



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-5226/1
EAW:jld

2017 SENATE BILL 736

January 29, 2018 - Introduced by Senators MOULTON and FEYEN, cosponsored by Representatives BERNIER, R. BROOKS, BORN, BRANDTJEN, KATSMA, KITCHENS, KRUG, MURSAU, NOVAK, PRONSCHINSKE, ROHRKASTE, SCHRAA, TAUCHEN, TITTL, THIESFELDT and TUSLER. Referred to Committee on Judiciary and Public Safety.

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

This bill creates a presumption that equalizing physical placement to the highest degree between parents in an action affecting the family is in the child's best interest.

Under current law, in an action affecting the family, such as a divorce or a paternity action, a court must determine the legal custody of a minor child based on the best interest of the child. In current law, there is a presumption that joint legal custody is in the child's best interest. The court also must allocate periods of physical placement between the parties. The court is required to 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 consideration geographic separation and accommodations for different households. The court may deny periods of physical placement with a parent only if the court finds that the physical placement would endanger the child's physical, mental, or emotional health. When determining custody and periods of physical placement, the court is required, under current law, to consider a number of factors, such as the wishes of the child and of the parties, the interaction and interrelationship of the child with his or her parents, the amount and quality of time that each party has spent with the child in the past, the child's

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adjustment to the home, school, and community, and the cooperation and communication between the parties.

This bill provides that, when the court allocates periods of physical placement, instead of maximizing the amount of time a child may spend with each parent, taking into consideration geographic separation and accommodations for different households, the court must presume that a placement schedule that equalizes to the highest degree the amount of time the child may spend with each parent is in the child's best interest. This presumption may be rebutted if the court finds by a preponderance of the evidence, after considering the custody and placement factors, that equalizing physical placement would not be in the child's best interest. The bill also makes the geographic separation of the parties an additional custody and placement factor for the court to consider in every case when determining custody and periods of physical placement.

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

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

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

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

14 767.41 (5) (am) 5m. The geographic separation of the parties.

15 **SECTION 3. Initial applicability.**

