



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-4359/1
EAW:jld&amn

2017 SENATE BILL 448

October 12, 2017 - Introduced by Senators HARSDORF, DARLING, L. TAYLOR, OLSEN, MARKLEIN and BEWLEY, cosponsored by Representatives RODRIGUEZ, BALLWEG, BILLINGS, BORN, DUCHOW, MURSAU, STEFFEN, TUSLER and PRONSCHINSKE. Referred to Committee on Judiciary and Public Safety.

1 **AN ACT to repeal** 767.41 (4) (d); **to amend** 767.001 (1) (k), 767.117 (1) (c), 767.215
2 (2) (j) 1., 767.225 (1) (bm) and 767.89 (6); **to repeal and recreate** 767.481; and
3 **to create** 767.14, 767.41 (6) (h), 767.805 (4) (am) and 767.89 (3) (bm) of the
4 statutes; **relating to:** relocating with a child who is the subject of a legal
5 custody or physical placement order.

Analysis by the Legislative Reference Bureau

This bill changes the procedures for relocating a child's residence when a court grants any periods of physical placement with a child to both parents and one parent intends to relocate and reside with the child 100 miles or more from the other parent.

Under current law, if the court grants periods of physical placement to more than one parent, a parent is required to provide at least 60 days' written notice to the court and the other parent of intent to move with the child out of state; move 150 miles or more from the other parent; or remove the child from the state for more than 90 consecutive days. If the other parent objects to the proposed action, he or she may file a notice of objection.

Currently, upon notice of objection, the court must refer the parents for mediation or other family court services and may appoint a guardian ad litem. If the dispute cannot be resolved through mediation, the court must appoint a guardian ad litem and may modify the legal custody or physical placement order to accommodate or prohibit the move. Depending on how custody and placement are allocated between the parents, there are a number of factors that the court must consider,

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including whether modification is in the best interest of the child, when determining whether to modify the legal custody or physical placement order affecting the child.

Under the bill, if both parents are granted periods of physical placement with a child, a parent must obtain a court order before relocating with the child 100 miles or more from the other parent, unless the parents already live 100 miles or more away from each other. The bill requires a parent to file a motion to relocate a child's residence and a relocation plan, and requires an initial hearing on the motion to be held within 30 days of filing. If the other parent does not object or appear at the hearing, the court must approve the relocation plan submitted by the parent unless it finds that the plan is not in the best interest of the child. Under the bill, if the parents already live 100 miles or more away from each other, a parent proposing to relocate with a child must provide 60 days' written notice to the other parent.

If the other parent objects to the relocation, the court must require a response from the objecting parent, refer the parties to mediation, appoint a guardian ad litem, and set the matter for a second hearing to be held within 60 days. After the initial hearing but before the final hearing, the court may allow a parent to relocate with the child, subject to revision at the final hearing, if the court finds that the relocation is in the child's best interest. Under the bill, if the proposed relocation plan does not affect the existing placement schedule or only minimally affects the existing placement schedule, the court is required to approve the proposed relocation. If the proposed relocation will have more than a minimal effect on the existing placement schedule, the court is required to consider the factors in custody and physical placement determinations. Under the bill, there is a presumption in favor of granting the motion to relocate the child if the objecting parent has not significantly exercised court-ordered physical placement or if the move is related to abuse.

At any time after a motion for relocation of a child is filed, the bill allows the parties to file a stipulated agreement with the court that specifies that neither parent has any objection to the planned relocation and that sets out any agreed upon modification to legal custody or periods of physical placement. The bill requires the court to incorporate the terms of the stipulation into an order for relocation or revised order of legal custody or physical placement, unless the court finds that the modification is not in the best interest of the child.

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

1 **SECTION 1.** 767.001 (1) (k) of the statutes is amended to read:

2 767.001 (1) (k) Concerning periods of physical placement or visitation rights
3 to children, including an action to ~~prohibit a move with or the removal of~~ relocate and
4 reside with a child under s. 767.481 (3)(e).

5 **SECTION 2.** 767.117 (1) (c) of the statutes is amended to read:

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1 767.117 (1) (c) Unless the action is one under s. 767.001 (1) (g) or (h), without
2 the consent of the other party or an order of the court, relocating and establishing
3 a residence with a minor child of the parties ~~outside the state or more than 150~~ 100
4 miles from the residence of the other party ~~within the state~~, removing a minor child
5 of the parties from the state for more than 90 consecutive days, or concealing a minor
6 child of the parties from the other party.

7 **SECTION 3.** 767.14 of the statutes is created to read:

8 **767.14 Change of address.** Within 5 business days after receiving notice of
9 an address change by a party to an action affecting the family, the clerk of circuit
10 court shall enter the new address in the case file for the action.

11 **SECTION 4.** 767.215 (2) (j) 1. of the statutes is amended to read:

12 767.215 (2) (j) 1. ~~Establishing~~ Relocating and establishing a residence with a
13 minor child of the parties ~~outside the state or more than 150~~ 100 miles from the
14 residence of the other party ~~within the state~~.

15 **SECTION 5.** 767.225 (1) (bm) of the statutes is amended to read:

16 767.225 (1) (bm) Allowing a party to ~~move with or remove~~ relocate and reside
17 with a child ~~after a notice of objection has been filed pending a final hearing~~ under
18 s. 767.481 (2) (a) (3).

19 **SECTION 6.** 767.41 (4) (d) of the statutes is repealed.

20 **SECTION 7.** 767.41 (6) (h) of the statutes is created to read:

21 767.41 (6) (h) In making an order of legal custody and periods of physical
22 placement, the court shall in writing inform the parents, and any other person
23 granted legal custody of the child, of all of the following:

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1 1. That each parent must notify the other parent, the child support agency, and
2 the clerk of court of the address at which they may be served within 10 business days
3 of moving to that address. The address may be a street or post office address.

4 2. That the address provided to the court is the address on which the other
5 parties may rely for service of any motion relating to modification of legal custody or
6 physical placement or to relocating the child's residence.

7 3. That a parent granted periods of physical placement with the child must
8 obtain a court order before relocating with the child 100 miles or more from the other
9 parent if the other parent also has court-ordered periods of physical placement with
10 the child.

11 **SECTION 8.** 767.481 of the statutes is repealed and recreated to read:

12 **767.481 Relocating a child's residence. (1) MOTION; FILING AND SERVING.**

13 (a) Except as provided in par. (d), if the court grants any periods of physical
14 placement with a child to both parents and one parent intends to relocate and reside
15 with the child 100 miles or more from the other parent, the parent who intends to
16 relocate and reside with the child shall file a motion with the court seeking
17 permission for the child's relocation.

18 (b) The motion under par. (a) shall include all of the following:

19 1. A relocation plan including:

20 a. The date of the proposed relocation.

21 b. The municipality and state of the proposed new residence.

22 c. The reason for the relocation.

23 d. If applicable, a proposed new placement schedule, including placement
24 during the school year, summers, and holidays.

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1 e. The proposed responsibility and allocation of costs for each parent for
2 transportation of the child between the parties under any proposed new placement
3 schedule.

4 2. If applicable, a request for a change in legal custody.

5 3. Notice to the other parent that, if he or she objects to the relocation, he or
6 she must file and serve, no later than 5 days before the initial hearing, an objection
7 to the relocation and any alternate proposal, including a modification of physical
8 placement or legal custody.

9 4. An attached "Objection to Relocation" form, furnished by the court, for use
10 by the other parent if he or she objects to the relocation.

11 (c) The parent filing the motion shall serve a copy of the motion by mail on the
12 other parent at his or her most recent address on file with the court. If the parent
13 filing the motion has actual knowledge that the other parent has a different address
14 from the one on file, the motion shall be served by mail at both addresses.

15 (d) The requirement to file a motion under par. (a) does not apply if the child's
16 parents already live more than 100 miles apart when a parent proposes to relocate
17 and reside with the child. If the parents already live more than 100 miles apart, the
18 parent who intends to relocate with the child shall serve written notice of his or her
19 intent to relocate on the other parent at least 60 days before relocation. Such written
20 notice shall include the date on which the parent intends to relocate and the parent's
21 new address.

22 **(2) INITIAL HEARING.** (a) Upon the filing of a motion under sub. (1) (a), the court
23 shall schedule an initial hearing to be held within 30 days after the motion is filed
24 and shall provide notice to the parents of the date of the initial hearing. The child
25 may not be relocated pending the initial hearing.

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1 (b) If the court finds at the initial hearing that the parent not filing the motion
2 was properly served and does not appear at the hearing, or appears at the hearing
3 but does not object to the proposed relocation plan, the court shall approve the
4 proposed relocation plan submitted by the parent filing the motion unless the court
5 finds that the proposed relocation plan is not in the best interest of the child.

6 (c) If the parent not filing the motion appears at the initial hearing and objects
7 to the relocation plan, the court shall do all of the following:

8 1. Require the parent who objects to respond by stating in writing within 5
9 business days, if he or she has not already done so, the basis for the objection and his
10 or her proposals for a new placement schedule and transportation responsibilities
11 and costs under sub. (1) (b) 4. and 5. in the event that the court grants the parent
12 filing the motion permission to relocate with the child. The parent who objects shall
13 file the response with the court and serve a copy of the response by mail on the other
14 parent at his or her most recent address on file with the court. If the parent filing
15 the response has actual knowledge that the other parent has a different address from
16 the one on file, the response shall be served by mail to both addresses.

17 2. Refer the parties to mediation, unless the court finds that attending
18 mediation would cause undue hardship or endanger the health or safety of a party
19 as provided in s. 767.405 (8) (b).

20 3. Except as provided in s. 767.407 (1) (am), appoint a guardian ad litem for the
21 child. The court shall provide in the order for appointment, however, that if a
22 mediator is ordered under subd. 2. the guardian ad litem is not required to commence
23 investigation on behalf of the child unless the mediator notifies the court that the
24 parties are unable to reach an agreement on the issue.

25 4. Set the matter for a further hearing to be held within 60 days.

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1 **(3) RELOCATION PENDING FINAL HEARING.** (a) At the initial hearing, or at any time
2 after the initial hearing but before the final hearing, the court may issue a temporary
3 order under s. 767.225 (1) (bm) to allow the parent proposing the relocation to
4 relocate with the child if the court finds that the relocation is in the child's immediate
5 best interest. The court shall inform the parties, however, that approval of the
6 relocation is subject to revision at the final hearing.

7 (b) If a court commissioner makes a determination, order, or ruling regarding
8 relocation pending the final hearing under par. (a), either party may seek a review
9 by hearing de novo under s. 757.69 (8). The motion requesting the de novo hearing
10 must be filed with the court within 10 days after the court commissioner orally issues
11 the determination, order, or ruling. The judge shall hold the de novo hearing within
12 30 days after the motion requesting the de novo hearing is filed, unless the court finds
13 good cause for an extension.

14 **(4) STANDARDS FOR DECIDING RELOCATION MOTIONS.** At the final hearing, the court
15 shall decide the matter as follows:

16 (a) If the proposed relocation only minimally changes or affects the current
17 placement schedule or does not affect or change the current placement schedule, the
18 court shall approve the proposed relocation, set a new placement schedule if
19 appropriate, and allocate the costs of and responsibility for transportation of the
20 child between the parties under the new placement schedule.

21 (b) In cases other than that specified in par. (a), the court shall, in determining
22 whether to approve the proposed relocation and a new placement schedule, use the
23 following factors:

- 24 1. The factors under s. 767.41 (5).

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1 2. A presumption that the court should approve the plan of the parent
2 proposing the relocation if the court determines that the objecting parent has not
3 significantly exercised court-ordered physical placement.

4 3. A presumption that the court should approve the relocation plan if the court
5 determines that the parent's relocation is related to abuse, as defined in s. 813.122
6 (1) (a), of the child, as defined in s. 813.122 (1) (b); a pattern or serious incident of
7 interspousal battery, as described under s. 940.19 or 940.20 (1m); or a pattern or
8 serious incident of domestic abuse, as defined in s. 813.12 (1) (am).

9 (c) If the objecting parent files a responsive motion that seeks a substantial
10 change in physical placement or a change in legal custody, the court shall, in deciding
11 the motion of the objecting parent, use the following factors:

12 1. The factors under s. 767.41 (5).

13 2. A presumption against transferring legal custody or the residence of the
14 child to a parent who the court determines has significantly failed to exercise
15 court-ordered physical placement.

16 3. A presumption that the court should approve the plan of the parent
17 proposing the relocation if the court determines that the parent's relocation is related
18 to abuse, as defined in s. 813.122 (1) (a), of the child, as defined in s. 813.122 (1) (b);
19 a pattern or serious incident of interspousal battery, as described under s. 940.19 or
20 940.20 (1m); or a pattern or serious incident of domestic abuse, as defined in s. 813.12
21 (1) (am).

22 (d) The court shall decide all contested relocation motions and all related
23 motions for modification of legal custody or physical placement in the best interest
24 of the child. The movant bears the burden of proof in a contested relocation motion
25 or a related motion for modification of legal custody or physical placement except in

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1 cases involving a presumption under par. (b) 2. or 3. or (c) 2. or 3. In cases involving
2 a presumption under par. (b) 2. or 3. or (c) 2. or 3., the parent objecting to the
3 relocation shall have the burden of proof in demonstrating the proposed relocation
4 is not in the child's best interest.

5 (e) If the objecting parent files a responsive motion that seeks a substantial
6 change in physical placement or a change in legal custody, and the parent proposing
7 the relocation withdraws or otherwise fails to pursue his or her relocation motion or
8 the court does not allow the relocation, the court shall proceed on the objecting
9 parent's responsive motion under s. 767.451.

10 **(5) STIPULATIONS.** At any time after a motion is filed under sub. (1), if the parties
11 agree that one parent may relocate more than 100 miles away from the other parent,
12 the parties may file a stipulation with the court that specifies that neither parent has
13 any objection to the planned relocation and that sets out any agreed upon
14 modification to legal custody or periods of physical placement, including
15 responsibility and costs for transportation of the child between the parties under a
16 proposed new placement schedule. The court shall incorporate the terms of the
17 stipulation into an order for the relocation or a revised order of legal custody or
18 physical placement, as appropriate, unless the court finds that the modification is
19 not in the best interest of the child.

20 **(6) OTHER NOTICE REQUIRED FOR REMOVALS.** Except as otherwise provided in an
21 order or judgment allocating periods of physical placement with a child, a person who
22 has legal custody of and periods of physical placement with the child shall notify any
23 other person who has periods of physical placement with the child before removing
24 the child from the child's residence for a period of more than 14 consecutive days.

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1 **(7) APPLICABILITY.** (a) The requirements and procedures under this section
2 apply to relocations with or removals of a child in any of the following cases:

3 1. Cases that are originally commenced on or after the effective date of this
4 subdivision [LRB inserts date].

5 2. Cases that were originally commenced before the effective date of this
6 subdivision [LRB inserts date], but in which a legal custody or physical placement
7 order is modified on or after the effective date of this subdivision [LRB inserts
8 date].

9 (b) Except as provided in par. (a) 2., the requirements and procedures under
10 s. 767.481, 2015 stats., apply to moves with or removals of a child in cases that were
11 originally commenced before the effective date of this paragraph [LRB inserts
12 date].

13 **SECTION 9.** 767.805 (4) (am) of the statutes is created to read:

14 767.805 (4) (am) The information set forth in s. 767.41 (6) (h).

15 **SECTION 10.** 767.89 (3) (bm) of the statutes is created to read:

16 767.89 (3) (bm) The information set forth in s. 767.41 (6) (h).

17 **SECTION 11.** 767.89 (6) of the statutes is amended to read:

18 767.89 (6) **OTHER APPLICABLE PROVISIONS.** Sections 767.41, 767.43, 767.451,
19 767.481, 767.57, 767.58, 767.59, 767.71, 767.75, 767.76, 767.77, and 767.78, where
20 applicable, apply to a judgment or order under this section.

21 **SECTION 12. Initial applicability.**

22 (1) **INFORMATION IN ORDERS REGARDING RELOCATIONS.** The treatment of sections
23 767.41 (4) (d) and (6) (h), 767.805 (4) (am), and 767.89 (3) (bm) of the statutes first
24 applies to judgments or orders for legal custody of and physical placement with a
25 child that are granted in actions affecting the family, including actions to modify

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1 judgments or orders previously granted, that are commenced on the effective date
2 of this subsection.

3 (2) MOTIONS TO RELOCATE WITH A CHILD. The treatment of sections 767.001 (1)
4 (k) and 767.225 (1) (bm) of the statutes first applies to motions to relocate with a child
5 that are filed in any of the following:

6 (a) Cases originally commenced on the effective date of this paragraph.

7 (b) Cases in which legal custody or physical placement is modified on the
8 effective date of this paragraph.

9 (3) PROHIBITED ACTS DURING THE PENDENCY OF AN ACTION. The treatment of
10 sections 767.117 (1) (c) and 767.215 (2) (j) 1. of the statutes first applies to actions
11 affecting the family, excluding actions for maintenance payments or property
12 division, but including actions to modify judgments or orders previously granted,
13 that are commenced on the effective date of this subsection.

14

(END)