



Budget Briefs

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CHANGES IN DIVORCE LAWS

The biennial state budget act (1999 Wisconsin Act 9), passed by the legislature and signed by Governor Tommy Thompson on October 27, 1999, makes various changes to Wisconsin's divorce laws. Major modifications in the joint custody and physical placement laws are discussed separately in Budget Brief 99-2, and the other changes are discussed here.

APPOINTMENT OF GUARDIAN AD LITEM

Prior to passage of Act 9, if a court had special concern regarding a child's welfare or if legal custody or physical placement of a child was contested, the judge was required to appoint a guardian ad litem to represent the interests of the child. Under the new law, the court would not be required to appoint a guardian ad litem in a contested action to modify legal custody or physical placement if: 1) the proposed modification would not substantially alter the amount of time the parent spends with the child; 2) the court determines that the appointment would not assist the court because the likely determination is clear; or 3) the party seeks the appointment solely for a tactical purpose or delay.

Act 9 requests the Joint Legislative Council to study reforming the guardian ad litem system as it applies to paternity, separation, and divorce. Issues to be studied would include: whether a guardian ad litem should be appointed in every case in which legal custody or physical placement of a child is contested; whether professionals, such as child psychologists or child psychiatrists, should be appointed; and the role, supervision, training, and compensation of the guardian ad litem.

PATERNITY ACTIONS

Under the new law, when the court orders child support in a paternity action, liability for support begins the day after the action is filed, unless the party seeking support shows to the satisfaction of the court that payments should have begun at an earlier date. In those cases, the claimant must prove he or she was induced to delay the action due to: duress or threats; actions, promises, or representations by the other party; or actions taken by the other party to evade paternity proceedings. The claimant must also show that after the inducement ceased, there was no unreasonable delay in filing the action. Support cannot be ordered for any period before the birth of the child.

Effective May 1, 2000, custody and physical placement orders issued in paternity actions or actions where paternity is acknowledged will be governed by the same provisions as those that apply in divorce actions (see Budget Brief 99-2). At the same time, the law expands the applicability of child support provisions for divorce actions to paternity cases.

INTEREST ON UNPAID CHILD SUPPORT

A party ordered to pay child support or family support must pay an interest penalty on any amount in arrears equal to or greater than the amount of support due in one month. Act

9 reduces the interest rate from 1.5% to 1% per month. The reduction first applies to arrearages existing or accruing on May 1, 2000, regardless of the date of the court order on which arrearages was based.

VISITATION OR PLACEMENT IN HOMICIDE CASES

In a divorce action, a court may grant persons, such as grandparents, visitation rights to a child. If an individual eligible for visitation rights is convicted of first- or second-degree intentional homicide of one of the child's parents, that person cannot be granted visitation rights, and previously granted visitation rights will be denied. Likewise, a parent may not be granted visitation or physical placement rights if that individual is convicted of first- or second-degree intentional homicide of the other parent. The court may, however, decide to grant visitation rights or physical placement rights in any of these cases if it determines by clear and convincing evidence it would be in the best interest of the child to do so. The court must consider the wishes of the child in making the determination.

FOR MORE INFORMATION

For copies of of material relating to changes in divorce laws, 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>.