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# Budget Briefs

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## JOINT LEGAL CUSTODY

### INTRODUCTION

The biennial state budget act (1999 Wisconsin Act 9), passed by the legislature and signed into law by Governor Tommy Thompson on October 27, 1999, changes the determination of legal custody and physical placement of children in actions for annulment, divorce, or legal separation. The same provisions, which take effect May 1, 2000, will also apply to paternity cases, custody actions, or physical placement actions in which the parents have voluntarily acknowledged paternity.

### LEGAL CUSTODY DECISIONS

Act 9 states that, while a custody decision must still be based on the child's best interest, "the court shall presume that joint legal custody is in the best interest of the child." The court may give legal custody to one party only if both parties agree or if one party requests sole custody and the court finds at least one of the following situations: 1) one party is not capable of performing parental responsibilities or does not wish to have an active role in raising the child; 2) one or more conditions exist that would substantially interfere with the exercise of joint custody; or 3) the parties will not be able to cooperate in future decision making for joint legal custody. In addition, the court may not give sole legal custody to a party who unreasonably refuses to cooperate with the other party. Evidence of child abuse, spousal battery, or domestic abuse creates a rebuttable presumption that the parties will not be able to cooperate.

### ALLOCATION OF PHYSICAL PLACEMENT

Under Act 9, the court will still be required to allocate periods of physical placement between parties, based on factors specified by statute. The factors currently considered in placement, such as the child's wishes, the relationship between the child and the parents, and the child's adjustment to surroundings, will be continued with a few modifications. One new requirement is that parental wishes must be formally indicated by an agreement between the parties, a proposed parenting plan, or a legal custody or placement proposal submitted to the court. A second factor dealing with unreasonable interference is modified to cover questions about whether one party can support the other's relationship with the child, including matters such as frequent and continuing contact or interference with the continuing relationship between the child and the second parent.

New factors the court will consider in physical placement include: the age of the child and child's changing developmental and educational needs; cooperation and communication between the parties; amount and quality of time spent with the child in the past; life-style changes needed to spend time with the child in the future; and the need to provide predictability and stability for the child. The court must set a physical placement schedule that allows the child regular and meaningful placement with each parent and maximizes the amount of time the child spends with each parent.

## **PARENTING PLANS**

Under the new law, if legal custody or physical placement is contested, each parent must submit a parenting plan before any pretrial conference is held. A party who fails to submit such a plan on time waives the right to object to the plan submitted by the other party. The law specifies the information a parenting plan must contain, including who will provide child care, where the child will go to school, the doctor or health care facility to be used by the child, payment of the child's medical expenses, the child's religious commitment, how holidays will be divided, the child's summer schedule, and how the child will be transferred between parties if there is evidence of spousal abuse.

The parenting plan must also include information on where the parent who seeks legal custody or physical placement lives and intends to live for the next two years and where that individual works. If there is evidence that the other parent has engaged in spousal battery or domestic abuse, the parent seeking custody or physical placement is not required to give a specific residential or workplace address, but only a general description of each.

## **ENFORCEMENT**

A parent may petition for enforcement of physical placement if the other parent has denied or substantially interfered with physical placement or has forced the party to incur expenses or financial burdens by failing to assume responsibility for physical placement. The court must accept any legible petition and hold a hearing no later than 30 days after a copy is served on the other parent.

If the court finds the respondent parent has denied or interfered with physical placement, the judge is required to order additional periods of placement and reimbursement of reasonable costs. In addition, the court can order specific times for placement if the underlying order does not make such provision. If a parent intentionally failed to exercise physical placement, the court may order restitution to the other party.

When a parent repeatedly fails to exercise periods of physical placement, a court may modify a physical placement order upon petition. The court also may grant an injunction ordering strict compliance with the original physical placement order effective for not more than two years. Violation of an injunction may lead to a citation for contempt of court, punishable by a fine of up to \$10,000, two years imprisonment, or both.

## **CLASSES ON EFFECTS OF SEPARATION**

Courts may require parties to attend court-approved classes that address child development, how parental separation affects child development, and what parents can do to make the separation less stressful for the child. Class attendance is not a condition to granting a final divorce or paternity judgment, but the court may refuse to hear a custody or physical placement motion of a party who refuses to attend.

## **FOR MORE INFORMATION**

For copies of the provisions affecting joint legal custody, contact the Legislative Reference Bureau at (608) 266-0342. 1999 Wisconsin Act 9 can be found on the Internet at <http://www.legis.state.wi.us/billtext/acts/99acts.html>.