that equalizing physical placement to the
3 highest degree is in the child’s best interest.

Analysis by the Legislative Reference Bureau

Under current law, a court must set a physical placement schedule in an action affecting the family 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 and that is based on the best interest of the child. The Wisconsin Supreme Court in *Landwehr v. Landwehr*, 2006 WI 64, 291 Wis. 2d 49, 715 N.W.2d 180, has stated that this standard does not require equal placement for a child with both parents.

This bill removes the current standard for determining a physical placement schedule and instead creates a presumption that equal placement of a child with both parents is in the child’s best interest. The 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 time between parents would not be in a child’s best interest.

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

4 **SECTION 1.** 767.41 (4) (a) 2. of the statutes is amended to read:

1 767.41 (4) (a) 2. In determining the allocation of periods of physical placement,
2 the court shall ~~consider each case on the basis of the factors in sub. (5) (am), subject~~
3 ~~to sub. (5) (bm). The court shall set~~ presume that a placement schedule that allows
4 ~~the child to have regularly occurring, meaningful periods of physical placement with~~
5 ~~each parent and that maximizes~~ equalizes to the highest degree the amount of time
6 the child may spend with each parent, ~~taking into account geographic separation and~~
7 ~~accommodations for different households~~ is in the best interest of the child. The
8 presumption under this subdivision is rebutted if the court finds by a preponderance
9 of the evidence, after considering all of the factors in sub. (5) (am), subject to sub. (5)
10 (bm), that equalizing physical placement to the highest degree is not in the child's
11 best interest.

12 **SECTION 2.** 767.41 (5) (am) 5m. of the statutes is created to read:

13 767.41 (5) (am) 5m. The geographic separation of the parties.

14 **SECTION 3. Initial applicability.**

15 (1) This act first applies to actions or proceedings that are commenced on the
16 effective date of this subsection.

17 **(END)**