

# State of Wisconsin



2021 Senate Bill 112

Date of enactment: **May 21, 2021**  
Date of publication\*: **May 22, 2021**

## 2021 WISCONSIN ACT 37

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

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

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

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

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

767.41 (5) (am) (intro.) 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 all of the following factors, which are not necessarily listed in order of importance, in making its determination:

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 of the statutes are repealed and recreated to read:

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

4. 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.

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

6. The interaction and interrelationship of the child with his or her parent or parents and 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 lifestyle changes that a parent proposes to make to maximize placement with the child.

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

a. A party.

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

\* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

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

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

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

10. 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.

11. Whether any of the following has a criminal record or 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 party.

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

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

12. 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).

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

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

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

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

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

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

767.451 (5m) (b) In determining the best interest of the child under this section, in addition to the factor under s. 767.41 (5) (am) ~~12m.~~ 11., the court shall consider whether a stepparent of the child has a criminal record and whether there is evidence that a stepparent of the child 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.

**SECTION 7. Initial applicability.**

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

**SECTION 8. Effective date.**

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