



## 2009 SENATE BILL 544

February 17, 2010 – Introduced by Senator PLALE, cosponsored by Representatives SCHNEIDER, PRIDEMORE, VAN AKKEREN and GUNDERSON. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

1     **AN ACT** *to repeal* 767.451 (1) (b) 3.; *to amend* 767.41 (4) (a) 2., 767.41 (6) (a),  
2           767.451 (1) (b) 2. (intro.) and 767.451 (2) (b); *to repeal and recreate* 767.451  
3           (1) (b) 2. a. and 767.451 (1) (b) 2. b.; and *to create* 767.41 (5) (am) 5m. of the  
4           statutes; **relating to:** equalizing physical placement to the highest degree,  
5           requiring the court to state the reasons for ordering sole legal custody or not  
6           equalizing physical placement, and standards for modifying legal custody or  
7           physical placement.

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### ***Analysis by the Legislative Reference Bureau***

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

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custody and periods of physical placement, the court is required, under current law, to consider a number of factors (custody and placement 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 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 is 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.

Under current law, if legal custody or physical placement is contested, the court must state in writing why its findings relating to legal custody or physical placement are in the best interest of the child. Under the bill, if legal custody or physical placement is contested and the court orders sole legal custody or a placement schedule that does not equalize placement between the parties to the highest degree, the court must state both orally and in writing the reasons for its order.

Under current law, after two years after making an initial order of legal custody or physical placement, a court may revise legal custody or physical placement in a manner that substantially alters the time a parent may spend with his or her child if the court finds that the modification is in the best interest of the child and that there has been a substantial change in circumstances since the last order was made. There is a rebuttable presumption that continuing the current allocation of decision making concerning the child and continuing the child's physical placement with the parent with whom the child resides for the greater period of time is in the best interest of the child, and a change in the economic circumstances or marital status of a party is not sufficient to meet the standard for modification. The bill changes the rebuttable presumption that applies to modifications after two years after an initial order of legal custody or physical placement. Under the bill, there is a rebuttable presumption that the standard for modification is met, that is, that modification is in the best interest of the child and that there has been a substantial change in circumstances since the last order was made, if either of the following has occurred: 1) a parent has modified his or her lifestyle or the location of his or her residence to an extent that affects the amount of time the parent is able to care for the child; or 2) a parent has successfully completed parenting classes, a drug or alcohol abuse treatment program, or an anger management program to address a problem that previously hindered his or her ability to care for the child. In addition,

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the bill deletes the provision that makes a change in the economic circumstances or marital status of a party insufficient to meet the standard for modification.

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

16           767.41 (6) (a) If legal custody or physical placement is contested and the court  
17           ~~orders sole legal custody or a placement schedule that does not equalize physical~~  
18           ~~placement between the parties to the highest degree, the court shall state orally and~~  
19           ~~in writing why its findings relating to legal custody or physical placement are in the~~  
20           ~~best interest of the child the reasons for its order.~~

21           **SECTION 4.** 767.451 (1) (b) 2. (intro.) of the statutes is amended to read:

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1           767.451 (1) (b) 2. (intro.) ~~With respect to subd. 1., there~~ There is a rebuttable  
2           presumption that any of the following is sufficient to meet the standards for  
3           modification under subd. 1.:

4           **SECTION 5.** 767.451 (1) (b) 2. a. of the statutes is repealed and recreated to read:

5           767.451 (1) (b) 2. a. A parent modifying his or her lifestyle or the location of his  
6           or her residence to an extent that affects the amount of time the parent is able to care  
7           for the child.

8           **SECTION 6.** 767.451 (1) (b) 2. b. of the statutes is repealed and recreated to read:

9           767.451 (1) (b) 2. b. A parent having successfully completed parenting classes,  
10          a drug or alcohol abuse treatment program, or an anger management program to  
11          address a problem that previously hindered the parent's ability to care for the child.

12          **SECTION 7.** 767.451 (1) (b) 3. of the statutes is repealed.

13          **SECTION 8.** 767.451 (2) (b) of the statutes is amended to read:

14          767.451 (2) (b) In any case in which par. (a) does not apply and in which the  
15          parties have substantially equal periods of physical placement pursuant to a court  
16          order, a court, upon petition, motion, or order to show cause of a party, may modify  
17          the order based on the appropriate standard under sub. (1). ~~However, under sub. (1)~~  
18          ~~(b) 2., there is a rebuttable presumption that having substantially equal periods of~~  
19          ~~physical placement is in the best interest of the child.~~

20          **SECTION 9. Initial applicability.**

21          (1) This act first applies to actions or proceedings, including actions or  
22          proceedings to modify a judgment or order previously granted, that are commenced  
23          on the effective date of this subsection.

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(END)