



**WSSFC 2023**

**Substantive Law Track – Session 5**

# **Are You Kid-ding? Child Custody, Placement and Support**

***Presented By:***

*Renee A. Read, Remley Law, S.C., Neenah  
Erica T. Gittings, Wisconsin Divorce Solutions, Madison*

## About the Presenters...

**Renee A. Read** is a shareholder of Remley Law, S.C. in Neenah. She obtained her law degree from Saint Louis University. Her practice is primarily focused on divorce/family law. She also handles collections for professional businesses. Early in her career, she was engaged in general practice in Janesville, WI. She is a Fellow of the Wisconsin Law Foundation and was selected as a Rising Star by Super Lawyers Magazine from 2015-2018. Attorney Read represented District 3 on the State Bar of Wisconsin Board of Governors from 2019-2023 and she was recently elected as a State Bar Delegate to the ABA.

**Erica T. Gittings** is the owner, attorney mediator, and attorney arbitrator at Wisconsin Divorce Solutions. Her entire legal career has been dedicated exclusively to family law. After more than a decade working as a top litigator and leading the nation's largest family law firm, she was fed up with the animosity, stress, and staggering costs that accompany divorce litigation. She now dedicates 100% of her practice to serving as a neutral mediator and arbitrator to provide families with a more collaborative, efficient, and affordable divorce. She has managed hundreds of family law attorneys and individuals going through a separation or divorce. She has worn every hat in the divorce litigation process: attorney advocate, mediator, arbitrator, guardian ad litem, and person going through a divorce. She has extensive experience in complicated financial matters and child-related disputes. Erica is the Dane County Circuit Court Branch 11 Supplemental Court Commissioner.

## **ARE YOU KID-DING? CHILD CUSTODY, PLACEMENT AND SUPPORT**

2023 Wisconsin Solo & Small Firm Conference

October 20, 2023

1:45 pm – 2:35 pm

Presenters:

Atty. Erica T. Gittings, Wisconsin Divorce Solutions LLC, Middleton

Atty. Renee A. Read, Remley Law, S.C., Neenah

### **I. Divorces with Minor Children Basics - See Chapter 767 of the Wisconsin Statutes**

A. Minors - Issues/Topics: When there are minor children in a divorce, these are the topics that must be resolved.

- i. Custody
- ii. Placement
- iii. Support
- iv. Variable Expenses
- v. Health Insurance Coverage and Uninsured Medical Expenses
- vi. Claiming the child for the Child Tax Credit

B. Custody v. Placement

i. Custody: Decision Making

a. Joint or Sole Legal Custody.

1. Joint Legal Custody is the presumption.

*See Sample Language A.*

2. Sole Legal Custody. *See Sample Language B.*

3. Impasse Breaking Authority. All major decisions or specific major decisions.

*See Sample Language C.*

4. Dispute Resolution-mediation requirement. *See Sample Language D.*

5. Method of communication: consider whether a program like Our Family Wizard would be appropriate.

b. Defining Major Decisions.

1. Education, religious instruction, non-emergency medical and dental care, joining the military or marrying before age 18.

2. Additional major decisions that you will commonly see are: extracurricular activities that take place during both party's periods of placement, routine childcare, piercings and tattoos.

3. Parental Autonomy: haircuts, cellphone, changing a child's appearance, activities a child can participate in, attending a church service, seeing a PG-13 or R rated movie.

ii. Placement: Time with the Children.

- a. Primary Placement = one party has less than 92 overnights in a year
- b. Shared Placement = both parties have at least 92 overnights in a year.
- c. Specific guidelines with regard to where the children will be when, and which parent is responsible at each time. Pick up and drop off the children if necessary-who, when, where. Plan for daily and overnight placement on weekdays and weekends both during the school year and non-school days. *See Sample Language E.*
- d. Detailed schedules and plans for holidays and vacations: determine whether the disruption to the default schedule makes sense. Sometimes less is more. *See Sample Language F.*
- e. Additional Language you will commonly see:
  - 1. Right of first refusal. *See Sample Language G.*
  - 2. Repartnering. *See Sample Language H.*
  - 3. Moving less than 100 miles away Language. *See Sample Language I.*

C. Child Support:

- i. *See DCF 150.* Consider:
  - a. Gross incomes of both parties (in particular if shared placement)
  - b. Placement of each party – determine if shared to use shared formula (Shared = each party with at least 92 overnights)
  - c. Number of children
- ii. Formulas:
  - a. Straight (Used for Primary/Split placement)
    - One child: 17%
    - Two children: 25%
    - Three children: 29%
    - Four children: 31%
    - Five + children: 34%
  - b. Shared: Adjusted in proportion to the time each parent has the child
  - c. Serial Family Cases:
    - 1. Supporting more than one family (have dependents with more than one family).
    - 2. Income for later child support orders may be reduced by parent’s earlier duty to support/ legal obligations.
    - 3. “A parent with a legal obligation to support a child in an intact family is a serial family payer for the purpose of calculating a support obligation for children from a subsequent family under the provisions of this subsection and s. DCF 150.04(6) (c).” Wis. Admin. Code DCF § 150.04
  - d. Combination of Split and Shared
  - e. High-Income Payer cases: Adjustment threshold: \$84,000 + per year
  - f. Low-Income Payer cases: Income up to \$1,581/month or \$18,972/year (2021)
  - g. Equivalent Care: See DCF 150.02(10) and DCF 150.035(1)(a)
- iii. Recommended Calculators/Tools:

- a. WI Department of Children and Families:
  - 1. Free!
  - 2. <https://dcf.wisconsin.gov/cs/order/tools>
- b. Divorce Financial Solutions
  - 1. For purchase: Part of their “TaxCalc” program available for purchase from website. <https://divfinsolutions.com/taxcalc/>
  - 2. Free: Child Support Calculator created by Atty. Dan Cross; <https://divfinsolutions.com/free-tools/>
- iv. Hold Open. *See Sample Language K.*
- v. Deviation from Guidelines. *See Sample language L.*
- vi. Annual Adjustment. *See Sample Language M.*

D. Variable Expenses: Expenses that are not covered by child support that are of a substantial cost. *See Sample Language N.*

- i. *See Variable Cost Checklist Green County Family Court*
- ii. *See Alternate Sample N from Attorney Renee Read*
- iii. *See 2<sup>nd</sup> Alternate Sample N: See Circuit Court Form FA-4147V Proposed Parenting Plan*

E. Health Insurance Coverage and Uninsured Medical Expenses. *See Sample Language O.*

- i. The cost to insure is the difference in cost to the person covering the child between a plan including the kids and the costs if the kids were not on the plan.
- ii. Specific language is needed if the children receive Badgercare assistance.
- iii. Uninsured medical/dental costs typically would be equally divided.
- iv. Consider adding language regarding orthodontics and counseling.

F. Child Tax Credit: *See Sample Language P.*

- i. Must be current on support.
- ii. Head of Household remains with the parent with majority placement.

## II. **Advanced Practice Tips and Strategies**

A. **Custody & Placement**:

- 1. Educate your client:
  - a. The law, what to expect, timeline: *See Sample Letter A and Sample Letter B.*
  - b. Substantive:
    - i. Practice the schedule that you want to have.
    - ii. Keep a record of your care and the other parent’s care of the children (bath time, bedtime, morning routines, doctor and dentist appointments, homework, etc.

- iii. Inexperienced or absent parents: parenting classes, demonstration of efforts and refusals.
- c. Method of Communication: Verbally and follow up in writing.
  - i. Send status updates throughout the case.
    - 1. The most recent activity in the case
    - 2. The upcoming events in their case
    - 3. Outstanding tasks that you need the client to complete
    - 4. What they can expect going forward
    - 5. Address outstanding invoices or bills.
- 2. When to hire a custody evaluation expert:
  - a. Each parent wants primary, or one wants primary and the other wants shared.
  - b. Claims of mental health issues/domestic violence issues.
- 3. Early Discovery:
  - a. Requests to Admit, Requests for Interrogatories, Deposition. Consider costs and strategy.
  - b. Obtain text messages, cards, or social media posts where the other parent praises your client as a good parent.
- 4. Think Outside the Box:
  - a. Variations to the traditional schedules we see. Looking to equivalent care.
  - b. Ramping up schedules.

**B. Support:**

- 1. Income available for Support:
  - a. W-2 Earners: box 5 but obtain the last paystub of the prior year and YTD paystub.
    - i. There are a variety of ways that you could calculate variable income:

1. YTD income divided by the number of pay periods
2. Average the last three paystubs
3. Look to prior year's total income
2. Separate bonus and overtime income for direct support
3. End of year true up

b. Business Owners: DCF150.02(16):

i. Determining Income Available for Support Gross Receipts minus the expenses that are reasonably necessary for the operation of the business.

1. Documents needed: Schedule C, business tax returns, and Profit/Loss Statement.
2. Determine how far you need to go back.
3. Just because an expense is deductible for the business for tax purposes doesn't mean (Keep an eye out for accelerated depreciation).
4. Bank account and spending gut check.
5. Hire a professional early on in the case.

### III. Legislative Changes

A. **De Novo Procedures** - Wis. Stat. §767.17

- Creates uniformity for timeframe
- Must have been present for Commissioner hearing
- Excludes stipulations
- No automatic stay of Commissioner order – must specifically seek

**767.17 De novo review.**

(1) RIGHT TO DE NOVO REVIEW. Any decision of a circuit court commissioner under this chapter shall be reviewed by the judge of the branch of court to which the case has been assigned, upon motion of any party. Any determination, order, or ruling by a circuit court commissioner under this chapter may be certified to the branch of court to which the case has been assigned, upon a motion of any party for a hearing de novo. A party is required to be present at the hearing in order to seek a de novo review. The right to seek a de novo review does not apply to stipulations entered into between the parties. Notices requesting a hearing de novo will not stay the order unless the trial court specifically grants a stay of the order.

- (2) **TIME LIMITS.** If a party seeks to have the trial court conduct a hearing de novo of a determination, order, or ruling entered by a court commissioner in an action affecting the family under this chapter, the party shall file a motion for a hearing de novo within 20 calendar days of the oral decision of the court commissioner or within 20 calendar days of the mailing of a written decision or order by the court commissioner if the decision or order was not given orally by the court commissioner at the time of the hearing. As set forth under s. [801.15 \(1\)](#), 20 calendar days are counted consecutively and include weekends and holidays.
- (3) **HEARING.** The court shall hold a hearing de novo no later than 60 days from the date of the filing of the motion under this section, except as otherwise required under s. [767.481](#).

**History:** [2005 a. 443](#); [2021 a. 205](#).

**B. Financial Exchange Provisions - Wis. Stat. §767.54**

- Includes maintenance cases
- Specified deadline
- Clear list of what must be exchange
- Permits redaction within certain parameters

**767.54 Required exchange of financial information.**

- (1) In an action in which the court has ordered a party to pay family support under s. [767.225](#), 2019 stats., or s. [767.531](#), 2019 stats., or child support or maintenance under this chapter, including an action to revise a judgment or order under s. [767.59](#), the court shall require the parties annually to exchange financial information. Information required under this section shall be exchanged no later than May 1 of each calendar year, unless otherwise agreed upon in writing by the parties. The information required to be exchanged shall include all of the following:
  - (a) A complete copy of the party's federal and state income tax return for the prior calendar year, including all W-2 forms and 1099 forms.
  - (b) A year-end paycheck stub from all sources of employment for the prior calendar year.
  - (c) The party's most recent paycheck stub from all sources of employment showing year-to-date gross and net income.
  - (d) Any other documentation of the party's income from all sources for the 12-month period preceding the exchange of information.
- (2) A party may redact or remove the following personally identifying information from documents provided under sub. [\(1\)](#) unless otherwise ordered by the court:
  - (a) The party's home or work address, if the party is participating in the program under s. [165.68](#), or if the party's address is otherwise protected or sealed.
  - (b) The name, date of birth, and address of the party's spouse.



- (c) The name, date of birth, and other personally identifying information of a minor child not related to the other party.
  - (d) Any social security number.
  - (e) An identification number assigned by an employer.
  - (f) A taxpayer identification number assigned by the department of revenue or federal internal revenue service.
  - (g) Any depository account number, investment account number, or other personally identifying number related to any investment tool.
  - (h) A military identification number.
  - (i) Any other personally identifying information that is intended to be used to access services, funds, or benefits of any kind to which an individual is entitled.
  - (j) Any other personally identifying information that is not required to determine the income or financial status of the party.
- (3) Information disclosed under this section is subject to s. [767.127 \(3\)](#). A party who fails to furnish information required by the court under this section may be proceeded against for contempt of court under ch. [785](#). If the court finds that a party has failed to furnish information required under this section, the court may award to the party bringing the action costs and, notwithstanding s. [814.04 \(1\)](#), reasonable attorney fees.

**History:** [2005 a. 443 s. 122](#); [2021 a. 35, 259](#).

**NOTE:** [2005 Wis. Act 443](#) contains explanatory notes.

C. **Permanent Injunction Statutes** - 2021 Wis. Act 256

- Allows all 4 types of injunctions to be ordered permanently under certain circumstances.

1. Wis. Stat. §813.12(4)(d)1m for Domestic Abuse Injunctions

**1m.** Upon request by the petitioner, a judge or circuit court commissioner may order that the injunction is in effect permanently if the respondent has been convicted of a violation of s. 940.225 (1) to (3) in which the petitioner was the crime victim. An order based on a finding under this subdivision is subject to review and modification under s. 813.126 (1m).

2. Wis. Stat. §813.122(5)(d)1m. for Child Abuse Injunctions

**1m.** Upon request by the petitioner, a judge may order that the injunction is in effect permanently if the respondent has been convicted of a violation of s. [948.02](#) or [948.025](#) in which the child victim was the crime victim. An order based on a finding under this subdivision is subject to review and modification under s. [813.126 \(1m\)](#).

3. Wis. Stat. §813.123(5)(d)1m for Individual at Risk Injunctions

1m. Upon request by the petitioner, a judge may order that the injunction is in effect permanently if the respondent has been convicted of a violation of s. 940.225 (1) to (3) in which the individual at risk was the crime victim. An order based on a finding under this subdivision is subject to review and modification under s. 813.126 (1m).

4. Wis. Stat. §813.125(4)(d)1m for Harassment Injunctions

1m. Upon request by the petitioner, a judge or circuit court commissioner may order that the injunction is in effect permanently if the respondent has been convicted of a violation of s. 940.225 (1) to (3) in which the petitioner was the crime victim. An order based on a finding under this subdivision is subject to review and modification under s. 813.126 (1m).

D. **Legal Separations / Commissioner’s Authority** - Wis. Stat. §757.69(1)(p)

- Authority now clear, previously silent.

(p) When assigned to assist in matters affecting the family:

1. Preside at any hearing held to determine whether a judgment of divorce or legal separation shall be granted if both parties to a divorce action state that the marriage is irretrievably broken, or if both parties to a legal separation action state that the marital relationship is broken, and that all material issues, including but not limited to division of property or estate, legal custody, physical placement, child support, spousal maintenance and family support, are resolved. A court commissioner may also preside at any hearing held to determine whether a judgment of divorce or legal separation shall be granted if one party does not participate in the action for divorce or legal separation. A circuit court commissioner may grant and enter judgment in any action over which he or she presides under this subdivision unless the judgment modifies an agreement between the parties on material issues. If the circuit court commissioner does not approve an agreement between the parties on material issues, the action shall be certified to the court for trial.

E. **Stipulations on Final Issues Prior to Judgment** - Wis. Stat. §767.333

- Wis. Stat. §767.35(3) amended also
- Legislation to address *Keller v. Keller*, 214 Wis.2d 32, 571 N.W.2d 182 (Ct. App. 1997).
- Requires the Judge to hold a hearing to ensure the stipulation is understood and accepted by all
- Hearing may be via video or phone (with good cause)

F. **Chapter 324: Deployed Parents Custody and Visitation**

- The Uniform Deployed Custody and Visitation Act / Uniform law Commission Legislation
- Includes definitions (who qualifies, what is “deployment”)

- Addresses agreements and requirements
- Spells out the judicial procedures
- Provides for expedited hearings

#### IV. Caselaw:

- A. U.S. Supreme Court:
  - 1. *Golan v. Saada*, 596 U.S. \_\_\_ (2022) (No. 20-1034)
- B. Court of Appeals – published
  - 1. *Thompson v. Ouellette*, 2023 WI App 7,406 Wis. 2d 99,986 N.W. 2d 338
  - 2. *State v. Ribbentrop*, 2023 WI App 15,406 Wis. 2d 692,987 N.W. 2d 801  
(Petition for review pending)
- C. Court of Appeals – unpublished, but may be cited
  - 1. *Lauher v. Lauher*, 2022 WI App 42, 978 N.W.2d 400
  - 2. *Biehl v. Hyde*, 2022 WI App 57, 983 N.W.2d 220

## SAMPLE LANGUAGE:

### Sample Language A - Joint Legal Custody:

Pursuant to Wis. Stat. 767.001(1s), joint legal custody means the condition under which both parties share legal custody and neither party's legal custody rights are superior, except with respect to specified decisions as set forth by the court or the parties in the final judgment or order. The parties shall share joint legal custody of the minor children.

The parties shall make decisions about the following together:

1. The schools the children attend.
2. The religious instruction, if any, the children will receive.
3. Any extracurricular activities or special programming the children will participate in if those activities take place during both of our periods of placement.
4. The routine childcare of our children.
5. All non-emergency medical treatment, therapy, and dental care.
6. Any piercing or tattoo.
7. Consent to obtain a motor vehicle license.
8. Permission to enter the military or marry while under the age of 18.

### Sample Language B - Sole Legal Custody:

Pursuant to Wis. Stat. 767.001(6), sole legal custody means the condition under which one party has legal custody.

PARTY NAME shall have the right to make all of the following major decisions:

1. The schools the children attend.
2. The religious instruction, if any, the children will receive.
3. Any extracurricular activities or special programming the children will participate in if those activities take place during both of our periods of placement.
4. The routine childcare of our children.
5. All non-emergency medical treatment, therapy, and dental care.
6. Any piercing or tattoo.
7. Consent to obtain a motor vehicle license.
8. Permission to enter the military or marry while under the age of 18.

### Sample Language C - Impasse Breaking Authority:

If they are unable to reach an agreement after a reasonable effort to discuss and negotiate a disputed decision, PARTY NAME shall have the ultimate impasse-breaking decision-making authority in the event of an impasse.

Sample Language D - Dispute Resolution:

In the event any dispute or disagreement arises regarding the terms and conditions of custody or placement, the parties shall seek the assistance of a mutually agreed-upon mediator or the court's mediation service for resolution of the conflict. Neither parent may seek or institute proceedings for modification of the custody or placement provisions of this agreement by litigation without first attempting to resolve any conflict through mediation.

Any required fees for the assistance of a mediator shall be shared equally by the parents unless the parties agree otherwise.

Sample Language E - Placement:

The Default Placement Schedule represents which parent the children will be with:

2/2/3	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Week 1	Dad	Dad/Mom at 5pm	Mom	Mom/Dad at 5pm	Dad	Dad/Mom at 5pm	Mom
Week 2	Mom	Mom/Dad at 5pm	Dad	Dad/Mom at 5pm	Mom	Mom/Dad at 5pm	Dad

The parent with the planned calendar day will stay with the children or make arrangements for them in the event of illness or days off school.

Sample Language F - Vacation and Holidays

Vacations: The Vacation Schedule takes precedence over the Default Placement Schedule (but does not take precedence over the Holiday Schedule).

Vacations with the children may be up to ten (10) days a year of the other parent's placement time. Requests shall be made with at least sixty days (60 days) advance notice. The vacation must include their regularly occurring weekend placement. Changes to this arrangement can be made by mutual agreement.

\_\_\_\_\_ will have preference of days in even years and \_\_\_\_\_ in odd years. In the event a parent submits a vacation placement request, and the other parent has preference and chooses the exact same vacation placement request (which must be stated within forty-eight (48) hours of receiving notice from the parent that originally requested the vacation time), the preference parent's selection controls. The preference parent cannot change their selection of that vacation period at a later date.

Each parent shall provide the other parent with an address and telephone number of where the children will be staying so that the parent or children can be contacted in the event of an emergency any time there is overnight travel outside of the State of Wisconsin.

Holidays. The parties shall follow the Holiday Schedule as set forth below. The Holiday Schedule takes precedence over the Default Placement Schedule and the Vacation Schedule.

The scheduled holiday placement is an overnight. When the other parent has placement the following day, the transfer shall occur at 9:00 a.m. unless otherwise agreed. For illustration, on Mother's year for Christmas Eve placement, she shall have placement of the children on Christmas Eve day and overnight. Father shall then begin his placement at 9:00 a.m. on Christmas morning to begin his Christmas day placement.

Weekend holidays, such as Memorial Day and Labor Day, commence on Friday after school until the following Tuesday morning. If the 4<sup>th</sup> of July falls on a Friday or a Monday, then the weekend shall be included with the July 4<sup>th</sup> holiday. If July 4<sup>th</sup> falls on a Tuesday through Thursday, then the placement schedule would be from \_\_\_\_:00 a.m. on July 4<sup>th</sup> until \_\_\_\_:00 a.m. on July 5<sup>th</sup>.

<u>HOLIDAY</u>	<u>ODD YEAR</u> <u>(beginning 2023)</u>	<u>EVEN YEAR</u> <u>(beginning 2024)</u>
New Year's Day (January 1 <sup>st</sup> )	Parent A	Parent B
Easter (Sunday)	Parent B	Parent A
Mother's Day (Sunday)	Parent A	Parent A
Memorial Day Weekend	Parent A	Parent B
Father's Day (Sunday)	Parent B	Parent B
July 4 <sup>th</sup>	Parent B	Parent A
Labor Day Weekend	Parent A	Parent B
Thanksgiving (Thursday)	Parent a	Parent B
Friday after Thanksgiving	Parent B	Parent A
Christmas Eve (December 24 <sup>th</sup> )	Parent A	Parent B
Christmas Day (December 25 <sup>th</sup> )	Parent B	Parent A
New Year's Eve (December 31 <sup>st</sup> )	Parent A	Parent B
Child's Birthday	Parent B	Parent A

Sample Language G - Right of First Refusal:

During each parent's period of placement (the "scheduled parent"), if the scheduled parent is unable to provide care for a period of more than \_\_\_\_\_ hours for the children for any reason, including but not limited to out-of-town trips or illnesses, that parent shall offer to the other parent the right to care for the children during their absence. Such an offer shall be made as soon as the scheduled parent knows that they will not be available to provide care. If the other parent wishes to care for the children, they shall notify the scheduled parent of their availability within twenty-four hours of receiving the offer. Otherwise, the scheduled parent shall be responsible for securing childcare for the children during this period.

OR

If during a parent's placement time they are unable to provide care for an overnight period for the children for any reason, including but not limited to out-of-town trips or illnesses, that parent shall offer to the other parent the right to care for the children during their absence. Such an offer shall be made as soon as the placement parent knows that they will not be available to provide care. If the other parent wishes to care for the children, they shall notify the other parent within 12 hours of receiving the offer. Otherwise, the placement parent shall be responsible for securing childcare for the children during this period.

Sample Language H - Repartnering/Significant Others:

The parties understand that introducing new partners into the family is a serious matter, with potentially significant impact on all parties. The parties agree to be discreet and conservative about new relationships, and to not introduce new romantic partners to the children until he or she has reason to believe that the relationship will be long term. Prior to introducing such a new romantic interest to the children, the parent will communicate their desire to do so to the other parent, and ideally give that parent an opportunity to meet the individual in question. The parent shall provide the full name and date of birth of the new partner to the other parent.

Sample Language I - Relocating/Moving:

In the event of a residence change, the parties agree to provide sixty days (60) notice, or as much notice as is possible and to provide information regarding the new address and any other information that might affect transition times or locations. If one of the parties moves more than 20 miles outside of the school district, and is unable to continue the Default Placement Schedule, the parties will attempt to come to an agreement about a new placement arrangement. If they are unable to do so informally, they each are entitled to initiate a modification meeting with a mutually agreed upon mediator or other mutually agreed upon professional. Each party agrees to participate in at least one such meeting.

Pursuant to Wis. Stat. §767.481, neither party shall establish legal residence for any minor child 100 miles or more from the other party. Pursuant to §767.481 (1), any parent granted periods of

physical placement with a child must obtain a court order before relocating with the child 100 miles or more from the other parent if the other parent also has court ordered periods of physical placement with the child. Further, neither party shall interfere with the custody of a child, nor the parental rights of the other parent as prohibited in sec. 948.31, Stats.

Sample Language J - Child Support:

1. **Amount:** Effective (date), \_\_\_\_\_ shall pay child support to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ per month, at the rate of \_\_\_\_\_ (*weekly, biweekly, semi-monthly, monthly, etc. – to match payroll frequency*). Child support is based on the formula pursuant to DCF 150 Child Support Percentages of Income Standard.
2. **Incomes:** This figure is based approximately on (party) earning \$ \_\_\_\_\_ per \_\_\_\_\_ (year or month) and (party) earning \$ \_\_\_\_\_ per \_\_\_\_\_ (year or month).
3. **Insurance Adjustments:** The agreed child support figure includes a (downward/upward) deviation of \$ \_\_\_\_\_, which amount is 50% of the incremental cost incurred by (party) to insure the child(ren) on the medical, dental, and vision (*strike any not included*) insurance at the (year) insurance rates.
4. **Income Assignment:** All child support payments shall be via income assignment. (party)'s employer, currently (name, date and payroll address), shall be ordered to withhold \$ \_\_\_\_\_ (frequency) from money due and send the payment to the Wisconsin Support Collections Trust Fund, P.O. Box 74400, Milwaukee, WI 53274-0400. The assignment shall take effect immediately. The assignment shall take effect immediately.
5. **Other Payments:** To the extent income assignment does not process all amounts due, any and all support payments shall be made in cash or by money order or certified check, and made payable to the Wisconsin Support Collections Trust Fund, P.O. Box 74400, Milwaukee, WI 53274-0400. If the support payments are made by personal check, they shall be paid 14 days in advance.
6. **Term:** Child support shall continue until our youngest child reaches eighteen or is earlier emancipated, or until the youngest child reaches nineteen, if they are pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent. The parties agree that child support should be reduced in accordance with Wisconsin Statutes and Administrative Codes as the child support obligation terminates for a child. However, the parties both understand that reductions in child support as a child ages out for support are not automatic and the parties would need to pursue a modification of the support order, either by agreement or motion, to change the support amount when this happens. the parties understand that if either of us pursues a motion to modify child support, that support is generally only modified prospectively.
7. **Notice of Changes.** Both parties shall notify the \_\_\_\_\_ County child support agency and the other party in writing of any change of address within 10 days of such change pursuant to Wis. Stat. § 767.58. Further, both parties shall notify the \_\_\_\_\_ County child support agency and the other party within 10 days of any change of employer and of any substantial change in the amount of his/her income, including the receipt of bonus compensation, such that ability to



pay support is affected. These matters are enforceable under Chapter 785, Wis. Stats. Notification of any substantial change in the amount of the payer's income will not result in a change in the order unless a revision or adjustment of the order is sought.

8. Interest: Pursuant to § 767.511(6), a party ordered to pay child support under this section shall pay simple interest at the rate of 0.5 percent per month (6% per year) on any amount in arrears that is equal or greater than the amount of child support due in one month, subject to § 767.511(6m).

9. Annual Financial Information Exchange: Pursuant to §767.54, Wis. Stats., the parties will annually exchange financial information. A party who fails to furnish the information as required by the court under this subsection may be proceeded against for contempt of court under ch. 785, Wis. Stats. If the court finds that a party has failed to furnish the information required under this subsection, the court may award to the party bringing the action costs and, notwithstanding §814.04(1), Wis. Stats., reasonable attorney fees. Failure by a party to timely file a complete disclosure statement as required hereunder shall authorize the court to accept as accurate any information provided in the statement of the other party or obtained under §49.22(2m), Wis. Stats., by WI SCTF or the county child support agency under §59.53(5), Wis. Stats. The parties shall exchange the following information by May 1<sup>st</sup> of each year:

- A complete copy of the party's federal and state income tax return for the prior calendar year, including all W-2 forms and 1099 forms.
- A year-end paycheck stub from all sources of employment for the prior calendar year.
- The party's most recent paycheck stub from all sources of employment showing year-to-date gross and net income.
- Any other documentation of the party's income from all sources for the 12-month period preceding the exchange of information.

*Suggested Addition:* The parties agree that based upon the year in which the divorce occurred, the first year of this information exchange shall be 2024. The parties must also provide the same information to the \_\_\_\_\_ Child Support Agency.

10. Local Court Rules: *(Insert as required)*

*Miscellaneous:*

11. All moneys received or disbursed hereunder will be entered in a record and kept by the WI SCTF that shall be open to inspection by the parties to the action, their attorneys, and the Family Court Commissioner. The parties understand that Child Support Enforcement will issue fees to each of us for the receipt and disbursement of support; the parties will each be solely responsible for the fee that is assessed to us individually.

12. Pursuant to Wis. Stat. § 767.57(1e)(a), the support payor shall pay a receiving and disbursing fee, currently \$65.00, due with the first support payment and annually thereafter.

13. Recipients of child or family support shall pay an annual collection fee of \$35.00 pursuant to Wis. Stat. § 767.57(1e)(c), to be deducted from child or family support, maintenance, or arrearage payments after the first \$550 is collected for the year.

14. Pursuant to Wis. Stat. § 767.75(1f), this order constitutes an assignment of all commissions, earnings, salaries, wages, pension benefits under Ch. 102 or 108, and other money due or to be due in the future, to the WI SCTF. The assignment shall be for an amount sufficient to ensure payment under this order and to pay arrears due at a period rate not to exceed 50% of the amount of support due under the order, so long as the addition of the arrears amount does not leave the party's income below the poverty line established under 42 USC 9902(2).

15. A withholding assignment or order under this section has priority over any other assignment, garnishment, or similar legal process under Wisconsin law. The employer shall not withhold more of the employee's disposable income than allowed pursuant to the federal Consumer Credit Protection Act unless the employee agrees to have the full amount withheld. No employer may use an assignment under this section to deny employment, or to discharge or take disciplinary action against an employee (Wis. Stat. § 767.75(6)(c)). Any income withholding put into effect in this case shall continue until all outstanding obligations are paid, or until further order of the court.

16. An order for support, past support, birth expenses, and any balances due, whether or not periodic payments are ordered, will result in the interception of the obligator's income tax refunds. Past due amounts on ordered periodic payments will be reported to the credit bureau, and are subject to imposition of a lien against real or personal property, seizure of financial accounts, or denial, non-renewal, restriction, or suspension of professional/recreational licenses.

17. Disobedience of a support order is punishable under Chapter 785, Wis. Stats., by commitment to the county jail or house of correction until the orders are complied with and the costs of the proceeding are paid, or until the committed party is otherwise discharged according to law (Wis. Stat. § 767.251(1)).

18. Both parties are required to notify the Child Support Agency of their social security numbers, residential and mailing addresses, telephone numbers, operator's license numbers and the name, address and telephone number of his or her employer, pursuant to Wis. Stat. § 767.58(2).

19. The person ordered to make child support, maintenance or family support payments under this order is required to make those payments as long as this order is in effect, whether or not the person is employed at any time in the future. Support orders cannot be modified for any period of time before the date of service on the other party except as provided by statute.

20. Pursuant to § 767.57 (1h), Wis. Stats., if maintenance, child support, or family support payments are not paid to the department or its designee at the time provided in the judgment or order, the county child support agency under s. 59.53 (5) or a circuit court commissioner of the county shall take proceedings to secure the payment of the sum, including enforcement by contempt proceedings under Ch. 785 or by other means. Copies of any order issued to compel the payment shall be mailed to the attorney, if any, who represented each party when the maintenance, child support, or family support payments were awarded. If any fees of officers in any of the proceedings, including the compensation of the circuit court commissioner at the rate of \$50 per day unless the commissioner is on a salaried basis, is not collected from the person proceeded against, the fees shall be paid out of the county treasury upon the order of the presiding judge and the certificate of the department.

21. An order for support, past support, birth expenses, and any balances due, whether or not periodic payments are ordered, will result in the interception of the obligator's income tax refunds. Past due amounts on ordered periodic payments will be reported to the credit bureau, and are subject to imposition of a lien against real or personal property, seizure of financial accounts, or denial, non-renewal, restriction, or suspension of professional/recreational licenses.

22. Disobedience of a support order is punishable under Chapter 785, Wis. Stats., by commitment to the county jail or house of correction until the orders are complied with and the costs of the proceeding are paid, or until the committed party is otherwise discharged according to law (s. 767.251(1), Wis. Stats.).

Sample Language K - Hold Open for Child Support:

There is, pursuant to the terms of this Agreement, sufficient income to support our children in both homes and to provide for the current needs of our children. Therefore, child support shall be held open at this time, based on the present placement arrangement and financial circumstances.

Child support, if ordered pursuant to the \_\_\_\_\_ percentage standard, would be \_\_\_\_\_ using \_\_\_\_\_ for Party's income and \_\_\_\_\_ for Party's income.

Sample Language L - Deviation from guideline support

We agree and request the Court to conclude that the application of the percentage standards for child support as provided in the Wisconsin Statutes and Administrative Code would be unfair under that facts and circumstances of this case, specifically \_\_\_\_\_.

Sample Language M - Annual Adjustment

We agree that the child support payments shall be modified annually in accordance with the child support percentage standards and based upon \_\_\_\_\_'s prior year's income from all sources.

No later than February 1 of each year, the parties each shall provide to the other copies of all Forms W-2, 1099, K-1, Schedule C and verification of all other income received during the past calendar year to determine the new amount of child support.

Upon receiving copies of such verification, the parties agree to execute a Stipulation and Order Amending Judgment of other Court-approved form, modifying the amount of support, effective March 1 of that year, to an amount consistent with the application of guideline child support. \_\_\_\_\_(Party Name)\_\_\_\_\_ will be responsible for preparing and filing the Stipulation and Order in even years and \_\_\_\_\_(Party Name)\_\_\_\_\_ will be responsible for odd years. If the parties are unable to agree on a support amount on our own, the parties intend to first address the issue in mediation. However, if the parties are still unsuccessful, the parties both understand that the parties have the

right to file a motion with the Court for the Court to determine the correct amount and the parties specifically agree herein that the amount set by the Court should be retroactive to March 1 of that year.

Sample Language N - Variable Expenses

We agree that each of us will be solely responsible for all basic support costs when our children are in our own household, including but not limited to, food, shelter, regular clothing, transportation, personal care, and incidental recreational items.

We understand variable expenses to be the reasonable costs above basic support costs incurred by or on behalf of our minor children that involve substantial costs. The parties have completed the Variable Expense Checklist and have allocated the responsibility for the expenses in a way that the parties believe is fair and equitable and takes into consideration our current financial circumstances. The parties both agree that if our respective financial circumstances change, the parties can enter a stipulation to change the allocation or the person seeking the change has the right to file a motion to modify. The parties understand that neither of us is under an obligation to continue to pay for variable expenses for a child once the child is no longer eligible for child support.

We agree that neither of us will incur any variable expense exceeding \$100 which the parties expect reimbursement from the other parent without prior notice to, and consent from, the other party. On the 10<sup>th</sup> of each month, the parties will exchange an itemization of expenses from the previous month. No later than the 20<sup>th</sup> of each month, the parent who has paid less than his or her portion of the total reimbursable expenses shall pay the other parent the amount necessary to cover his or her portion of the expenses paid by each. The parties both agree that if either of us fails to submit a reimbursement request to the other within sixty (60) days of receiving the invoice or other documentation of the expense from the vendor or provider, then the party incurring the expense has waived the right to reimbursement from the other.

Alternate Sample N - Variable Expenses

The parties shall share variable expenses of the minor child in the following percentages consistent with their placement of the child: \_\_\_% to be paid by (party); \_\_\_\_\_% to be paid by (party). It is understood that no expense costing more than \$100.00 shall be incurred unless both parties consent to the expense in advance.

A. Variable Expenses Definition: Variable costs for sharing are all expenses not directly related to the child residing in a party's home (i.e., non-household expenses) and shall include, but not be limited to the following:

1. Essential school-related expenses, including, but not limited to, school tuition, fees, school supplies, electronics required or recommended for school, field trips, yearbooks;
2. School hot lunches;

3. Outerwear, including winter boots and snow pants;
4. School-sponsored extracurricular activities and sport fees for agreed activities;
5. Non-school extracurricular activity fees for agreed activities;
6. Equipment, uniforms, instruments, etc. required for participation in agreed activities;
7. Fees for testing and advanced coursework (ACT, SAT, AP, CAAP);
8. Driver's education, driver's license fees;
9. Religious formation fees;
10. Basic graduation-related expenses, cap and gown, etc.;
11. Announcements and senior picture sitting fees, as agreed in advance;
12. Cell phone device and service, as agreed in advance; and
13. Required special needs for the child.

B. Clothing & Shoes: The child's clothing shall be permitted to go freely between each household. The parties shall cooperate to ensure each child has his basic wardrobe needs met.

C. Each of the parties shall be responsible for the household expenses he or she may incur on behalf of the minor child including, but not limited to the following:

1. Groceries and meals, including meals outside the home during his or her periods of physical placement;
2. Vacation expenses during his or her periods of physical placement;
3. Entertainment that the parent participates in with the child during his or her periods of physical placement, or entertainment expenses the minor child incurs with friends during a parent's periods of physical placement (i.e. movies, skating, gifts for friends' birthday parties, etc.);
4. Gifts to the child and gifts from the child to other family members, whether for birthdays, holidays or any other reason unless the parents mutually agree to share the cost of said gift;
5. Gifts from the child to friends, teacher or non-family, unless the parents mutually agree to share in the cost of the gift;
6. Any allowance either parent chooses to give the child(ren);
7. Photo prints of school, graduation and sports team photo;
8. Automobile Insurance: Each parent shall be solely responsible for any additional automobile expenses outside of driver's education and the cost of obtaining the license including the insurance premium he/she is required to pay in order to insure his/her personal vehicles when a minor child obtains a driver's license. Purchase of a vehicle for use or ownership by the minor child is not a variable cost. The automobile insurance for such vehicle is not a variable cost. Neither party shall be entitled to reimbursement for such expense unless agreed to by the parties; and
9. Childcare: The parties shall be responsible for the daycare or any childcare costs during their own placement time.

D. Any items not specifically referenced shall be discussed on a situational basis. Nothing precludes the parties from deviating from the above by agreement, but such agreements are on a situational basis and are not binding modifications to the general terms of this agreement unless set forth in writing.

E. Procedure for Reimbursement: When practical to do so, the parties should pay his/her portion directly to the creditor, but otherwise shall reimburse the other parent for his/her respective portion of variable costs incurred and advanced. The parties shall collate proof of variable expenses for reimbursement with detailed receipts showing the purpose of the expense and proof of payment and provide to the other parent by the 15<sup>th</sup> of the month for the prior month's expenses. Reimbursement shall occur within 30 days of a substantiated request.

2<sup>nd</sup> Alternate Sample N - Variable Expenses

*See Circuit Court Form FA-4147V Proposed Parenting Plan with detailed checklist of variable costs which may be used to breakdown variable costs and avoid future conflict*

Sample Language O - Health Insurance and Uninsured Medical Expenses.

\_\_\_\_\_ will maintain the minor children on their medical insurance policy and shall maintain the same until the youngest minor child reaches age eighteen or is earlier emancipated, or reaches nineteen, if they are pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent.

We agree to share equally in the cost to insure the minor children. This is defined as the difference in cost between a plan including the children and the cost to \_\_\_\_\_ if they were not carrying coverage for the minor children. Currently, the cost to insure the minor children on \_\_\_\_\_'s health insurance is \$\_\_\_\_\_ per month. \_\_\_\_\_ is responsible for one-half of this amount, \$\_\_\_\_\_, which amount has been factored into child support and deviated downward \$\_\_\_\_\_.

If insurance for the minor children is no longer available through \_\_\_\_\_'s employment, or if the cost of the insurance increases substantially from the costs noted above, the parties will review the options together to identify the best plan available to cover the children and share in the cost of the same (taking into consideration the deviation that is already being considered for support).

The parent carrying the children on their policy must provide an insurance summary and provider card to the other parent and must notify the other parent of any changes in coverage or providers.

We agree to share, equally, the minor children's uninsured or non-reimbursed medical and dental expenses, including any insurance deductibles. Expenses include, but are not limited to, items such as routine medical checkups and treatment, examinations required by school authorities, treatment of minor ailments and prescriptions incidental thereto, and other health care expenses necessarily incurred to protect or maintain a child's mental and physical health. As with variable expenses, the parties shall collate proof of variable expenses for reimbursement with detailed receipts showing the purpose of the expense and proof of payment and provide to the other parent by the 15<sup>th</sup> of the month for the prior month's expenses. Reimbursement shall occur within 30 days of a substantiated request.

*\*Deadline/Waiver\**

The parties both agree that if either of us fails to submit a reimbursement request to the other within ninety (90) of receiving the invoice or other documentation of the expense from the provider, then the party incurring the expense has waived the right to reimbursement from the other.

BADGERCARE:

The children are currently covered on health insurance through Badgercare. The parties both understand that if private health insurance becomes available to either party at a reasonable cost, that parent must enroll the children on said health insurance. Insurance coverage for the minor children must be maintained until the child reaches age eighteen or is earlier emancipated, or until the child reaches nineteen, if they are pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent. In the event this paragraph is triggered, the parties agree to share in the cost to cover the children (as defined above).

*Sample Language P - Child Tax Credit*

Each of us shall have the right to claim (#) of the children as dependent for the child tax credit and exemption on our individual federal and state income tax returns, and when there are an odd number of children the parties will alternate, annually, claiming the youngest minor child as an exemption, with (Party Name) claiming the youngest minor child in the first tax year this occurs.

We understand that any party ordered to pay child support may only claim the minor children as exemptions for federal and state income tax purposes if they are substantially current in the payment of child support as of December 31st of the year in which they intend to claim the exemption, pursuant to DWD 40.03(10).

We each agree to cooperate in signing IRS Form 8332, or other appropriate state or federal tax forms, as necessary, to carry out the options selected above.

### *Sample Letter A : What to Expect in Litigation*

The following information is a general outline of the divorce process provided for your continual review. Please read through this document carefully. It will be helpful as a reference during the pendency of your divorce as a reminder of the general sequence of events for a divorce action. You should also have the flowchart I provided at our initial meeting which outlines the divorce process as well.

This document is intended to answer your general questions and concerns. If at any time you wish to discuss your case with me directly, please do not hesitate to call or email.

#### **THE ACTION**

The divorce action began with the filing and service of the Summons and Petition for Divorce which was filed by \_\_\_ date and name of former spouse \_\_\_\_\_. You signed the admission of service today, so we have 20 days to respond to the Petition for Divorce. The allegations are pretty straightforward, but we will need to respond indicating we agree or disagree with the allegations in the petition and counterclaim for divorce. I will review the document with you on \_\_\_ date \_\_\_ and obtain your signature then so we can get that out of the way.

The following issues will ultimately be addressed in your case:

1. Custody – decision making authority.
2. Placement – where your children spend their time.
3. Child Support – taking into consideration the placement schedule and gross monthly earnings.
4. Health Insurance – for your children now and in the future
5. Life Insurance – for your children’s benefit now and in the future.
6. Tax Exemption – which parent may claim the children for tax purposes.
7. Maintenance – whether either of you will pay spousal support to the other.
8. Property Division – an equitable division of the marital assets/debts

If it is necessary to have the court set the temporary terms and conditions the parties are to follow during the pendency of the action, then an Order to Show Cause for Temporary Order and an Affidavit for Temporary Order will be filed concurrently with the Summons and Petition, or shortly thereafter. Your spouse filed the same when they filed her Summons and Petition for Divorce, and the hearing is scheduled for \_\_\_ date and time \_\_\_\_\_. **Your appearance is required so please be sure to adjust your schedule so that you can attend.** This first hearing is heard by a Family Court Commissioner in a private room, not in open court. The temporary order issued as a result of the first hearing may include provisions for the following relief: maintenance for either party; support for the minor child; removal of a spouse from the home; custody of your child and identification of physical placement periods; determination of who shall make mortgage payments and meet other obligations while the action is pending; and non-depletion of assets.

If you or your spouse disagree with the orders issued by the Family Court Commissioner, you may request a review which is called a de novo review. The review would be heard by a Judge who could then modify the Family Court Commissioner's orders. You and I will discuss the Commissioner’s orders in detail after any hearing to determine whether a de novo review is the best way to proceed.



We have the option of submitting a stipulation for temporary orders and eliminating the hearing on \_\_\_ date and time \_\_\_\_\_. However, we have to have an agreement prior to the hearing. I will be discussing terms with \_\_\_\_\_ Opposing Counsel \_\_\_\_\_ before I meet with you.

REFRESHER: If there is no agreement between you and your spouse as to custody/placement of your child by the time of the temporary order hearing date, then you will be referred by the court to the director of family court counseling services for mediation of the contested issues. The cost in Dane County is \$25 cash for the parenting education class in the morning and you have the option of attending mediation that afternoon; or if that doesn't work for your schedules you will schedule the soonest possible day after you attend the parenting education class. If mediation does not result in an agreement, it will also be necessary to obtain a custody study and if you still do not agree, then we must petition the court for the appointment of a Guardian ad Litem, an attorney appointed to represent the interests of your daughter. Most courts require that each party immediately forward a deposit to the Guardian ad Litem (GAL) and that the subsequent fees be split by the parties. The GAL will conduct an investigation and prepare a recommendation for the court as to what situation would be best for your child. The GAL may also request psychological evaluations.

Prior to the first hearing you will need to provide me with a completed financial statement. My paralegal will be working with you this week to complete this document so we have a full disclosure prior to the hearing. I gave you a hard copy of the document to work on and my paralegal will be preparing a skeleton of the document based on the information you provided for your review before Wednesday. When we have compiled a complete marital asset list, I will meet with you to discuss proposals for the division of the estate.

Although the exchange of marital asset information is fairly routine, if your spouse does not voluntarily disclose financial information, I may recommend a formal discovery process. This would include the possibility of a deposition of your spouse or other witnesses, interrogatories (questions submitted in writing to be answered in writing, under oath), or a request for production of documents such as bank statements, cancelled checks, etc. Formal discovery is more time-consuming and costly than voluntary cooperation.

A pretrial hearing may be scheduled with the judge assigned to your case once 120 days has lapsed since you were served (today's date). If all issues in your case have been settled, financial statements have been filed with the court by both parties and a marital settlement agreement has been signed by both parties, the pretrial hearing date may be used as a default date, *i.e.*, a final divorce hearing. If there are still issues in dispute, the pretrial hearing will consist of the attorneys meeting with the Judge to apprise the Judge of the status of the case and to schedule a trial date. Your case will then be treated as a contested matter and proceed toward trial. If an agreement is reached and signed, a prompt final hearing date can generally be scheduled.

You have retained me to represent your interests in this matter. To that end, I will strive toward a fair and equitable settlement. The final decision on all settlement terms is up to you. Though I will provide legal input and advice, this is your divorce. You will not be granted a divorce until all issues have been resolved and a marital settlement agreement is signed or until the judge renders a decision at the end of a trial. If your case goes to trial, I will strongly advocate your position and vigorously defend your interests. However, you should be aware that a trial is an emotionally rendering and expensive experience.

If either you or your spouse fail to abide by any court order (for example, not making a mortgage payment as ordered or not allowing placement with your daughter to occur as ordered), the court may be asked to hold the offending spouse "in contempt" and to impose appropriate sanctions (punishment). Please inform me immediately if your spouse does not follow through on any orders of the court.

### **DO'S & DONT'S**

A divorce is an unusually stressful and difficult time for all involved. Each spouse may at times be tempted to act in a less than rational or appropriate manner. Please read through the following list of common sense "do's and don'ts" carefully and refer to it as often as necessary:

1. DO follow all court orders exactly. Do not unilaterally disobey the order simply on the basis you do not agree with it. Call me and we will discuss what action can be taken to modify the order.
2. DO keep a brief daily diary as a record of events as your case is pending. As I mentioned above, this is a stressful time and you may find it difficult to reconstruct from memory the events of the day before, let alone the same event six months down the line.
3. DO NOT make unilateral financial or child-related decisions without consulting with me regarding legal impact.
4. DO NOT alienate the children from their other parent. Children want to love both parents regardless of how the parents feel about each other.
5. DO NOT discuss your marital problems with the children. Remember, you are an adult with an adult's resources to handle stress; they are children, with only a child's capacity to deal with conflict. Urging a child directly or indirectly to take on your negative feelings may have long-term negative consequences.
6. DO pick up the children and return them or have them ready for pick up at the time agreed upon when you and your spouse have physical placement rights. Be sure that any changes in court-ordered placement schedules occur by mutual agreement.

### ***Sample Letter B: The law***

As we have discussed, the following issues will be addressed in your case:

- Custody – decision making authority.
- Placement – where your children spend their time.
- Child Support – taking into consideration the placement schedule and gross monthly earnings.
- Health Insurance – for your children now and in the future
- Life Insurance – for your children’s benefit now and in the future.
- Tax Exemption – which parent may claim the children for tax purposes.
- Maintenance – whether either of you will pay spousal support to the other.
- Property Division – an equitable division of the marital assets/debts

The main issues that will be present in your case are:

#### CUSTODY & PLACEMENT

Legal custody is the right and responsibility to make major decisions concerning a child. In cases in which both parents are involved in the child’s life, courts start with the presumption that joint custody is in the best interests of the child. An order for joint custody gives both parents equal rights and responsibilities to make major decisions in areas like schooling, religion, and other major life areas. In certain circumstances, custody may be awarded solely to one parent as to one or more children.

Physical placement refers to a parent’s right to actually spend time with the child. A child is entitled to placement with both parents unless the court finds that placement with a parent would endanger the child’s health. While a court is required to issue a placement order that will maximize the amount of quality time a child spends with each parent, the court is not required to grant equal time to each parent.

Placement arrangements vary greatly depending on the circumstances of each case. In general, a court will review the following considerations when making a physical placement determination: (1) the wishes of the child’s parent(s); (2) the wishes of the child; (3) the interaction and interrelationship of the child with his or her parent(s), siblings, and any other person who may significantly affect the child’s best interest; (4) the amount and quality of time that each parent has spent with the child in the past and any change a parent may propose to spend more time with the child in the future; (5) the child’s adjustment to home, school, religion and community; (6) the child’s age and developmental needs; (7) the mental and physical health of any person exposed to the child; (8) the need for regularly occurring and meaningful periods of placement to provide stability; (9) availability of public or private services; (10) the communication and cooperation between the parties; (11) the ability of a party to support the other party’s relationship with the child; (12) evidence of abuse; and (13) criminal records. Wis. Stat. § 767.41(5).

### *Primary Placement*

Primary placement occurs when one parent has placement of the child for less than 25% of the time. Time is based on how many overnights the child spends with each parent. If a parent has less than 92 overnights per year, the other parent has primary placement.

The child support calculation for primary placement is based on a straight percentage standard. The non-primary parent will usually pay a percentage of his or her gross income depending on the number of children. The percentages are currently set as follows: one child (17%), two children (25%), three children (29%), four children (31%), and five or more children (34%). These percentages are lowered slightly if the payor parent earns more than \$84,000 per year.

### *Shared Placement*

Shared placement occurs when both parents have anywhere between 93 and 272 overnights with the child per year. If the parents have shared placement, the court utilizes a shared placement formula that assumes both parents pay for the child's basic support costs in proportion to the time the parent has the child.

## CHILD SUPPORT

The purpose of child support is to provide for the children as if the parties had not separated. The Department of Children and Families created percentage standards for determining a parent's child support obligation. DCF § 150. Which percentage applies depends on the number of children, the parties' placement arrangement and, in some cases, each parent's income. In general, support is based either on a primary placement schedule or a shared placement schedule. Wis. Stat. § 767.511.

## VARIABLE EXPENSES

Variable expenses are defined as the reasonable costs above basic support costs incurred by or on behalf of a child, including but not limited to, childcare, tuition, special needs, and other activities that involve substantial cost. Under a primary placement schedule, the variable expenses are typically not addressed. Under shared placement, the parents usually split the variable expenses equally or in proportion to the time they spend with the child. Typically, parents agree that both parties must consent to variable expenses, receive notice, and timely request compensation.

## MAINTENANCE

In any judgment of divorce, legal separation, or annulment, the court may grant an order requiring maintenance (also called alimony or spousal support) payments to either party for a limited or indefinite length of time. Maintenance is ordered to further two objectives: to support the recipient spouse, and to ensure a fair and equitable financial arrangement between the parties. The fairness objective requires the court to ensure a fair and equitable financial arrangement between the parties in each individual case. The support objective recognizes the obligation to support a spouse in a manner in which that spouse was accustomed during the marriage.

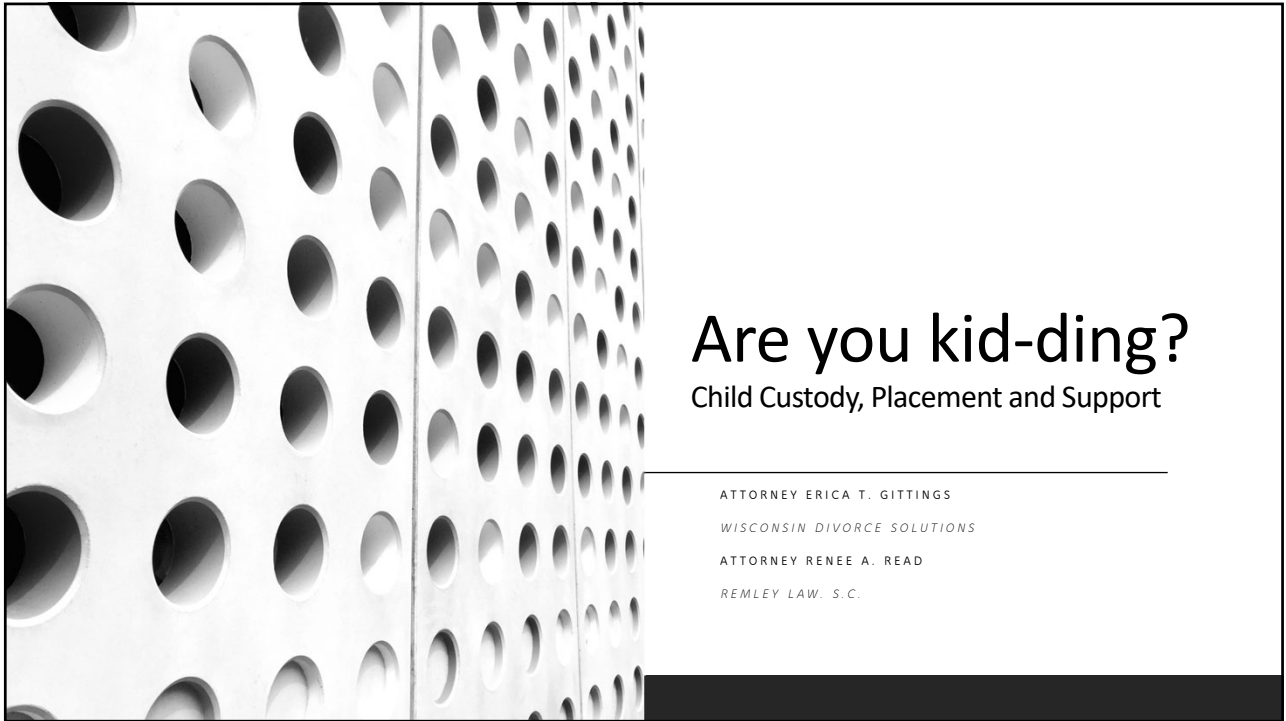
In determining maintenance, the court frequently starts by equalizing the total income between the parties and then sets the amount at what it determines to be fair under the circumstances. Whether maintenance is appropriate depends on the facts of each case. Courts will typically consider: (1) the length of the marriage; (2) the age and physical and emotional health of the parties; (3) the division of property; (4) the educational level of each party at the time of marriage and divorce; (5) the earning capacity of the party seeking maintenance; (6) the feasibility that the party seeking maintenance can become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage; (7) tax consequences; (8) any mutual agreements made by the parties either before or during the marriage; (9) the contribution by one party to the education, training, or increased earning power of the other; and (10) any other relevant factors. Wis. Stat. § 767.59.

Parties can always agree to hold maintenance open, waive maintenance, or set their own parameters. If maintenance is held open, the court retains jurisdiction over the issue and may order maintenance at a later time. If maintenance is waived, it cannot be requested for any reason in the future. Parties may also agree that maintenance will continue for an un-modifiable period of time or terminate at the occurrence of some condition (i.e., retirement, co-habitation, turning 65, etc.).

### PROPERTY DIVISION

The property division in a divorce or separation divides the assets and debts between the parties. Because Wisconsin is a marital property state, the statutory presumption is that all property, both debts and assets, acquired prior to or during the marriage, are equally divided. The court may deviate from an equal division after considering: (1) the length of the marriage; (2) the property brought to the marriage by each party; (3) whether one of the parties has substantial assets not subject to division; (4) the contribution of each party to the marriage, giving appropriate economic value to home-making and child care services; (5) the age and physical and emotional health of the parties; (6) the contribution by one party to the education, training, or increased earning power of the other; (7) the earning capacity of each party; (8) who retains the marital residence; (9) maintenance orders; (10) tax consequences; and (11) any written agreements made by the parties before or during the marriage. Wis. Stat. § 767.61.

The only property not subject to division is property that one party acquired (1) by a gift from someone other than the spouse; (2) by reason of the death of another (i.e., inheritance, life insurance proceeds, or trust distribution); or (3) with funds acquired by either of the first two methods. In order to keep this non-marital property exempt from the property division, the spouse must establish: (1) the original gifted or inherited status of the property; and (2) that the character and identity of the property has been preserved.



# Are you kid-ding?

Child Custody, Placement and Support

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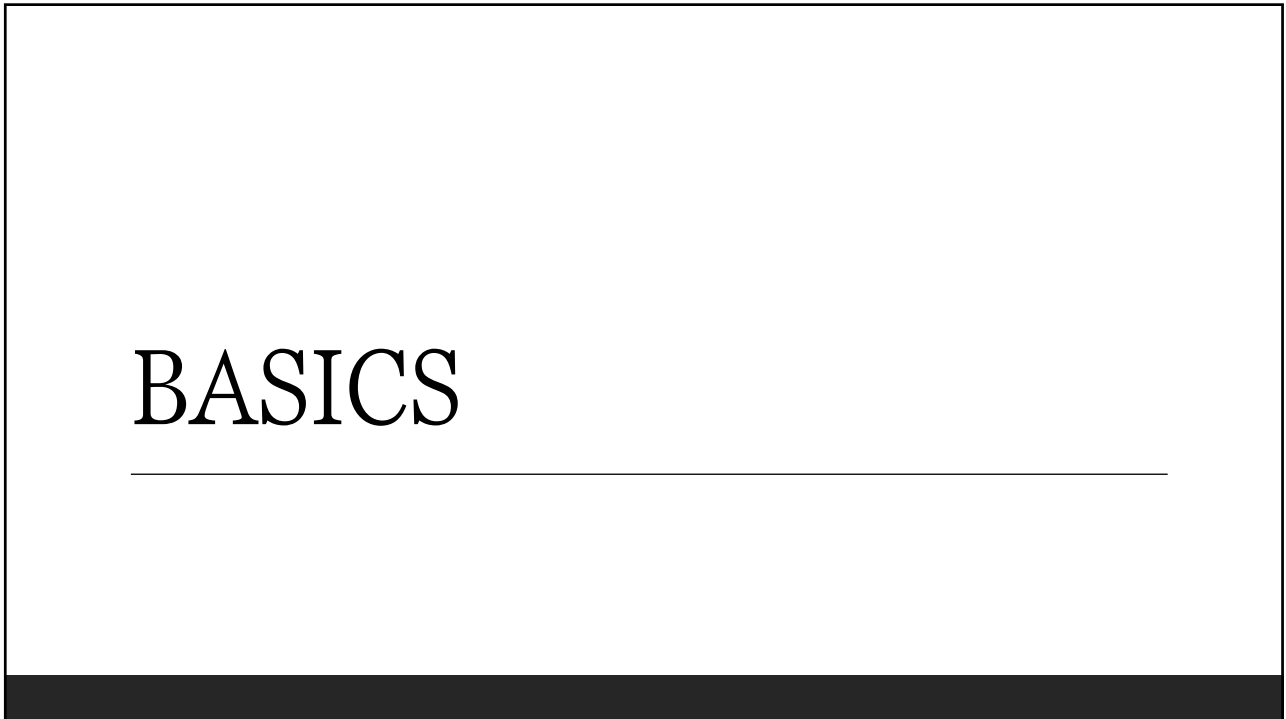
ATTORNEY ERICA T. GITTINGS

WISCONSIN DIVORCE SOLUTIONS

ATTORNEY RENEE A. READ

REMLEY LAW, S.C.

1



# BASICS

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2

# BASICS

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Custody

Placement

Support

Variable expenses

Health insurance  
coverage and  
uninsured medical  
expenses

Claiming the child  
tax credit

3

# CUSTODY

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Joint

Sole

4

# CUSTODY

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Education



Religion



Non-Emergency Medical/Dental Care



Marrying/Military before 18

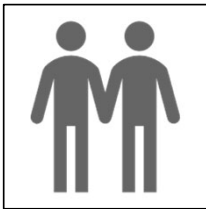
5

# PLACEMENT

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Primary Placement



Shared Placement

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## CHILD SUPPORT: Split

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Primary / Split Placement =  
Percentage of Payer's Gross  
Income

One child: 17%  
Two children: 25%  
Three children: 29%  
Four children: 31%  
Five + children: 34%

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## CHILD SUPPORT: Shared

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Shared Placement =  
Formula based on  
incomes and number  
of overnights

*See attached  
sample calculations*

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## CHILD SUPPORT: Complex

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- Serial Families
- Combination of Split & Shared
- High Income Payers
- Low Income Payers
- Equivalent Care



Practice Tip: Be able to recognize these issues as they arise to make or defend arguments, but utilize calculators/tools

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## BASICS

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Variable Expenses

Health Insurance Coverage and Uninsured Medical Expenses

Child Tax Credit

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## ADVANCE PRACTICE TIPS AND STRATEGIES

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## ADVANCED PRACTICE TIPS AND STRATEGIES

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Educate your  
client



Hiring a  
Professional



Early Discovery



Think Outside  
the Box

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## ADVANCED PRACTICE TIPS AND STRATEGIES

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What is the party's income available for support?

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## Legislative Changes

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## De Novo Procedures

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**Wis. Stat. §767.17**

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## Financial Exchange Provisions

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**Wis. Stat. §767.54**

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## Injunction Statutes – Permanency Provisions

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**Wis. Stat. sections**

**813.12, 813.122,**

**813.123, 813.125**

17

## Legal Separations/ Commissioner Authority

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**Wis. Stat.**  
**§767.69(1)(p)**



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## Stipulations on Final Issues Pre-Judgment

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**Wis. Stat. §767.333**



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## Deployed Parents Custody & Visitation

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**Chapter 324**

20

Case Name: **PRETEND** Date:

Scenario 1: **Scenario #1** Enter/Remove Dependents

Name	Date of Birth	Year end Age	Overnights With Father	Overnights With Mother
<b>Child A</b>	<b>1/1/2018</b>	<b>Y 5</b>	<b>91</b>	<b>274</b>

Father		DOB:	1/1/00
Filing Status:	Single		
Total Dependent	0		
Child Dependents <17:	0		
Qualifying Children:	0		
Earned Income:	\$50,000		
Self Employment Income	\$0		
Other Income	\$0		
Custom Income	\$0		
Custom Income	\$0		
Custom Income	\$0		
Investment Income:	\$0		
Pre-Tax Payroll Deduction:	\$0		
Total Social Security	\$0		
Taxable Social Security	\$0		
Non Taxable Social Security	\$0		
Child Support Paid:	\$8,500		
Child Support Received:	\$0		
Non-Deductible Maintenance Paic	\$0		
Non-Taxable Maintenance Rec'd:	\$0		
RE Tax on Home	\$0		
Interest on Home	\$0		
Other Itemized Deductions	\$0		
Rent with Heat	\$0		
Rent without Heat	\$0		
Child Care	\$0		

Net Spendable Income:	
Annual	\$31,715
Monthly	\$2,643
<b>Percentage of Income</b>	<b>43.45%</b>

Federal Tax	
Adjusted Gross Income:	\$50,000
Taxable Income:	\$36,150
Federal Income Tax:	\$4,118
Alternative Minimum Tax	\$0
Medicare/Investment Tax	\$0
Child & Dep Care Credit	\$0
Child Tax Credit	\$0
Refundable Child Tax Credit	\$0
Earned Income Credit	\$0
Total Federal Tax	\$4,118

State Tax		Wisconsin
State Income Tax	\$1,842	
State Credits	\$0	
Total State Tax	\$1,842	

Social Security Tax	
Social Security Tax	\$3,825
<b>Total Net Tax:</b>	<b>\$9,785</b>

Mother		DOB:	1/1/00
Filing Status:	Single		
Total Dependent	0		
Child Dependents <17:	0		
Qualifying Children:	0		
Earned Income:	\$40,000		
Self Employment Income	\$0		
Other Income	\$0		
Custom Income	\$0		
Custom Income	\$0		
Custom Income	\$0		
Investment Income:	\$0		
Pre-Tax Payroll Deduction:	\$0		
Total Social Security	\$0		
Taxable Social Security	\$0		
Non Taxable Social Security	\$0		
Child Support Paid:	\$0		
Child Support Received:	\$8,500		
Non-Deductible Maintenance Paic	\$0		
Non-Taxable Maintenance Rec'd:	\$0		
RE Tax on Home	\$0		
Interest on Home	\$0		
Other Itemized Deductions	\$0		
Rent with Heat	\$0		
Rent without Heat	\$0		
Child Care	\$0		

Net Spendable Income:	
Annual	\$41,274
Monthly	\$3,439
<b>Percentage of Income</b>	<b>56.55%</b>

Federal Tax	
Adjusted Gross Income:	\$40,000
Taxable Income:	\$26,150
Federal Income Tax:	\$2,918
Alternative Minimum Tax	\$0
Medicare/Investment Tax	\$0
Child & Dep Care Credit	\$0
Child Tax Credit	\$0
Refundable Child Tax Credit	\$0
Earned Income Credit	\$0
Total Federal Tax	\$2,918

State Tax		Wisconsin
State Income Tax	\$1,248	
State Credits	\$0	
Total State Tax	\$1,248	

Social Security Tax	
Social Security Tax	\$3,060
<b>Total Net Tax:</b>	<b>\$7,226</b>

Calculate Filing Options

Enter Maintenance Target

Populate 50/50, 55/45 and 60/40 Scenarios

Calculate Child Support

Clear Scenario Inputs

Copy/Import Scenario

View Scenario Summary

Monthly Child Support	
\$708	
Monthly Maintenance	
\$0	
Combined Spendable Income	
\$72,989	

### SCENARIOS

**1** Scenario #1

**2** Scenario #2

**3** Scenario #3

**4** Scenario #4

**5** Scenario #5





DCF 150 - Split/Shared/Primary Placement

Case Information

Name..... PRETEND Scenario Scenario #1
Date Prepared..... Date:

Child Support Factors

Monthly income subject to child support (see Gross Income)..... 4,166.67
Monthly Children's Auxiliary Benefits Received (see Income Summary)..... 0.00

Table with columns: Placement Schedules, #1, #2, #3, #4, #5, Total. Rows include # of Children, Overnights (Father, Mother), and Percentages (Father, Mother).

Child Support (with high/low income adjustments)

Month..... 708.33
Semi-month..... 354.17
Bi-week..... 326.92
Week..... 163.46

Basic Costs

Table with columns: Basic Costs, Father, Mother, Variable Costs, Father, Mother. Rows include Food, Shelter, Clothing, Transportation, Personal care, Incidental, Recreational, Child care, Tuition, Special needs, Activities.

Child Support Discretionary Outcome Table

Table showing Payer (Father) and No Adj. values for Father and Mother.

CALCULATIONS

Low and High Income Adjustments Applied

Table with columns: Support Percentages, Income, Father (Total, Per Child), Mother (Total, Per Child). Rows include Low Income Table, Income beginning at, High-income beginning at.

Table with columns: Placement Scenarios, 1, 2, 3, 4, 5. Rows include Children, Overnights (Father, Mother), Percentages (Father, Mother).

Child Support Calculations

Table with columns: Scenario 1, Scenario 2, Scenario 3, Scenario 4, Scenario 5. Rows include Income, Low Income, \$ 0, \$ 7,000, \$ 12,500, Subtotal, Times 150%, Placement %, Subtotal, Net, Adjusted Net.

Table with columns: Net Support Calculation, Father, Mother. Row: Scenario Totals.

Case Name: **PRETEND** Date:

Scenario 2: **Scenario #2** Enter/Remove Dependents

Name	Date of Birth	Year end Age	Overnights With Father	Overnights With Mother
<b>Child A</b>	<b>1/1/2018</b>	<b>Y 5</b>	<b>92</b>	<b>273</b>

Father		DOB:	1/1/00
Filing Status:	Single		
Total Dependent	0		
Child Dependents <17:	0		
Qualifying Children	0		
Earned Income:	\$50,000		
Self Employment Income	\$0		
Other Income	\$0		
Custom Income	\$0		
Custom Income	\$0		
Custom Income	\$0		
Investment Income:	\$0		
Pre-Tax Payroll Deduction:	\$0		
Total Social Security	\$0		
Taxable Social Security	\$0		
Non Taxable Social Security	\$0		
Child Support Paid:	\$6,965		
Child Support Received:	\$0		
Non-Deductible Maintenance Paic	\$0		
Non-Taxable Maintenance Rec'd:	\$0		
RE Tax on Home	\$0		
Interest on Home	\$0		
Other Itemized Deductions	\$0		
Rent with Heat	\$0		
Rent without Heat	\$0		
Child Care	\$0		

Net Spendable Income:	
Annual	\$33,250
Monthly	\$2,771
<b>Percentage of Income</b>	<b>45.55%</b>

Federal Tax	
Adjusted Gross Income:	\$50,000
Taxable Income:	\$36,150
Federal Income Tax:	\$4,118
Alternative Minimum Tax	\$0
Medicare/Investment Tax	\$0
Child & Dep Care Credit	\$0
Child Tax Credit	\$0
Refundable Child Tax Credit	\$0
Earned Income Credit	\$0
Total Federal Tax	\$4,118

State Tax		Wisconsin
State Income Tax	\$1,842	
State Credits	\$0	
Total State Tax	\$1,842	

Social Security Tax	
Social Security Tax	\$3,825
<b>Total Net Tax:</b>	<b>\$9,785</b>

Mother		DOB:	1/1/00
Filing Status:	Single		
Total Dependent	0		
Child Dependents <17:	0		
Qualifying Children	0		
Earned Income:	\$40,000		
Self Employment Income	\$0		
Other Income	\$0		
Custom Income	\$0		
Custom Income	\$0		
Custom Income	\$0		
Investment Income:	\$0		
Pre-Tax Payroll Deduction:	\$0		
Total Social Security	\$0		
Taxable Social Security	\$0		
Non Taxable Social Security	\$0		
Child Support Paid:	\$0		
Child Support Received:	\$6,965		
Non-Deductible Maintenance Paic	\$0		
Non-Taxable Maintenance Rec'd:	\$0		
RE Tax on Home	\$0		
Interest on Home	\$0		
Other Itemized Deductions	\$0		
Rent with Heat	\$0		
Rent without Heat	\$0		
Child Care	\$0		

Net Spendable Income:	
Annual	\$39,739
Monthly	\$3,312
<b>Percentage of Income</b>	<b>54.45%</b>

Federal Tax	
Adjusted Gross Income:	\$40,000
Taxable Income:	\$26,150
Federal Income Tax:	\$2,918
Alternative Minimum Tax	\$0
Medicare/Investment Tax	\$0
Child & Dep Care Credit	\$0
Child Tax Credit	\$0
Refundable Child Tax Credit	\$0
Earned Income Credit	\$0
Total Federal Tax	\$2,918

State Tax		Wisconsin
State Income Tax	\$1,248	
State Credits	\$0	
Total State Tax	\$1,248	

Social Security Tax	
Social Security Tax	\$3,060
<b>Total Net Tax:</b>	<b>\$7,226</b>

Calculate Filing Options

Enter Maintenance Target

Populate 50/50, 55/45 and 60/40 Scenarios

Calculate Child Support

Clear Scenario Inputs

Copy/Import Scenario

View Scenario Summary

Monthly Child Support
\$580
Monthly Maintenance
\$0
Combined Spendable Income
\$72,989

### SCENARIOS

1 Scenario #1

2 Scenario #2

3 Scenario #3

4 Scenario #4

5 Scenario #5



**DCF 150 - Split/Shared/Primary Placement**

**Case Information**

Name..... PRETEND Scenario Scenario #2  
 Date Prepared..... Date:

**Child Support Factors**

Monthly income subject to child support (enter on Gross Income Page)..... **Father** 4,166.67 **Mother** 3,333.33  
 Monthly Children's Auxiliary Benefits Received (see Income Summary)..... 0.00 0.00

Placement Schedules:	#1	#2	#3	#4	#5	Total
# of Children	1	0	0	0	0	1
<b>Overnights:</b>						
Father	92.00					
Mother	273.00					
<b>Percentages:</b>						
Father	25.21%					
Mother	74.79%					

**Child Support (with high/low income adjustments)**

Month..... **Father** 580.45 **Mother**  
 Semi-month..... 290.22  
 Bi-week..... 267.90  
 Week..... 133.95

**Basic Costs**

	Father	Mother	Variable Costs	Father	Mother
Food.....	25%	75%	Child care.....	25%	75%
Shelter.....	25%	75%	Tuition.....	25%	75%
Clothing.....	25%	75%	Special needs.....	25%	75%
Transportation..	25%	75%	Activities.....	25%	75%
Personal care...	25%	75%			
Incidental.....	25%	75%			
Recreational....	25%	75%			

**Child Support Discretionary Outcome Table**

		Mother			
		No Adj.	Father	Mother	
Payer →	Father	580.45			
	No Adj.				

**CALCULATIONS**

Low and High Income Adjustments Applied

Support Percentages	Income	Father		Mother	
		Total Percent	Per Child Percent	Total Percent	Per Child Percent
Low Income Table.....					
Income beginning at.....	\$ 0.00	17%	17.00%	17%	17.00%
High-income beginning at.....	\$ 7,000.00	14%	14.00%	14%	14.00%
High-income beginning at.....	\$ 12,500.00	10%	10.00%	10%	10.00%

Placement Scenarios	1	2	3	4	5
Children	1	0	0	0	0
<b>Overnights:</b>					
Father	92.00				
Mother	273.00				
<b>Percentages:</b>					
Father	25.21%				
Mother	74.79%				

**Child Support Calculations**

	Scenario 1		Scenario 2		Scenario 3		Scenario 4		Scenario 5	
	Father	Mother	Father	Mother	Father	Mother	Father	Mother	Father	Mother
<b>Income</b>	4,166.67	3,333.33								
Low Income										
\$ 0	708.33	566.67								
\$ 7,000										
\$ 12,500										
Subtotal	708.33	566.67	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Times 150%	1,062.50	850.00								
Placement %	74.79%	25.21%								
Subtotal	794.69	214.25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Net	580.45									
Adjusted Net (1	580.45									

Net Support Calculation	Father	Mother
Scenario Totals	580.45	0.00

Case Name: **PRETEND** Date:   
 Scenario 3: **Scenario #3** Enter/Remove Dependents

Name	Date of Birth	Year end Age	Overnights With Father	Overnights With Mother
<b>Child A</b>	<b>1/1/2018</b>	<b>Y 5</b>	<b>182.5</b>	<b>182.5</b>

Father		DOB:	1/1/00
Filing Status:	Single		
Total Dependent	0		
Child Dependents <17:	0		
Qualifying Children	0		
Earned Income:	\$50,000		
Self Employment Income	\$0		
Other Income	\$0		
Custom Income	\$0		
Custom Income	\$0		
Custom Income	\$0		
Investment Income:	\$0		
Pre-Tax Payroll Deduction:	\$0		
Total Social Security	\$0		
<i>Taxable Social Security</i>	\$0		
<i>Non Taxable Social Security</i>	\$0		
Child Support Paid:	\$1,275		
Child Support Received:	\$0		
<i>Non-Deductible Maintenance Paic</i>	\$0		
<i>Non-Taxable Maintenance Rec'd:</i>	\$0		
RE Tax on Home	\$0		
Interest on Home	\$0		
Other Itemized Deductions	\$0		
Rent with Heat	\$0		
Rent without Heat	\$0		
Child Care	\$0		

Net Spendable Income:	
<i>Annual</i>	\$38,940
<i>Monthly</i>	\$3,245
<b>Percentage of Income</b>	<b>53.35%</b>

Federal Tax	
<i>Adjusted Gross Income:</i>	\$50,000
<i>Taxable Income:</i>	\$36,150
<i>Federal Income Tax:</i>	\$4,118
<i>Alternative Minimum Tax</i>	\$0
<i>Medicare/Investment Tax</i>	\$0
<i>Child &amp; Dep Care Credit</i>	\$0
<i>Child Tax Credit</i>	\$0
<i>Refundable Child Tax Credit</i>	\$0
<i>Earned Income Credit</i>	\$0
Total Federal Tax	\$4,118

State Tax		Wisconsin
<i>State Income Tax</i>	\$1,842	
<i>State Credits</i>	\$0	
Total State Tax	\$1,842	

Social Security Tax	
Social Security Tax	\$3,825
<b>Total Net Tax:</b>	<b>\$9,785</b>

Mother		DOB:	1/1/00
Filing Status:	Single		
Total Dependent	0		
Child Dependents <17:	0		
Qualifying Children	0		
Earned Income:	\$40,000		
Self Employment Income	\$0		
Other Income	\$0		
Custom Income	\$0		
Custom Income	\$0		
Custom Income	\$0		
Investment Income:	\$0		
Pre-Tax Payroll Deduction:	\$0		
Total Social Security	\$0		
<i>Taxable Social Security</i>	\$0		
<i>Non Taxable Social Security</i>	\$0		
Child Support Paid:	\$0		
Child Support Received:	\$1,275		
<i>Non-Deductible Maintenance Paic</i>	\$0		
<i>Non-Taxable Maintenance Rec'd:</i>	\$0		
RE Tax on Home	\$0		
Interest on Home	\$0		
Other Itemized Deductions	\$0		
Rent with Heat	\$0		
Rent without Heat	\$0		
Child Care	\$0		

Net Spendable Income:	
<i>Annual</i>	\$34,049
<i>Monthly</i>	\$2,837
<b>Percentage of Income</b>	<b>46.65%</b>

Federal Tax	
<i>Adjusted Gross Income:</i>	\$40,000
<i>Taxable Income:</i>	\$26,150
<i>Federal Income Tax:</i>	\$2,918
<i>Alternative Minimum Tax</i>	\$0
<i>Medicare/Investment Tax</i>	\$0
<i>Child &amp; Dep Care Credit</i>	\$0
<i>Child Tax Credit</i>	\$0
<i>Refundable Child Tax Credit</i>	\$0
<i>Earned Income Credit</i>	\$0
Total Federal Tax	\$2,918

State Tax		Wisconsin
<i>State Income Tax</i>	\$1,248	
<i>State Credits</i>	\$0	
Total State Tax	\$1,248	

Social Security Tax	
Social Security Tax	\$3,060
<b>Total Net Tax:</b>	<b>\$7,226</b>

Calculate Filing Options

Enter Maintenance Target

Populate 50/50, 55/45 and 60/40 Scenarios

Calculate Child Support

Clear Scenario Inputs

Copy/Import Scenario

View Scenario Summary

Monthly Child Support
\$106
Monthly Maintenance
\$0
Combined Spendable Income
\$72,989

### SCENARIOS

1 Scenario #1

2 Scenario #2

3 Scenario #3

4 Scenario #4

5 Scenario #5



**DCF 150 - Split/Shared/Primary Placement**

**Case Information**

Name..... PRETEND Scenario Scenario #3  
 Date Prepared..... Date:

**Child Support Factors**

Monthly income subject to child support (enter on Gross Income Page)..... **Father** 4,166.67 **Mother** 3,333.33  
 Monthly Children's Auxiliary Benefits Received (see Income Summary)..... 0.00 0.00

Placement Schedules:	#1	#2	#3	#4	#5	Total
# of Children	1	0	0	0	0	1
<b>Overnights:</b>						
Father	182.50					
Mother	182.50					
<b>Percentages:</b>						
Father	50.00%					
Mother	50.00%					

**Child Support (with high/low income adjustments)**

Month..... **Father** 106.25 **Mother**  
 Semi-month..... 53.13  
 Bi-week..... 49.04  
 Week..... 24.52

**Basic Costs**

	Father	Mother	Variable Costs	Father	Mother
Food.....	50%	50%	Child care.....	50%	50%
Shelter.....	50%	50%	Tuition.....	50%	50%
Clothing.....	50%	50%	Special needs.....	50%	50%
Transportation..	50%	50%	Activities.....	50%	50%
Personal care...	50%	50%			
Incidental.....	50%	50%			
Recreational....	50%	50%			

**Child Support Discretionary Outcome Table**

		Mother			
		No Adj.	Father	Mother	
Payer →	Father	106.25			
	No Adj.				

**CALCULATIONS**

Low and High Income Adjustments Applied

Support Percentages	Income	Father		Mother	
		Total Percent	Per Child Percent	Total Percent	Per Child Percent
Low Income Table.....					
Income beginning at.....	\$ 0.00	17%	17.00%	17%	17.00%
High-income beginning at.....	\$ 7,000.00	14%	14.00%	14%	14.00%
High-income beginning at.....	\$ 12,500.00	10%	10.00%	10%	10.00%

Placement Scenarios	1	2	3	4	5
Children	1	0	0	0	0
<b>Overnights:</b>					
Father	182.50				
Mother	182.50				
<b>Percentages:</b>					
Father	50.00%				
Mother	50.00%				

**Child Support Calculations**

	Scenario 1		Scenario 2		Scenario 3		Scenario 4		Scenario 5	
	Father	Mother	Father	Mother	Father	Mother	Father	Mother	Father	Mother
<b>Income</b>	4,166.67	3,333.33								
Low Income										
\$ 0	708.33	566.67								
\$ 7,000										
\$ 12,500										
Subtotal	708.33	566.67	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Times 150%	1,062.50	850.00								
Placement %	50.00%	50.00%								
Subtotal	531.25	425.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Net	106.25									
Adjusted Net (1	106.25									

**Net Support Calculation**  
 Scenario Totals **Father** 106.25 **Mother** 0.00

Case Name: **PRETEND** Date:

Scenario 4: **Scenario #4** Enter/Remove Dependents

Name	Date of Birth	Year end Age	Overnights With Father	Overnights With Mother
<b>Child A</b>	<b>1/1/2018</b>	<b>Y 5</b>	<b>91</b>	<b>274</b>

Father		DOB:	1/1/00
Filing Status:	Single		
Total Dependent	0		
Child Dependents <17:	0		
Qualifying Children	0		
Earned Income:	\$85,000		
Self Employment Income	\$0		
Other Income	\$0		
Custom Income	\$0		
Custom Income	\$0		
Custom Income	\$0		
Investment Income:	\$0		
Pre-Tax Payroll Deduction:	\$0		
Total Social Security	\$0		
Taxable Social Security	\$0		
Non Taxable Social Security	\$0		
Child Support Paid:	\$14,420		
Child Support Received:	\$0		
Non-Deductible Maintenance Paic	\$0		
Non-Taxable Maintenance Rec'd:	\$0		
RE Tax on Home	\$0		
Interest on Home	\$0		
Other Itemized Deductions	\$0		
Rent with Heat	\$0		
Rent without Heat	\$0		
Child Care	\$0		

Net Spendable Income:	
Annual	\$49,197
Monthly	\$4,100
<b>Percentage of Income</b>	<b>51.04%</b>

Federal Tax	
Adjusted Gross Income:	\$85,000
Taxable Income:	\$71,150
Federal Income Tax:	\$10,961
Alternative Minimum Tax	\$0
Medicare/Investment Tax	\$0
Child & Dep Care Credit	\$0
Child Tax Credit	\$0
Refundable Child Tax Credit	\$0
Earned Income Credit	\$0
Total Federal Tax	\$10,961

State Tax Wisconsin	
State Income Tax	\$3,919
State Credits	\$0
Total State Tax	\$3,919

Social Security Tax	
Social Security Tax	\$6,503
<b>Total Net Tax:</b>	<b>\$21,383</b>

Mother		DOB:	1/1/00
Filing Status:	Single		
Total Dependent	0		
Child Dependents <17:	0		
Qualifying Children	0		
Earned Income:	\$40,000		
Self Employment Income	\$0		
Other Income	\$0		
Custom Income	\$0		
Custom Income	\$0		
Custom Income	\$0		
Investment Income:	\$0		
Pre-Tax Payroll Deduction:	\$0		
Total Social Security	\$0		
Taxable Social Security	\$0		
Non Taxable Social Security	\$0		
Child Support Paid:	\$0		
Child Support Received:	\$14,420		
Non-Deductible Maintenance Paic	\$0		
Non-Taxable Maintenance Rec'd:	\$0		
RE Tax on Home	\$0		
Interest on Home	\$0		
Other Itemized Deductions	\$0		
Rent with Heat	\$0		
Rent without Heat	\$0		
Child Care	\$0		

Net Spendable Income:	
Annual	\$47,194
Monthly	\$3,933
<b>Percentage of Income</b>	<b>48.96%</b>

Federal Tax	
Adjusted Gross Income:	\$40,000
Taxable Income:	\$26,150
Federal Income Tax:	\$2,918
Alternative Minimum Tax	\$0
Medicare/Investment Tax	\$0
Child & Dep Care Credit	\$0
Child Tax Credit	\$0
Refundable Child Tax Credit	\$0
Earned Income Credit	\$0
Total Federal Tax	\$2,918

State Tax Wisconsin	
State Income Tax	\$1,248
State Credits	\$0
Total State Tax	\$1,248

Social Security Tax	
Social Security Tax	\$3,060
<b>Total Net Tax:</b>	<b>\$7,226</b>

Calculate Filing Options

Enter Maintenance Target

Populate 50/50, 55/45 and 60/40 Scenarios

Calculate Child Support

Clear Scenario Inputs

Copy/Import Scenario

View Scenario Summary

Monthly Child Support
\$1,202
Monthly Maintenance
\$0
Combined Spendable Income
\$96,391

### SCENARIOS

1 Scenario #1

2 Scenario #2

3 Scenario #3

4 Scenario #4

5 Scenario #5



**DCF 150 - Split/Shared/Primary Placement**

**Case Information**

Name..... PRETEND Scenario Scenario #4  
 Date Prepared..... Date:

**Child Support Factors**

Monthly income subject to child support (enter on Gross Income Page)..... **Father** 7,083.33 **Mother** 3,333.33  
 Monthly Children's Auxiliary Benefits Received (see Income Summary)..... 0.00 0.00

Placement Schedules:	#1	#2	#3	#4	#5	Total
# of Children	1	0	0	0	0	1
<b>Overnights:</b>						
Father	91.00					
Mother	274.00					
<b>Percentages:</b>						
Father	24.93%					
Mother	75.07%					

**Child Support (with high/low income adjustments)**

Month..... **Father** 1,201.66 **Mother**  
 Semi-month..... 600.83  
 Bi-week..... 554.61  
 Week..... 277.31

**Basic Costs**

	Father	Mother	Variable Costs	Father	Mother
Food.....	25%	75%	Child care.....	25%	75%
Shelter.....	25%	75%	Tuition.....	25%	75%
Clothing.....	25%	75%	Special needs.....	25%	75%
Transportation..	25%	75%	Activities.....	25%	75%
Personal care...	25%	75%			
Incidental.....	25%	75%			
Recreational....	25%	75%			

**Child Support Discretionary Outcome Table**

		Mother			
		No Adj.	Father	Mother	
Payer →	Father	1,204.17			
	No Adj.	1,204.17			
Father	High	1,201.66			

**CALCULATIONS**

Low and High Income Adjustments Applied

Support Percentages	Income	Father		Mother	
		Total Percent	Per Child Percent	Total Percent	Per Child Percent
Low Income Table.....					
Income beginning at.....	\$ 0.00	17%	17.00%	17%	17.00%
High-income beginning at.....	\$ 7,000.00	14%	14.00%	14%	14.00%
High-income beginning at.....	\$ 12,500.00	10%	10.00%	10%	10.00%

Placement Scenarios	1	2	3	4	5
Children	1	0	0	0	0
<b>Overnights:</b>					
Father	91.00				
Mother	274.00				
<b>Percentages:</b>					
Father	24.93%				
Mother	75.07%				

**Child Support Calculations**

	Scenario 1		Scenario 2		Scenario 3		Scenario 4		Scenario 5	
	Father	Mother	Father	Mother	Father	Mother	Father	Mother	Father	Mother
<b>Income</b>	7,083.33	3,333.33								
Low Income										
\$ 0	1,190.00									
\$ 7,000	11.67									
\$ 12,500										
Subtotal	1,201.66	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Times 150%										
Placement %										
Subtotal	1,201.66	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Net	1,201.66									
Adjusted Net (1	1,201.66									

Net Support Calculation	Father	Mother
Scenario Totals	1,201.66	0.00

VARIABLE COST CHECKLIST  
GREEN COUNTY FAMILY COURT

Case Caption (short): \_\_\_\_\_

Case Number: \_\_\_\_\_

Your name or names: \_\_\_\_\_

We agree (I propose) that the following are to be considered “variable expenses” in this case:

Yes	No	
		<b>Child Care</b>
<input type="checkbox"/>	<input type="checkbox"/>	Day Care
<input type="checkbox"/>	<input type="checkbox"/>	Babysitters (non-work related)
<input type="checkbox"/>	<input type="checkbox"/>	Nanny
		<b>Transportation</b>
<input type="checkbox"/>	<input type="checkbox"/>	Child(ren)’s car
<input type="checkbox"/>	<input type="checkbox"/>	Child(ren)’s car insurance
<input type="checkbox"/>	<input type="checkbox"/>	Bicycles and bicycle repair
<input type="checkbox"/>	<input type="checkbox"/>	Drivers education fees
<input type="checkbox"/>	<input type="checkbox"/>	Drivers license fees
<input type="checkbox"/>	<input type="checkbox"/>	Public Transportation (bus, etc)
<input type="checkbox"/>	<input type="checkbox"/>	Gasoline costs for placement transportation
<input type="checkbox"/>	<input type="checkbox"/>	Airline costs for placement transportation
		<b>School &amp; school related</b>
<input type="checkbox"/>	<input type="checkbox"/>	Preschool
<input type="checkbox"/>	<input type="checkbox"/>	Back to school clothes
<input type="checkbox"/>	<input type="checkbox"/>	School supplies
<input type="checkbox"/>	<input type="checkbox"/>	School fees
<input type="checkbox"/>	<input type="checkbox"/>	Summer school expenses



<input type="checkbox"/>	<input type="checkbox"/>	School lunches
<input type="checkbox"/>	<input type="checkbox"/>	Private school tuition
<input type="checkbox"/>	<input type="checkbox"/>	Field trips
<input type="checkbox"/>	<input type="checkbox"/>	Class trips
<input type="checkbox"/>	<input type="checkbox"/>	Tutoring fees
<input type="checkbox"/>	<input type="checkbox"/>	Year books
<input type="checkbox"/>	<input type="checkbox"/>	Letter jackets
<input type="checkbox"/>	<input type="checkbox"/>	Class pictures other than senior photos
<input type="checkbox"/>	<input type="checkbox"/>	Senior photos
<input type="checkbox"/>	<input type="checkbox"/>	Class rings
<input type="checkbox"/>	<input type="checkbox"/>	High school graduation expenses
<input type="checkbox"/>	<input type="checkbox"/>	Costs of college/tech school search; application fees, travel expenses
<input type="checkbox"/>	<input type="checkbox"/>	Financial aid counseling
<input type="checkbox"/>	<input type="checkbox"/>	SAT/ACT prep classes
<input type="checkbox"/>	<input type="checkbox"/>	SAT/ACT fees
<input type="checkbox"/>	<input type="checkbox"/>	Formal occasion expenses (dresses, tuxes, tickets, flowers)
<input type="checkbox"/>	<input type="checkbox"/>	Limousine for prom
<input type="checkbox"/>	<input type="checkbox"/>	Athletic fees
<input type="checkbox"/>	<input type="checkbox"/>	Athletic equipment
<input type="checkbox"/>	<input type="checkbox"/>	Extra-curricular fees
		<b>Clothing</b>
<input type="checkbox"/>	<input type="checkbox"/>	Winter coats
<input type="checkbox"/>	<input type="checkbox"/>	Boots
<input type="checkbox"/>	<input type="checkbox"/>	School uniforms
<input type="checkbox"/>	<input type="checkbox"/>	Jewelry

		<b>Activities &amp; Recreation</b>
<input type="checkbox"/>	<input type="checkbox"/>	YMCA membership
<input type="checkbox"/>	<input type="checkbox"/>	Art/craft supplies
<input type="checkbox"/>	<input type="checkbox"/>	4-H project expenses
<input type="checkbox"/>	<input type="checkbox"/>	Music lessons
<input type="checkbox"/>	<input type="checkbox"/>	Instrument rental/Instrument purchase
<input type="checkbox"/>	<input type="checkbox"/>	Other music supplies
<input type="checkbox"/>	<input type="checkbox"/>	Performance costumes
<input type="checkbox"/>	<input type="checkbox"/>	Hunter safety courses
<input type="checkbox"/>	<input type="checkbox"/>	Hunting & fishing licenses & equipment
<input type="checkbox"/>	<input type="checkbox"/>	Club/traveling team sports membership fees
<input type="checkbox"/>	<input type="checkbox"/>	Sports lessons
<input type="checkbox"/>	<input type="checkbox"/>	Dance lessons
<input type="checkbox"/>	<input type="checkbox"/>	Team uniforms & sports equipment
<input type="checkbox"/>	<input type="checkbox"/>	Residential summer camp
<input type="checkbox"/>	<input type="checkbox"/>	Summer recreation fees
<input type="checkbox"/>	<input type="checkbox"/>	Sports camps
		<b>General Lifestyle</b>
<input type="checkbox"/>	<input type="checkbox"/>	Haircuts, styling, permanents, nails
<input type="checkbox"/>	<input type="checkbox"/>	Allowances
<input type="checkbox"/>	<input type="checkbox"/>	Holiday & birthday gifts
<input type="checkbox"/>	<input type="checkbox"/>	Child's gifts to others
<input type="checkbox"/>	<input type="checkbox"/>	Classes not specified elsewhere (art, lifeguarding, etc)
<input type="checkbox"/>	<input type="checkbox"/>	Cell phones
<input type="checkbox"/>	<input type="checkbox"/>	Cell phone charges

<input type="checkbox"/>	<input type="checkbox"/>	Music players & subscriptions
<input type="checkbox"/>	<input type="checkbox"/>	Luggage
<input type="checkbox"/>	<input type="checkbox"/>	Camera
<input type="checkbox"/>	<input type="checkbox"/>	Laptop & tablet
<input type="checkbox"/>	<input type="checkbox"/>	Computer accessories & hardware
<input type="checkbox"/>	<input type="checkbox"/>	Computer software
<input type="checkbox"/>	<input type="checkbox"/>	Online games
<input type="checkbox"/>	<input type="checkbox"/>	Electronic games
<input type="checkbox"/>	<input type="checkbox"/>	Birthday & graduation parties for child
<input type="checkbox"/>	<input type="checkbox"/>	Books, paper or electronic
<input type="checkbox"/>	<input type="checkbox"/>	Movie, theater, concert tickets
		<b>Other</b>
<input type="checkbox"/>	<input type="checkbox"/>	Orthodontic care & supplies (Braces and retainers, doctor visits, etc. not covered by insurance.
<input type="checkbox"/>	<input type="checkbox"/>	Eyeglasses if not covered by insurance)
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	

Both sign if agreed, one signs if proposed

\_\_\_\_\_  
Petitioner

\_\_\_\_\_  
Respondent/Joint Petitioner

Wisconsin Administrative Code Section DCF 150.04(2)(b)6 requires that variable costs shared by the parties be determined based on a detailed list of variable costs provided by the parties. The rule requires that transportation costs related to the exercise of physical placement be included in that list. The rule requires that the responsibility for payment of variable expenses be assigned based on each parent's share of physical placement, but parents often agree to split these expenses equally.

each party furnish the court with information regarding the types and costs of any health insurance policies or plans that are offered through each party's employer or other organization. This disclosure shall include a copy of any health care policy or plan that names the child as a beneficiary at the time that the disclosure is filed under sub. (2).

(2) **FILING DISCLOSURE FORMS.** Disclosure forms required under this section shall be filed within 90 days after the service of summons or the filing of a joint petition or at a time ordered by the court. Information on the forms shall be updated on the record to the date of hearing.

(3) **CONFIDENTIALITY OF DISCLOSED INFORMATION.** (a) Except as provided in par. (b), information disclosed under this section and under s. 767.54 is confidential and may not be made available to any person for any purpose other than the adjudication, appeal, modification, or enforcement of judgment of an action affecting the family of the disclosing parties.

(b) The clerk of circuit court shall provide information from court records to the department under s. 59.40 (2) (p).

(4) **FAILURE TO TIMELY FILE.** If either party fails timely to file a complete disclosure statement as required by this section, the court may accept as accurate any information provided in the statement of the other party or obtained under s. 49.22 (2m) by the department or the county child support agency under s. 59.53 (5).

(5) **FAILURE TO DISCLOSE; CONSTRUCTIVE TRUST.** If a party intentionally or negligently fails to disclose information required by sub. (1) and as a result any asset with a fair market value of \$500 or more is omitted from the final distribution of property, the party aggrieved by the nondisclosure may at any time petition the court granting the annulment, divorce, or legal separation to declare the creation of a constructive trust as to all undisclosed assets, for the benefit of the parties and their minor or dependent children, if any, with the party in whose name the assets are held declared the constructive trustee. The trust shall include such terms and conditions as the court may determine. The court shall grant the petition upon a finding of a failure to disclose assets as required under sub. (1).

**History:** 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; 1979 c. 352 s. 39; Stats. 1979 s. 767.27; 1985 a. 29; 1987 a. 413; 1993 a. 112, 481; 1995 a. 27 s. 9126 (19); 1995 a. 201, 404; 1997 a. 27, 35, 191; 2001 a. 16, 61, 105; 2005 a. 443 ss. 68, 121, 123; Stats. 2005 s. 767.127; 2011 a. 258.

**NOTE:** 2005 Wis. Act 443 contains explanatory notes.

In the event of a property division determined by arbitration, the closing of the arbitration record does not create a categorical exception under sub. (2) to alter the general rule of valuing property at the date of divorce, although the closing of the arbitration record could serve as the date of valuation. *Frank v. Franke*, 2004 WI 8, 268 Wis. 2d 360, 674 N.W.2d 832, 01–3316.

While under s. 767.61 (2) (a) 1. gifted property is generally not subject to division, that is not a hard and fast rule. It was not for a party to unilaterally decide not to disclose property because the party believed it was not subject to division. *Jezeski v. Jezeski*, 2009 WI App 8, 316 Wis. 2d 178, 763 N.W.2d 176, 07–2823.

In not revealing that he was a trust beneficiary, a father failed to make proper financial disclosure at the time of a divorce as was required by this section. Under both grantor and nongrantor trusts if there is an obligation to report that trust's income as one's own, there is an obligation to report the income, and that obligation makes the income reachable for calculations of child support. *Stevenson v. Stevenson*, 2009 WI App 29, 316 Wis. 2d 442, 765 N.W.2d 811, 07–2143.

**767.13 Impoundment of record.** Except as provided in s. 767.127 (3), the record or evidence in an action affecting the family may not be impounded, and access to the record or evidence may not be refused, except by written order of the court for good cause shown. No person may permit a copy of any impounded record or evidence, or the substance of the record or evidence, to be taken by any person other than a party to the action or his or her attorney of record, unless a court orders otherwise.

**History:** 1977 c. 105, 273; 1979 c. 32 s. 50; 1979 c. 352 s. 39; Stats. s. 767.19; 2005 a. 443 s. 76; Stats. 2005 s. 767.13.

**NOTE:** 2005 Wis. Act 443 contains explanatory notes.

**767.14 Change of address.** Within 5 business days after receiving notice of an address change by a party to an action affecting the family, the clerk of circuit court shall enter the new address in the case file for the action.

**History:** 2017 a. 203.

**767.16 Circuit court commissioner or law partner; when interested; procedure.** A circuit court commissioner assisting in matters affecting the family or a member of the commissioner's law firm may not appear in any action affecting the family in any court held in the county in which the circuit court commissioner is acting. If a circuit court commissioner or a member of the commissioner's law firm is interested in an action affecting the family and no other circuit court commissioner is available, the presiding judge shall appoint an attorney to act as circuit court commissioner in that action. The appointed attorney shall take and file the oath and receive the compensation provided by law.

**History:** 1979 c. 32 ss. 50, 92 (4); 1979 c. 176; 1979 c. 352 s. 39; Stats. 1979 s. 767.16; 2001 a. 61; 2005 a. 443.

**NOTE:** 2005 Wis. Act 443 contains explanatory notes.

**767.17 De novo review. (1) RIGHT TO DE NOVO REVIEW.** Any decision of a circuit court commissioner under this chapter shall be reviewed by the judge of the branch of court to which the case has been assigned, upon motion of any party. Any determination, order, or ruling by a circuit court commissioner under this chapter may be certified to the branch of court to which the case has been assigned, upon a motion of any party for a hearing de novo. A party is required to be present at the hearing in order to seek a de novo review. The right to seek a de novo review does not apply to stipulations entered into between the parties. Notices requesting a hearing de novo will not stay the order unless the trial court specifically grants a stay of the order.

(2) **TIME LIMITS.** If a party seeks to have the trial court conduct a hearing de novo of a determination, order, or ruling entered by a court commissioner in an action affecting the family under this chapter, the party shall file a motion for a hearing de novo within 20 calendar days of the oral decision of the court commissioner or within 20 calendar days of the mailing of a written decision or order by the court commissioner if the decision or order was not given orally by the court commissioner at the time of the hearing. As set forth under s. 801.15 (1), 20 calendar days are counted consecutively and include weekends and holidays.

(3) **HEARING.** The court shall hold a hearing de novo no later than 60 days from the date of the filing of the motion under this section, except as otherwise required under s. 767.481.

**History:** 2005 a. 443; 2021 a. 205.

**767.18 Actions to affirm marriage.** If the validity of a marriage is denied or doubted by either of the parties the other party may commence an action to affirm the marriage. The judgment in an action to affirm marriage shall declare the marriage valid or annul the marriage, and is conclusive upon all persons concerned.

**History:** 1979 c. 32 s. 50; Stats. 1979 s. 767.04; 2005 a. 443 s. 24; Stats. 2005 s. 767.18.

## SUBCHAPTER III

### GENERAL PROCEDURE

**767.201 Civil procedure generally governs.** Except as otherwise provided in the statutes, chs. 801 to 847 govern procedure and practice in an action affecting the family. Except as provided in this chapter, chs. 801 and 802 apply to the content and form of the pleadings and summons in an action affecting the family.

**History:** 2005 a. 443.

**NOTE:** 2005 Wis. Act 443 contains explanatory notes.

Because this chapter does not prohibit civil sanctions for frivolous proceedings under s. 802.05, a motion for sanctions under s. 802.05 (2) and (3) in a divorce action under this chapter is governed by the rules of civil procedure. *Wenzel v. Wenzel*, 2017 WI App 75, 378 Wis. 2d 670, 904 N.W.2d 384, 16–1771.

**767.205 Parties; title of actions. (1) PARTIES.** The party initiating an action affecting the family is the petitioner. The party responding to the action is the respondent. All references to "plaintiff" in chs. 801 to 807 apply to the petitioner, and all refer-

or any other person who paid for the services on behalf of the child, the department may obtain a judgment against the parent for the amount of the 3rd-party payment.

(b) Section 767.75 (4) applies to a garnishment based on a judgment obtained under par. (a).

**(6) CHANGE OF EMPLOYMENT: NOTICE.** (a) If a parent who provides coverage of the health care expenses of a child under an order under this section changes employers and that parent has a court-ordered child support obligation with respect to the child, the county child support agency under s. 59.53 (5) shall provide notice of the order to provide coverage of the child's health care expenses to the new employer and to the parent.

(b) The notice provided to the parent shall inform the parent that coverage for the child under the new employer's health benefit plan will be in effect upon the employer's receipt of the notice. The notice shall inform the parent that he or she may, within 10 business days after receiving the notice, by motion request a hearing before the court on the issue of whether the order to provide coverage of the child's health care expenses should remain in effect. A motion under this paragraph may be heard by a circuit court commissioner. If the parent requests a hearing and the court determines that the order to provide coverage of the child's health care expenses should not remain in effect, the court shall provide notice to the employer that the order is no longer in effect.

**History:** 2005 a. 443 ss. 104, 220; 2007 a. 96; 2019 a. 95.

**NOTE:** 2005 Wis. Act 443 contains explanatory notes.

Orders assigning health care responsibility pursuant to s. 767.25 (4m) [now this section] are subject to revision under s. 767.32 [now s. 767.59]. *Kuchenbecker v. Schultz*, 151 Wis. 2d 868, 447 N.W.2d 80 (Ct. App. 1989).

**767.521 Action by state for child support.** The state or its delegate under s. 49.22 (7) shall bring an action for support of a minor child under s. 767.001 (1) (f) or for paternity determination and child support under s. 767.80 if the child's right to support is assigned to the state under s. 48.57 (3m) (b) 2. or (3n) (b) 2., 48.645 (3), 49.145 (2) (s), 49.19 (4) (h) 1. b., or 49.775 (2) (bm) and all of the following apply:

(1) The child has been deprived of parental support by reason of the continued absence of a parent from the home.

(2) A court has not issued an order under s. 767.511 requiring the parent who is absent from the home to support the child.

**History:** 1987 a. 27; 1995 a. 289, 404; 1997 a. 27, 105; 2005 a. 443 s. 38; Stats. 2005 s. 767.521; 2007 a. 20.

**767.531 Family support.** Subject to s. 767.511 (6m), a party ordered to pay family support under this section, 2019 stats., shall pay simple interest at the rate of 1 percent per month on any amount in arrears that is equal to or greater than the amount of child support due in one month. Subject to s. 767.511 (6m), if the party no longer has a current obligation to pay child support, interest at the rate of 1 percent per month shall accrue on the total amount of child support in arrears, if any. Interest under this section is in lieu of interest computed under s. 807.01 (4), 814.04 (4), or 815.05 (8) and is paid to the department or its designee under s. 767.57. Except as provided in s. 767.57 (1m), the department or its designee shall apply all payments received for family support ordered under this section, 2019 stats., as follows:

(1) First, to payment of family support due within the calendar month during which the payment is received.

(2) Second, to payment of unpaid family support due before the payment is received.

(3) Third, to payment of interest accruing on unpaid family support.

**History:** 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); Stats. 1979 s. 767.261; 1983 a. 27; 1985 a. 29; 1993 a. 481; 1995 a. 279; 1997 a. 27, 191; 1999 a. 9, 32; 2005 a. 443 s. 111; Stats. 2005 s. 767.531; 2013 a. 20; 2021 a. 35.

This section does not limit the authority a trial court would otherwise have to consider imposing interest on unpaid maintenance arrears. *Cashin v. Cashin*, 2004 WI App 92, 273 Wis. 2d 754, 681 N.W.2d 255, 03–1010.

Under former s. 767.531, 2019 stats., the circuit court must separately calculate child support and maintenance as a condition precedent to calculating family support. If the court applies the percentage guidelines when setting child support, it must set family support at an amount that results in a net payment, after state and federal taxes are paid, of no less than the child support as calculated under the guidelines. Even

if a court makes detailed findings as to all of the factors for family support, the court erroneously exercises its discretion if it neglects to provide a rational explanation of how its findings lead to the support award. *Vlies v. Brookman*, 2005 WI App 158, 285 Wis. 2d 411, 701 N.W.2d 642, 04–0315.

It is evident from the statutory framework and the purpose of family support that at least a portion of family support ordered in any case involving minor children is child support. With respect to child support, any provision in a marital settlement agreement that purports to limit a child support payee's ability to seek a support modification upon a substantial change in circumstances is against public policy and cannot provide a basis to estop the payee from seeking a modification. *Huhn v. Stuckmann*, 2009 WI App 127, 321 Wis. 2d 169, 772 N.W.2d 744, 08–3102.

#### **767.54 Required exchange of financial information.**

(1) In an action in which the court has ordered a party to pay family support under s. 767.225, 2019 stats., or s. 767.531, 2019 stats., or child support or maintenance under this chapter, including an action to revise a judgment or order under s. 767.59, the court shall require the parties annually to exchange financial information. Information required under this section shall be exchanged no later than May 1 of each calendar year, unless otherwise agreed upon in writing by the parties. The information required to be exchanged shall include all of the following:

(a) A complete copy of the party's federal and state income tax return for the prior calendar year, including all W-2 forms and 1099 forms.

(b) A year-end paycheck stub from all sources of employment for the prior calendar year.

(c) The party's most recent paycheck stub from all sources of employment showing year-to-date gross and net income.

(d) Any other documentation of the party's income from all sources for the 12-month period preceding the exchange of information.

(2) A party may redact or remove the following personally identifying information from documents provided under sub. (1) unless otherwise ordered by the court:

(a) The party's home or work address, if the party is participating in the program under s. 165.68, or if the party's address is otherwise protected or sealed.

(b) The name, date of birth, and address of the party's spouse.

(c) The name, date of birth, and other personally identifying information of a minor child not related to the other party.

(d) Any social security number.

(e) An identification number assigned by an employer.

(f) A taxpayer identification number assigned by the department of revenue or federal internal revenue service.

(g) Any depository account number, investment account number, or other personally identifying number related to any investment tool.

(h) A military identification number.

(i) Any other personally identifying information that is intended to be used to access services, funds, or benefits of any kind to which an individual is entitled.

(j) Any other personally identifying information that is not required to determine the income or financial status of the party.

(3) Information disclosed under this section is subject to s. 767.127 (3). A party who fails to furnish information required by the court under this section may be proceeded against for contempt of court under ch. 785. If the court finds that a party has failed to furnish information required under this section, the court may award to the party bringing the action costs and, notwithstanding s. 814.04 (1), reasonable attorney fees.

**History:** 2005 a. 443 s. 122; 2021 a. 35, 259.

**NOTE:** 2005 Wis. Act 443 contains explanatory notes.

#### **767.55 Child support: employment-related orders.**

(1) **GENERALLY.** In an action for modification of a child support order under s. 767.59 or an action in which an order for child support is required under s. 767.511 (1), 767.804 (3), 767.805 (4), or 767.89 (3), the court may order either or both parents of the child to seek employment or participate in an employment or training program.

sureties to be approved by the presiding judge, as a condition of the continuance of the injunction.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 760 (1975); Stats. 1975 s. 813.11; 1993 a. 486.

**813.115 Service notification system.** A sheriff who executes or serves, or who assists a petitioner in executing or serving, a temporary restraining order, injunction, or other document or notice under s. 813.12, 813.122, 813.123, or 813.125 may use the Wisconsin Statewide Victim Notification service or another service notification system administered by the department of corrections that enables the petitioner to receive an automated notification of the service of the temporary restraining order, injunction, or other document or notice that must be served on the respondent. A sheriff for a county that uses the system shall enter each order for service into the system as soon as practicable so that the petitioner receives timely notification of the service. The clerk of court for a county that uses a service notification system shall, at the time a petition is filed under s. 813.12, 813.122, 813.123, or 813.125, make available to the petitioner information on how to gain access to the system.

**History:** 2015 a. 349; 2017 a. 365.

**813.12 Domestic abuse restraining orders and injunctions.** (1) **DEFINITIONS.** In this section:

(ad) “Caregiver” means an individual who is a provider of in-home or community care to an individual through regular and direct contact.

(ag) “Dating relationship” means a romantic or intimate social relationship between 2 adult individuals but “dating relationship” does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context. A court shall determine if a dating relationship existed by considering the length of the relationship, the type of the relationship, and the frequency of the interaction between the adult individuals involved in the relationship.

(am) “Domestic abuse” means any of the following engaged in by an adult family member or adult household member against another adult family member or adult household member, by an adult caregiver against an adult who is under the caregiver’s care, by an adult against his or her adult former spouse, by an adult against an adult with whom the individual has or had a dating relationship, or by an adult against an adult with whom the person has a child in common:

1. Intentional infliction of physical pain, physical injury or illness.
2. Intentional impairment of physical condition.
3. A violation of s. 940.225 (1), (2) or (3).
4. A violation of s. 940.32.
5. A violation of s. 943.01, involving property that belongs to the individual.
6. A threat to engage in the conduct under subd. 1., 2., 3., 4., or 5.

(ar) “Elder person” means any individual who is 60 years of age or older.

(b) “Family member” means a spouse, a parent, a child or a person related by blood or adoption to another person.

(c) “Household member” means a person currently or formerly residing in a place of abode with another person.

(ce) “Household pet” means a domestic animal that is not a farm animal, as defined in s. 951.01 (3), that is kept, owned, or cared for by the petitioner or by a family member or a household member of the petitioner.

(cg) “Reasonable grounds” means more likely than not that a specific event has occurred or will occur.

(cj) “Regular and direct contact” means face-to-face physical proximity to an individual that is planned, scheduled, expected, or periodic.

(d) “Tribal court” means a court established by any federally recognized Wisconsin Indian tribe or band, except the Menominee Indian tribe of Wisconsin.

(e) “Tribal order or injunction” means a temporary restraining order or injunction issued by a tribal court under a tribal domestic abuse ordinance adopted in conformity with this section.

**(2) COMMENCEMENT OF ACTION AND RESPONSE.** (a) No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by a petition described under sub. (5) (a). The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. If the judge or a circuit court commissioner extends the time for a hearing under sub. (3) (c) and the petitioner files an affidavit with the court stating that personal service by the sheriff or a private server under s. 801.11 (1) (a) or (b) was unsuccessful because the respondent is avoiding service by concealment or otherwise, the judge or circuit court commissioner shall inform the petitioner that he or she may serve the respondent by publication of a summary of the petition as a class 1 notice, under ch. 985, and by mailing or sending a facsimile if the respondent’s post-office address or facsimile number is known or can with due diligence be ascertained. The mailing or sending of a facsimile may be omitted if the post-office address or facsimile number cannot be ascertained with due diligence. A summary of the petition published as a class 1 notice shall include the name of the respondent and of the petitioner, notice of the temporary restraining order, and notice of the date, time, and place of the hearing regarding the injunction. The court shall inform the petitioner in writing that, if the petitioner chooses to have the documents in the action served by the sheriff, the petitioner should contact the sheriff to verify the proof of service of the petition.

(b) A petition may be filed in conjunction with an action affecting the family commenced under ch. 767, but commencement of an action affecting the family or any other action is not necessary for the filing of a petition or the issuance of a temporary restraining order or an injunction. A judge or circuit court commissioner may not make findings or issue orders under s. 767.225 or 767.41 while granting relief requested only under this section. Section 813.06 does not apply to an action under this section. The respondent may respond to the petition either in writing before or at the hearing on the issuance of the injunction or orally at that hearing.

(c) When the respondent is served with the petition under this subsection, the person who serves the respondent shall also provide the respondent all of the following information:

1. Notice of the requirements and penalties under s. 941.29 and notice of any similar applicable federal laws and penalties.
2. An explanation of s. 813.1285, including the procedures for surrendering a firearm and the circumstances listed under s. 813.1285 under which a respondent must appear at a hearing to surrender firearms.
3. A firearm possession form developed under s. 813.1285 (5) (a), with instructions for completing and returning the form.

**(2m) TWO-PART PROCEDURE.** Procedure for an action under this section is in 2 parts. First, if the petitioner requests a temporary restraining order the court shall issue or refuse to issue that order. Second, the court shall hold a hearing under sub. (4) on whether to issue an injunction, which is the final relief. If the court issues a temporary restraining order, the order shall set forth the date for the hearing on an injunction. If the court does not issue a temporary restraining order, the date for the hearing shall be set upon motion by either party.

**(3) TEMPORARY RESTRAINING ORDER.** (a) A judge or circuit court commissioner shall issue a temporary restraining order ordering the respondent to refrain from committing acts of domestic abuse against the petitioner, to avoid the petitioner’s residence, except as provided in par. (am), or any other location temporarily occupied by the petitioner or both, or to avoid contacting or causing any person other than a party’s attorney or a law enforcement

officer to contact the petitioner unless the petitioner consents in writing, to refrain from removing, hiding, damaging, harming, or mistreating, or disposing of, a household pet, to allow the petitioner or a family member or household member of the petitioner acting on his or her behalf to retrieve a household pet, or any combination of these remedies requested in the petition, or any other appropriate remedy not inconsistent with the remedies requested in the petition, if all of the following occur:

1. The petitioner submits to the judge or circuit court commissioner a petition alleging the elements set forth under sub. (5) (a).

2. The judge or circuit court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based on prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner.

(aj) In determining whether to issue a temporary restraining order, the judge or circuit court commissioner shall consider the potential danger posed to the petitioner and the pattern of abusive conduct of the respondent but may not base his or her decision solely on the length of time since the last domestic abuse or the length of time since the relationship ended. The judge or circuit court commissioner may grant only the remedies requested or approved by the petitioner. The judge or circuit court commissioner may not dismiss or deny granting a temporary restraining order because of the existence of a pending action or of any other court order that bars contact between the parties, nor due to the necessity of verifying the terms of an existing court order.

(am) If the petitioner and the respondent are not married, the respondent owns the premises where the petitioner resides and the petitioner has no legal interest in the premises, in lieu of ordering the respondent to avoid the petitioner's residence under par. (a) the judge or circuit court commissioner may order the respondent to avoid the premises for a reasonable time until the petitioner relocates and shall order the respondent to avoid the new residence for the duration of the order.

(b) Notice need not be given to the respondent before issuing a temporary restraining order under this subsection. A temporary restraining order may be entered only against the respondent named in the petition.

(c) The temporary restraining order is in effect until a hearing is held on issuance of an injunction under sub. (4), except that the court may extend the temporary restraining order under s. 813.1285. The temporary restraining order is not voided if the respondent is admitted into a dwelling that the order directs him or her to avoid. A judge or circuit court commissioner shall hold a hearing on issuance of an injunction within 14 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties, extended under s. 801.58 (2m), or extended once for 14 days upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence. A judge or circuit court commissioner may not extend the temporary restraining order in lieu of ruling on the issuance of an injunction.

(d) The judge or circuit court commissioner shall advise the petitioner of the right to serve the respondent the petition by published notice if with due diligence the respondent cannot be served as provided under s. 801.11 (1) (a) or (b). The clerk of circuit court shall assist the petitioner with the preparation of the notice and filing of the affidavit of printing.

**(4) INJUNCTION.** (a) A judge or circuit court commissioner may grant an injunction ordering the respondent to refrain from committing acts of domestic abuse against the petitioner, to avoid the petitioner's residence, except as provided in par. (am), or any other location temporarily occupied by the petitioner or both, or to avoid contacting or causing any person other than a party's attorney or a law enforcement officer to contact the petitioner unless the petitioner consents to that contact in writing, to refrain from removing, hiding, damaging, harming, or mistreating, or disposing of, a household pet, to allow the petitioner or a family member or household member of the petitioner acting on his or her

behalf to retrieve a household pet, or any combination of these remedies requested in the petition, or any other appropriate remedy not inconsistent with the remedies requested in the petition, if all of the following occur:

1. The petitioner files a petition alleging the elements set forth under sub. (5) (a).

2. The petitioner serves upon the respondent a copy or summary of the petition and notice of the time for hearing on the issuance of the injunction, or the respondent serves upon the petitioner notice of the time for hearing on the issuance of the injunction.

3. After hearing, the judge or circuit court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner.

(aj) In determining whether to issue an injunction, the judge or circuit court commissioner shall consider the potential danger posed to the petitioner and the pattern of abusive conduct of the respondent but may not base his or her decision solely on the length of time since the last domestic abuse or the length of time since the relationship ended. The judge or circuit court commissioner may grant only the remedies requested by the petitioner. The judge or circuit court commissioner may not dismiss or deny granting an injunction because of the existence of a pending action or of any other court order that bars contact between the parties, nor due to the necessity of verifying the terms of an existing court order.

(am) If the petitioner and the respondent are not married, the respondent owns the premises where the petitioner resides and the petitioner has no legal interest in the premises, in lieu of ordering the respondent to avoid the petitioner's residence under par. (a) the judge or circuit court commissioner may order the respondent to avoid the premises for a reasonable time until the petitioner relocates and shall order the respondent to avoid the new residence for the duration of the order.

(b) The judge or circuit court commissioner may enter an injunction only against the respondent named in the petition. No injunction may be issued under this subsection under the same case number against the person petitioning for the injunction. The judge or circuit court commissioner may not modify an order restraining the respondent based solely on the request of the respondent.

(c) 1. An injunction under this subsection is effective according to its terms, for the period of time that the petitioner requests, but not more than 4 years, except as provided in par. (d). An injunction granted under this subsection is not voided if the petitioner allows or initiates contact with the respondent or by the admittance of the respondent into a dwelling that the injunction directs him or her to avoid.

2. When an injunction expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect him or her. This extension shall remain in effect until 4 years after the date the court first entered the injunction, except as provided in par. (d).

4. Notice need not be given to the respondent before extending an injunction under subd. 2. The clerk of courts shall notify the respondent after the court extends an injunction under subd. 2.

(d) 1. A judge or circuit court commissioner may, upon issuing an injunction or granting an extension of an injunction issued under this subsection, order that the injunction is in effect for not more than 10 years, if the court finds, by a preponderance of the evidence stated on the record, that any of the following is true:

a. There is a substantial risk that the respondent may commit first-degree intentional homicide under s. 940.01, or 2nd-degree intentional homicide under s. 940.05, against the petitioner.

b. There is a substantial risk that the respondent may commit sexual assault under s. 940.225 (1), (2), or (3), or under s. 948.02 (1) or (2), against the petitioner.

1m. Upon request by the petitioner, a judge or circuit court commissioner may order that the injunction is in effect permanently if the respondent has been convicted of a violation of s. 940.225 (1) to (3) in which the petitioner was the crime victim. An order based on a finding under this subdivision is subject to review and modification under s. 813.126 (1m).

2. This paragraph does not prohibit a petitioner from requesting a new temporary restraining order under sub. (3) or injunction under this subsection before or at the expiration of a previously entered order or injunction.

**(4g) ORDER; TELEPHONE SERVICES.** (a) Unless a condition described in par. (b) exists, a judge or circuit court commissioner who issues an injunction under sub. (4) may, upon request by the petitioner, order a wireless telephone service provider to transfer to the petitioner the right to continue to use a telephone number or numbers indicated by the petitioner and the financial responsibility associated with the number or numbers, as set forth in par. (c). The petitioner may request transfer of each telephone number he or she, or a minor child in his or her custody, uses. The order shall contain all of the following:

1. The name and billing telephone number of the account holder.
2. Each telephone number that will be transferred.
3. A statement that the provider transfers to the petitioner all financial responsibility for and right to the use of any telephone number transferred under this subsection. In this subdivision, “financial responsibility” includes monthly service costs and costs associated with any mobile device associated with the number.

(b) A wireless telephone service provider shall terminate the respondent’s use of, and shall transfer to the petitioner use of, the telephone number or numbers indicated in par. (a) unless it notifies the petitioner, within 72 hours after it receives the order, that one of the following applies:

1. The account holder named in the order has terminated the account.
2. A difference in network technology would prevent or impair the functionality of a device on a network if the transfer occurs.
3. The transfer would cause a geographic or other limitation on network or service provision to the petitioner.
4. Another technological or operational issue would prevent or impair the use of the telephone number if the transfer occurs.

(c) The petitioner assumes all financial responsibility for and right to the use of any telephone number transferred under this subsection. In this paragraph, “financial responsibility” includes monthly service costs and costs associated with any mobile device associated with the number.

(d) A wireless telephone service provider may apply to the petitioner its routine and customary requirements for establishing an account or transferring a number, including requiring the petitioner to provide proof of identification, financial information, and customer preferences.

(e) A wireless telephone service provider is immune from civil liability for its actions taken in compliance with a court order issued under this subsection.

**(4m) NOTICE OF RESTRICTION ON FIREARM POSSESSION; SURRENDER OF FIREARMS.** (a) An injunction issued under sub. (4) shall do all of the following:

1. Inform the respondent named in the petition of the requirements and penalties under s. 941.29 and any similar applicable federal laws and penalties.
2. Except as provided in par. (ag), require in writing the respondent to surrender any firearms that he or she owns or has in his or her possession to the sheriff of the county in which the action

under this section was commenced, to the sheriff of the county in which the respondent resides or to another person designated by the respondent and approved by the judge or circuit court commissioner, in accordance with s. 813.1285.

(ag) If the respondent is a peace officer, an injunction issued under sub. (4) may not require the respondent to surrender a firearm that he or she is required, as a condition of employment, to possess whether or not he or she is on duty.

**(5) PETITION.** (a) The petition shall allege facts sufficient to show the following:

1. The name of the petitioner and that the petitioner is the alleged victim.
2. The name of the respondent and that the respondent is an adult.
3. That the respondent engaged in, or based on prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner.
4. If the petitioner knows of any other court proceeding in which the petitioner is a person affected by a court order or judgment that includes provisions regarding contact with the respondent, any of the following that are known by the petitioner:
  - a. The name or type of the court proceeding.
  - b. The date of the court proceeding.
  - c. The types of provisions regarding contact between the petitioner and respondent.

(am) The petition shall request that the respondent be restrained from committing acts of domestic abuse against the petitioner, that the respondent be ordered to avoid the petitioner’s residence, or that the respondent be ordered to avoid contacting the petitioner or causing any person other than the respondent’s attorney to contact the petitioner unless the petitioner consents to the contact in writing, or any combination of these requests.

(b) The clerk of circuit court shall provide the simplified forms provided under s. 49.165 (3) (c) to help a person file a petition.

(c) A judge or circuit court commissioner shall accept any legible petition for a temporary restraining order or injunction.

(d) A petition may be prepared and filed by the person who alleges that he or she has been the subject of domestic abuse or by the guardian of an individual adjudicated incompetent in this state who has been the subject of domestic abuse.

**(5b) ELDER PERSON PETITIONER.** If the petitioner is an elder person, the court shall permit the petitioner to participate in hearings under this section by telephone or live audiovisual means.

**(5g) STIPULATION.** If the parties enter into a stipulation to convert a petition under this section to a petition for a temporary restraining order or injunction under s. 813.125, the court may not approve that stipulation unless all of the following occur:

(a) Either or both parties submit an oral request on the record for the conversion explaining why the conversion of the petition is requested.

(b) The court addresses the petitioner personally and determines that the petitioner entered into the stipulation voluntarily and with an understanding of the differences between the orders issued under subs. (4) and (4m) and s. 813.125 (4) and (4m).

**(5m) CONFIDENTIALITY OF VICTIM’S ADDRESS.** The petition under sub. (5) and the court order under sub. (3), (4), or (4g) may not disclose the address of the alleged victim. The petitioner shall provide the clerk of circuit court with the petitioner’s address when he or she files a petition under this section. The clerk shall maintain the petitioner’s address in a confidential manner.

**(6) ENFORCEMENT ASSISTANCE.** (a) If an order is issued under this section, upon request by the petitioner the court or circuit court commissioner shall order the sheriff to accompany the petitioner and assist in placing him or her in physical possession of his or her residence.

(ag) 1. The clerk of the circuit court shall forward to the sheriff any temporary restraining order, injunction, or other document or notice that must be served on the respondent under this section and



the sheriff shall assist the petitioner in executing or serving the temporary restraining order, injunction, or other document or notice on the respondent. The petitioner may, at his or her expense, elect to use a private server to effect service.

2. If the petitioner elects service by the sheriff, the clerk of circuit court shall provide a form supplied by the sheriff to the petitioner that allows the petitioner to provide information about the respondent that may be useful to the sheriff in effecting service. The clerk shall forward the completed form to the sheriff. The clerk shall maintain the form provided under this subdivision in a confidential manner.

(am) 1. If an injunction is issued or extended under sub. (4) or if a tribal injunction is filed under s. 813.128 (3g), the clerk of the circuit court shall notify the department of justice of the injunction and shall provide the department of justice with information concerning the period during which the injunction is in effect and information necessary to identify the respondent for purposes of responding to a request under s. 165.63 or for purposes of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

2. Except as provided in subd. 3., the department of justice may disclose information that it receives under subd. 1. only to respond to a request under s. 165.63 or as part of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

3. The department of justice shall disclose any information that it receives under subd. 1. to a law enforcement agency when the information is needed for law enforcement purposes.

(b) Within one business day after an order or injunction is issued, extended, modified or vacated under this section, the clerk of the circuit court shall send a copy of the order or injunction, or of the order extending, modifying or vacating an order or injunction, to the sheriff or to any other local law enforcement agency which is the central repository for orders and injunctions and which has jurisdiction over the petitioner's premises.

(c) No later than 24 hours after receiving the information under par. (b), the sheriff or other appropriate local law enforcement agency under par. (b) shall enter the information concerning an order or injunction issued, extended, modified or vacated under this section into the transaction information for management of enforcement system. The sheriff or other appropriate local law enforcement agency shall also make available to other law enforcement agencies, through a verification system, information on the existence and status of any order or injunction issued under this section. The information need not be maintained after the order or injunction is no longer in effect.

(d) The issuance of an order under s. 813.12 (3) or (4) is enforceable despite the existence of any other criminal or civil order restricting or prohibiting contact.

(e) A law enforcement agency and a clerk of circuit court may use electronic transmission to facilitate the exchange of documents under this section. Any person who uses electronic transmission shall ensure that the electronic transmission does not allow unauthorized disclosure of the documents transmitted.

**(7) ARREST.** (am) A law enforcement officer shall arrest and take a person into custody if all of the following occur:

1. A petitioner under sub. (5) presents the law enforcement officer with a copy of a court order issued under sub. (3) or (4), or the law enforcement officer determines that such an order exists through communication with appropriate authorities.

2. The law enforcement officer has probable cause to believe that the person has violated the court order issued under sub. (3) or (4) by any circuit court in this state.

(c) A respondent who does not appear at a hearing at which the court orders an injunction under sub. (4) but who has been served with a copy of the petition and notice of the time for hearing under sub. (4) (a) 2. has constructive knowledge of the existence of the injunction and shall be arrested for violation of the injunction

regardless of whether he or she has been served with a copy of the injunction.

**(7m) TRANSCRIPTS.** The judge or circuit court commissioner shall record the temporary restraining order or injunction hearing upon the request of the petitioner.

**(8) PENALTY.** (a) Whoever knowingly violates a temporary restraining order or injunction issued under sub. (3) or (4) shall be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

(b) The petitioner does not violate the court order under sub. (3) or (4) if he or she admits into his or her residence a person ordered under sub. (3) or (4) to avoid that residence.

**(9) NOTICE OF FULL FAITH AND CREDIT.** An order or injunction issued under sub. (3) or (4) shall include a statement that the order or injunction may be accorded full faith and credit in every civil or criminal court of the United States, civil or criminal courts of any other state and Indian tribal courts to the extent that such courts may have personal jurisdiction over nontribal members.

**History:** 1983 a. 204, 540; 1985 a. 29, 135; 1989 a. 193; 1993 a. 319; 1995 a. 71, 306; 1999 a. 162; 2001 a. 61, 109; 2003 a. 321; 2005 a. 387; 2005 a. 443 s. 265; 2007 a. 20, 124; 2009 a. 262; 2011 a. 35, 266; 2013 a. 223, 311, 321, 322; 2015 a. 109, 195, 253, 349, 352, 353; 2021 a. 76, 256.

This section is constitutional. *Schramek v. Bohren*, 145 Wis. 2d 695, 429 N.W.2d 501 (Ct. App. 1988).

Sub. (3) (am) provides for a limited-term injunction as an alternative to a restraining order under sub. (3) (a) when three stated conditions are met. *Johnson v. Miller*, 157 Wis. 2d 482, 459 N.W.2d 886 (Ct. App. 1990).

A person convicted of violating a harassment injunction may not collaterally attack the validity of the injunction in a criminal prosecution to enforce the injunction. *State v. Bouzek*, 168 Wis. 2d 642, 484 N.W.2d 362 (Ct. App. 1992).

This section does not authorize granting an injunction without filing a formal petition, thus precluding an injunction against the petitioner. *Laluzerne v. Stange*, 200 Wis. 2d 179, 546 N.W.2d 182 (Ct. App. 1996), 95–1718.

The definition of "household member" requires a continuous residential living arrangement between the parties. They need not reside in only one place, but must reside together on a continuous basis. *Petrowsky v. Krause*, 223 Wis. 2d 32, 588 N.W.2d 318 (Ct. App. 1998), 97–2205.

It is error to grant an injunction under this section for other than the length of time requested or to refuse to order the sheriff to place the petitioner in possession of the petitioner's residence. The requirement that the injunction granted be for the length of time requested is constitutional. *Hayen v. Hayen*, 2000 WI App 29, 232 Wis. 2d 447, 606 N.W.2d 606, 99–1361.

Only a true threat is constitutionally punishable under statutes criminalizing threats. The constitutional boundaries for a true threat apply in domestic abuse injunction cases under this section. Acts underlying an earlier vacated domestic abuse injunction were relevant to a prediction of what the defendant would do if the domestic abuse injunction were not granted, and whether recent threats were true threats. *Wittig v. Hoffart*, 2005 WI App 198, 287 Wis. 2d 353, 704 N.W.2d 415, 04–1653.

If the initial injunction was for less than four years, but expired, and the petitioner states that an extension is necessary to protect the petitioner, sub. (4) (c) 2. requires the court to extend the injunction for up to four years from the date the injunction was first granted. Because the court is required to extend an injunction under the proper circumstances, even after it has expired, it follows that a court has the authority and jurisdiction to grant the extension request after the injunction has expired. *Switzer v. Switzer*, 2006 WI App 10, 289 Wis. 2d 83, 709 N.W.2d 871, 04–2943.

Applicable law allows electronic transmission of certain confidential case information among clerks of circuit court, county sheriff's offices, and the Department of Justice through electronic interfaces involving the Department of Administration's Office of Justice Assistance, specifically including electronic data messages regarding a domestic abuse protection order issued under this section in an action that the court has ordered sealed. OAG 2–10.

Construing this section to include a requirement of showing imminent danger, it is constitutional. *Blazel v. Bradley*, 698 F. Supp. 756 (1988).

Using Restraining Orders to Protect Elder Victims. *Meuer*. Wis. Law. Sept. 2000. Trouble Ahead: Wisconsin's New Domestic Abuse Laws. *Birdsall*. Wis. Law. Feb. 2004.

**813.122 Child abuse restraining orders and injunctions.** **(1) DEFINITIONS.** In this section:

(a) "Abuse" has the meaning given in s. 48.02 (1) (a) and (b) to (gm) and, in addition, includes a threat to engage in any conduct under s. 48.02 (1), other than conduct under s. 48.02 (1) (am).

(b) "Child" means any person under 18 years of age.

(c) "Child victim" means the child who is the victim or the alleged victim of abuse.

(d) "Child victim advocate" means any person who counsels child victims, assists child victims in coping with the impact of the crime or otherwise acts in support of child victims.

(e) "Household pet" means a domestic animal that is not a farm animal, as defined in s. 951.01 (3), that is kept, owned, or cared

for by a child victim or by a family member or a household member of a child victim.

**(2) COMMENCEMENT OF ACTION AND RESPONSE.** (a) No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by a petition described under sub. (6) (a). The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. Notwithstanding s. 803.01 (3) (a), the child victim or a parent, stepparent or legal guardian of the child victim may be a petitioner under this section. Section 813.06 does not apply to an action under this section. The respondent may respond to the petition either in writing before or at the hearing on the issuance of the injunction or orally at that hearing. The court shall inform the petitioner in writing that, if the petitioner chooses to have the documents in the action served by the sheriff, the petitioner should contact the sheriff to verify the proof of service of the petition.

(b) When the respondent is served with the petition under this subsection, the person who serves the respondent shall also provide the respondent with all of the following information:

1. Notice of the requirements and penalties under s. 941.29 and notice of any similar applicable federal laws and penalties.

2. An explanation of s. 813.1285, including the procedures for surrendering a firearm and the circumstances listed under s. 813.1285 under which a respondent must appear at a hearing to surrender firearms.

3. A firearm possession form developed under s. 813.1285 (5) (a), with instructions for completing and returning the form.

**(3) GENERAL PROCEDURE.** (a) Procedure for an action under this section is in 2 parts. First, if the petitioner requests a temporary restraining order, the court or circuit court commissioner shall issue or refuse to issue that order. Second, the court shall hold a hearing under sub. (5) on whether to issue an injunction, which is the final relief. If the court or circuit court commissioner issues a temporary restraining order, the order shall set forth the date for the hearing on an injunction. If the court or circuit court commissioner does not issue a temporary restraining order, the date for the hearing shall be set upon motion by either party.

(b) 1m. Except as provided in subd. 2m., the court or circuit court commissioner, on its or his or her own motion or the motion of any party, may order that a guardian ad litem be appointed for the child victim in accordance with s. 48.235.

2m. The court or circuit court commissioner shall appoint a guardian ad litem if the respondent is a parent of the child.

(bp) All persons, other than the parties, their attorneys, witnesses, child victim advocates, service representatives, as defined in s. 895.45 (1) (c), court personnel and any guardian ad litem, shall be excluded from any hearing under this section.

(bq) Any record of an action under this section is confidential and is available only to the parties, their attorneys, any guardian ad litem, court personnel, the child victim, law enforcement, and any applicable court upon appeal, except that a record may be available to any other person as required by law, as necessary to effect service, or upon a court order for good cause shown.

(c) An action under this section may pertain to more than one child victim.

**(4) TEMPORARY RESTRAINING ORDER.** (a) A judge or circuit court commissioner shall issue a temporary restraining order ordering the respondent to avoid the child victim's residence or any premises temporarily occupied by the child victim or both, to avoid contacting or causing any person other than a party's attorney to contact the child victim unless the petitioner consents in writing and the judge or circuit court commissioner agrees that the contact is in the best interests of the child victim, to refrain from removing, hiding, damaging, harming, or mistreating, or disposing of, a household pet, and to allow the petitioner or a family member or household member of the petitioner acting on his or her behalf to retrieve a household pet, if all of the following occur:

1. The petitioner submits to the judge or circuit court commissioner a petition alleging the elements set forth under sub. (6) (a).

2. The judge or circuit court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based on prior conduct of the child victim and the respondent may engage in, abuse of the child victim.

(b) Notice need not be given to the respondent before issuing a temporary restraining order under this subsection. A temporary restraining order may be entered only against the respondent named in the petition.

(c) The temporary restraining order is in effect until a hearing is held on issuance of an injunction under sub. (5), except that the court may extend the temporary restraining order under s. 813.1285. A judge shall hold a hearing on issuance of an injunction within 14 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties, extended under s. 801.58 (2m), or extended once for 14 days upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence. A judge or court commissioner may not extend the temporary restraining order in lieu of ruling on the issuance of an injunction.

**(5) INJUNCTION.** (a) A judge may grant an injunction ordering the respondent to avoid the child victim's residence or any premises temporarily occupied by the child victim or both, to avoid contacting or causing any person other than a party's attorney to contact the child victim unless the petitioner consents to that contact in writing and the judge agrees that the contact is in the best interests of the child victim, to refrain from removing, hiding, damaging, harming, or mistreating, or disposing of, a household pet, and to allow the petitioner or a family member or household member of the petitioner acting on his or her behalf to retrieve a household pet, if all of the following occur:

1. The petitioner files a petition alleging the elements set forth under sub. (6) (a).

2. The petitioner serves upon the respondent a copy of the petition and notice of the time for hearing on the issuance of the injunction, or the respondent serves upon the petitioner notice of the time for hearing on the issuance of the injunction.

3. After hearing, the judge finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the child victim and the respondent may engage in, abuse of the child victim.

(b) If the respondent is the parent of the child victim, the judge shall modify the order under par. (a) to provide the parent reasonable visitation rights, unless the judge finds that visitation would endanger the child's physical, mental or emotional health. The judge may provide that any authorized visitation be supervised.

(c) The injunction may be entered only against the respondent named in the petition.

(d) 1. An injunction under this subsection is effective according to its terms, but, except as provided in par. (dm), for not more than 2 years or until the child victim attains 18 years of age, whichever occurs first.

2. When an injunction expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect the child victim. This extension shall remain in effect until 6 months after the date the court first entered the injunction or until the child attains 18 years of age, whichever occurs first, except as provided in par. (dm).

3. If the petitioner states that an extension is necessary to protect the child victim, the court may extend the injunction for not more than 2 years or until the child attains 18 years of age, whichever occurs first, except as provided in par. (dm).

4. Notice need not be given to the respondent before extending an injunction under subd. 2. or 3. The clerk of courts shall notify the respondent after the court extends an injunction under subd. 2. or 3.

(dm) 1. A judge may, upon issuing an injunction or granting an extension of an injunction issued under this subsection, order that the injunction is in effect for not more than 5 years, if the court finds, by a preponderance of the evidence stated on the record, that any of the following is true:

a. There is a substantial risk that the respondent may commit first-degree intentional homicide under s. 940.01, or 2nd-degree intentional homicide under s. 940.05, against the child victim.

b. There is a substantial risk that the respondent may commit sexual assault under s. 940.225 (1), (2), or (3), or under s. 948.02 (1) or (2), against the child victim.

1m. Upon request by the petitioner, a judge may order that the injunction is in effect permanently if the respondent has been convicted of a violation of s. 948.02 or 948.025 in which the child victim was the crime victim. An order based on a finding under this subdivision is subject to review and modification under s. 813.126 (1m).

2. This paragraph does not prohibit a petitioner from requesting a new temporary restraining order under sub. (4) or injunction under this subsection before or at the expiration of a previously entered order or injunction.

(e) An injunction under this section may direct the payment of child support using a method of calculation authorized under s. 767.511.

**(5c) ORDER; TELEPHONE SERVICES.** (a) Unless a condition described in par. (b) exists, a judge or circuit court commissioner who issues an injunction under sub. (5) may, upon request by the petitioner, order a wireless telephone service provider to transfer to the petitioner the right to continue to use a telephone number or numbers indicated by the petitioner and the financial responsibility associated with the number or numbers, as set forth in par. (c). The petitioner may request transfer of each telephone number he or she, or a minor child in his or her custody, uses. The order shall contain all of the following:

1. The name and billing telephone number of the account holder.

2. Each telephone number that will be transferred.

3. A statement that the provider transfers to the petitioner all financial responsibility for and right to the use of any telephone number transferred under this subsection. In this subdivision, “financial responsibility” includes monthly service costs and costs associated with any mobile device associated with the number.

(b) A wireless telephone service provider shall terminate the respondent’s use of, and shall transfer to the petitioner use of, the telephone number or numbers indicated in par. (a) unless it notifies the petitioner, within 72 hours after it receives the order, that one of the following applies:

1. The account holder named in the order has terminated the account.

2. A difference in network technology would prevent or impair the functionality of a device on a network if the transfer occurs.

3. The transfer would cause a geographic or other limitation on network or service provision to the petitioner.

4. Another technological or operational issue would prevent or impair the use of the telephone number if the transfer occurs.

(c) The petitioner assumes all financial responsibility for and right to the use of any telephone number transferred under this subsection. In this paragraph, “financial responsibility” includes monthly service costs and costs associated with any mobile device associated with the number.

(d) A wireless telephone service provider may apply to the petitioner its routine and customary requirements for establishing an account or transferring a number, including requiring the petitioner to provide proof of identification, financial information, and customer preferences.

(e) A wireless telephone service provider is immune from civil liability for its actions taken in compliance with a court order issued under this subsection.

**(5g) CONFIDENTIALITY OF ADDRESSES.** The petition under sub. (6) and the court order under sub. (4), (5), or (5c) may not disclose the address of the petitioner or of the alleged child victim. The petitioner shall provide the clerk of circuit court with the address of the petitioner and of the alleged child victim when he or she files a petition under this section. The clerk shall maintain the addresses in a confidential manner.

**(5m) NOTICE OF RESTRICTION ON FIREARM POSSESSION; SURRENDER OF FIREARMS.** (a) An injunction issued under sub. (5) shall do all of the following:

1. Inform the respondent named in the petition of the requirements and penalties under s. 941.29 and any similar applicable federal laws and penalties.

2. Except as provided in par. (ag), require in writing the respondent to surrender any firearms that he or she owns or has in his or her possession to the sheriff of the county in which the action under this section was commenced, to the sheriff of the county in which the respondent resides or to another person designated by the respondent and approved by the judge or circuit court commissioner, in accordance with s. 813.1285.

(ag) If the respondent is a peace officer, an injunction issued under sub. (5) may not require the respondent to surrender a firearm that he or she is required, as a condition of employment, to possess whether or not he or she is on duty.

**(6) PETITION.** (a) The petition shall allege facts sufficient to show the following:

1. The name of the petitioner and the child victim.

2. The name of the respondent.

3. That the respondent engaged in, or based on prior conduct of the respondent and the child victim may engage in, abuse of the child victim.

4. If the payment of child support is requested, that the payment of child support is reasonable or necessary based on criteria provided under s. 767.511.

5. If the petitioner knows of any other court proceeding in which the petitioner is a person affected by a court order or judgment that includes provisions regarding contact with the respondent, any of the following that are known by the petitioner:

a. The name or type of the court proceeding.

b. The date of the court proceeding.

c. The types of provisions regarding contact between the petitioner and respondent.

(b) Upon request, the clerk of circuit court shall provide, without cost, the simplified forms obtained under s. 48.47 (7) (d) to a petitioner.

**(7) CONTACT.** Any order under this section directing a person to avoid contact with a child victim prohibits the person from knowingly touching, meeting, communicating or being in visual or audio contact with the child victim, except as provided in any modifications of the order under sub. (5) (b).

**(9) ENFORCEMENT ASSISTANCE.** (a) 1. The clerk of the circuit court shall forward to the sheriff any temporary restraining order, injunction, or other document or notice that must be served on the respondent under this section and the sheriff shall assist the petitioner in executing or serving the temporary restraining order, injunction, or other document or notice on the respondent. The petitioner may, at his or her expense, elect to use a private server to effect service.

2. If the petitioner elects service by the sheriff, the clerk of circuit court shall provide a form supplied by the sheriff to the petitioner that allows the petitioner to provide information about the respondent that may be useful to the sheriff in effecting service. The clerk shall forward the completed form to the sheriff. The

clerk shall maintain the form provided under this subdivision in a confidential manner.

(am) 1. If an injunction is issued or extended under sub. (5), the clerk of the circuit court shall notify the department of justice of the injunction and shall provide the department of justice with information concerning the period during which the injunction is in effect and information necessary to identify the respondent for purposes of responding to a request under s. 165.63 or for purposes of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

2. Except as provided in subd. 3., the department of justice may disclose information that it receives under subd. 1. only to respond to a request under s. 165.63 or as part of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

3. The department of justice shall disclose any information that it receives under subd. 1. to a law enforcement agency when the information is needed for law enforcement purposes.

(b) Within one business day after an order or injunction is issued, extended, modified or vacated under this section, the clerk of the circuit court shall send a copy of the order or injunction, or of the order extending, modifying or vacating an order or injunction, to the sheriff or to any other local law enforcement agency which is the central repository for orders and injunctions and which has jurisdiction over the child victim's premises.

(c) The sheriff or other appropriate local law enforcement agency under par. (b) shall enter the information received under par. (b) concerning an order or injunction issued, extended, modified or vacated under this section into the transaction information for management of enforcement system no later than 24 hours after receiving the information and shall make available to other law enforcement agencies, through a verification system, information on the existence and status of any order or injunction issued under this section. The information need not be maintained after the order or injunction is no longer in effect.

(d) A law enforcement agency and a clerk of circuit court may use electronic transmission to facilitate the exchange of documents under this section. Any person who uses electronic transmission shall ensure that the electronic transmission does not allow unauthorized disclosure of the documents transmitted.

**(10) ARREST.** (am) A law enforcement officer shall arrest and take a person into custody if all of the following occur:

1. A petitioner under sub. (6) (a) presents the law enforcement officer with a copy of an order issued under sub. (4) or (5), or the law enforcement officer determines that such an order exists through communication with appropriate authorities.

2. The law enforcement officer has probable cause to believe that the person has violated the order issued under sub. (4) or (5).

(c) A respondent who does not appear at a hearing at which the court orders an injunction under sub. (5) but who has been served with a copy of the petition and notice of the time for hearing under sub. (5) (a) 2. has constructive knowledge of the existence of the injunction and shall be arrested for violation of the injunction regardless of whether he or she has been served with a copy of the injunction.

**(11) PENALTY.** Whoever knowingly violates a temporary restraining order or injunction issued under this section shall be fined not more than \$1,000 or imprisoned for not more than 9 months or both.

**(12) NOTICE OF FULL FAITH AND CREDIT.** An order or injunction issued under sub. (4) or (5) shall include a statement that the order or injunction may be accorded full faith and credit in every civil or criminal court of the United States, civil or criminal courts of any other state and Indian tribal courts to the extent that such courts may have personal jurisdiction over nontribal members.

**History:** 1985 a. 234; 1987 a. 332 s. 64; Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1991 a. 276; 1993 a. 227, 318; 1995 a. 71, 275, 306, 456; 1997 a. 292; 2001 a. 61; 2005 a. 155, 272; 2005 a. 443 s. 265; 2007 a. 20, 124; 2009 a. 262; 2011 a. 35; 2013 a. 223, 311, 321, 322; 2015 a. 109, 195, 253, 349, 353; 2021 a. 256.

This section implicitly envisions a change of placement and custody if the trial court issues a child abuse injunction against a parent who has custody or placement of a child under a divorce order or judgment. *Scott M.H. v. Kathleen M.H.*, 218 Wis. 2d 605, 581 N.W.2d 564 (Ct. App. 1998), 97–0814.

Construing this section and s. 48.02 (1) (gm) as allowing a trial court to consider evidence of the treatment a respondent obtained or steps a respondent took to ameliorate a child's symptoms of emotional damage after the filing of the petition but prior to the injunction hearing would undercut the purpose of the injunction, which is to protect a child from an abusive situation. In light of Wisconsin's strong and long-standing interest in the protection and well-being of its minors, interpreting these statutes in a manner that would allow a respondent to undercut the purpose of the statute would be unreasonable. *S.O. v. T.R.*, 2016 WI App 24, 367 Wis. 2d 669, 877 N.W.2d 408, 15–0548.

Evidence of the treatment obtained or steps taken by a parent, guardian, or legal custodian to address and remedy his or her actions can benefit the child within the meaning of this section and s. 48.02 (1) (gm). However, when evidence of such actions is introduced to establish that the parent, guardian, or legal custodian has not "neglected, refused or been unable ... to obtain the necessary treatment or to take steps to ameliorate the symptoms," there must also be testimony or other evidence showing an actual benefit to the child in terms of treating the child and ameliorating the child's symptoms of emotional abuse. *S.O. v. T.R.*, 2016 WI App 24, 367 Wis. 2d 669, 877 N.W.2d 408, 15–0548.

Applicable law allows electronic transmission of certain confidential case information among clerks of circuit court, county sheriff's offices, and the Department of Justice through electronic interfaces involving the Department of Administration's Office of Justice Assistance, specifically including electronic data messages regarding child abuse protection orders and individual at risk protection orders in actions in which the court has ordered, under sub. (3) (b) 3. [now sub. (3) (bq)] and s. 813.23 (3) (c) 2., respectively, that access to any record of the case be available only to the individual at risk, parties, their attorneys, any guardian or guardian ad litem, court personnel, and any applicable appellate court. OAG 2–10.

Family Court or Not? Raising Child Abuse Allegations Against a Parent. Kornblum & Pollack. Wis. Law. Mar. 2020.

### 813.123 Restraining orders and injunctions for individuals at risk. (1) DEFINITIONS. In this section:

- (a) "Abuse" has the meaning given in s. 46.90 (1) (a).
- (ae) "Adult at risk" has the meaning given in s. 55.01 (1e).
- (am) "Adult-at-risk agency" has the meaning given in s. 55.01 (1f).
- (b) "Bodily harm" has the meaning given in s. 46.90 (1) (aj).
- (br) "Caregiver" has the meaning given in s. 46.90 (1) (an).
- (cg) "Elder adult at risk" has the meaning given in s. 46.90 (1) (br).
- (d) "False representation" includes a promise that is made with the intent not to fulfill the promise.
- (dm) "Financial exploitation" has the meaning given in s. 46.90 (1) (ed).
- (e) "Great bodily harm" has the meaning given in s. 939.22 (14).
- (eg) "Harassment" has the meaning given in s. 813.125 (1) (am) 4.
- (ek) "Household pet" means a domestic animal that is not a farm animal, as defined in s. 951.01 (3), that is kept, owned, or cared for by an individual at risk or an elder adult at risk or by a family member or a household member of an individual at risk or an elder adult at risk.
- (ep) "Individual at risk" means an elder adult at risk or an adult at risk.
- (fm) "Mistreatment of an animal" means cruel treatment of any animal owned by or in service to an individual at risk.
- (g) "Neglect" has the meaning given in s. 46.90 (1) (f).
- (gr) "Self-neglect" has the meaning given in s. 46.90 (1) (g).
- (gs) "Stalking" means engaging in a course of conduct, as defined in s. 940.32 (1) (a).

**(2) COMMENCEMENT OF ACTION AND RESPONSE.** (a) No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by a petition described under sub. (6). The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. The individual at risk, any person acting on behalf of an individual at risk, an elder-adult-at-risk agency, or an adult-at-risk agency may be a petitioner under this section. If the petition is filed by a person other than the individual at risk, the petitioner shall serve a copy of the petition on the individual at risk. Section 813.06 does not apply

to an action under this section. The respondent may respond to the petition either in writing before or at the hearing on the issuance of the injunction or orally at that hearing. The court shall inform the petitioner in writing that, if the petitioner chooses to have the documents in the action served by the sheriff, the petitioner should contact the sheriff to verify the proof of service of the petition.

(b) The court may go forward with a petition filed under sub. (6) if the individual at risk has been adjudicated incompetent under ch. 880, 2003 stats., or ch. 54, notwithstanding an objection by an individual at risk who is the subject of the petition, or an objection by the guardian of the individual at risk.

(3) GENERAL PROCEDURE. (a) Procedure for an action under this section is in 2 parts. First, if the petitioner requests a temporary restraining order, the court or circuit court commissioner shall issue or refuse to issue that order. Second, the court shall hold a hearing under sub. (5) on whether to issue an injunction, which is the final relief. If the court or circuit court commissioner issues a temporary restraining order, the order shall set forth the date for the hearing on an injunction. If the court or circuit court commissioner does not issue a temporary restraining order, the date for the hearing shall be set upon motion by either party.

(b) The court or circuit court commissioner, on its or his or her own motion or the motion of any party, shall order that a guardian ad litem be appointed for the individual at risk, if the petition under sub. (6) was filed by a person other than the individual at risk, and may order that a guardian ad litem be appointed in other instances when justice so requires.

(c) The court or circuit court commissioner, on its or his or her own motion or the motion of any party, may order any of the following:

1. That all persons, other than the individual at risk, the parties, their attorneys, a representative of the adult-at-risk agency or elder-adult-at-risk agency, witnesses, court personnel, and any guardian or any guardian ad litem, be excluded from any hearing under this section.

2. That access to any record of an action under this section be available only to the individual at risk, the parties, their attorneys, any guardian or any guardian ad litem, the adult-at-risk agency or elder-adult-at-risk agency, court personnel, and, upon appeal, any applicable court.

(4) TEMPORARY RESTRAINING ORDER. (a) Unless the individual at risk, guardian, or guardian ad litem consents in writing and the judge or circuit court commissioner agrees that the contact is in the best interests of the individual at risk, a judge or circuit court commissioner shall issue a temporary restraining order, as specified in par. (ar), if all of the following occur:

1. The petitioner submits to the judge or circuit court commissioner a petition alleging the elements set forth under sub. (6).

2. The judge or circuit court commissioner finds reasonable grounds to believe any of the following:

a. That the respondent has interfered with or, based on prior conduct of the respondent, may interfere with an investigation of the individual at risk, the delivery of protective services to or a protective placement of the individual at risk under ch. 55, or the delivery of services to an elder adult at risk under s. 46.90 (5m); and that the interference complained of, if continued, would make it difficult to determine whether abuse, financial exploitation, neglect, or self-neglect has occurred, is occurring, or may recur.

b. That the respondent engaged in or threatened to engage in the abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk or the mistreatment of an animal.

(ar) A temporary restraining order issued under par. (a) shall order the respondent to do one or more of the following:

1. Avoid interference with an investigation of the elder adult at risk under s. 46.90 or the adult at risk under s. 55.043, the delivery of protective services to or a protective placement of the individual at risk under ch. 55, or the delivery of services to the elder adult at risk under s. 46.90 (5m).

2. Cease engaging in or threatening to engage in the abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk or mistreatment of an animal.

2m. Refrain from removing, hiding, damaging, harming, or mistreating, or disposing of, a household pet and allow the individual at risk or a guardian, guardian ad litem, family member, or household member of the individual at risk acting on his or her behalf to retrieve a household pet.

3. Avoid the residence of the individual at risk or any other location temporarily occupied by the individual at risk, or both.

4. Avoid contacting or causing any person other than a party's attorney or a law enforcement officer to contact the individual at risk.

5. Engage in any other appropriate remedy not inconsistent with the remedies requested in the petition.

(b) Notice need not be given to the respondent before issuing a temporary restraining order under this subsection. A temporary restraining order may be entered only against the respondent named in the petition.

(c) The temporary restraining order is in effect until a hearing is held on issuance of an injunction under sub. (5), except that the court may extend the temporary restraining order under s. 813.1285. A judge shall hold a hearing on issuance of an injunction within 14 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties, extended under s. 801.58 (2m), or extended once for 14 days upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence. A judge or court commissioner may not extend the temporary restraining order in lieu of ruling on the issuance of an injunction.

(5) INJUNCTION. (a) Unless the individual at risk, guardian, or guardian ad litem consents in writing to a contact and the judge agrees that the contact is in the best interests of the individual at risk, a judge may grant an injunction ordering the respondent as specified in par. (ar), if all of the following occur:

1. The petitioner files a petition alleging the elements set forth under sub. (6).

2. The petitioner serves upon the respondent a copy of the petition and notice of the time for hearing on the issuance of the injunction, or the respondent serves upon the petitioner notice of the time for hearing on the issuance of the injunction. The notice served under this subdivision shall inform the respondent that, if the judge or circuit court commissioner issues an injunction, the judge or circuit court commissioner may also order the respondent not to possess a firearm while the injunction is in effect. The person who serves the respondent with the notice shall also provide the respondent with all of the following information:

a. Notice of the requirements and penalties under s. 941.29 and notice of any similar applicable federal laws and penalties.

b. An explanation of s. 813.1285, including the procedures for surrendering a firearm and the circumstances listed under s. 813.1285 under which a respondent must appear at a hearing to surrender firearms.

c. A firearm possession form developed under s. 813.1285 (5) (a), with instructions for completing and returning the form.

3. After hearing, the judge finds reasonable cause to believe any of the following:

a. That the respondent has interfered with or, based upon prior conduct of the respondent, may interfere with an investigation of the elder adult at risk under s. 46.90 or the adult at risk under s. 55.043 and that the interference complained of, if continued, would make it difficult to determine if abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk or mistreatment of an animal is occurring or may recur.

b. That the respondent has interfered with the delivery of protective services to or a protective placement of the individual at risk under ch. 55 after the offer of protective services or protective

placement has been made and the individual at risk or his or her guardian, if any, has consented to receipt of the protective services or protective placement; or that the respondent has interfered with the delivery of services to an elder adult at risk under s. 46.90 (5m).

c. That the respondent has engaged in or threatened to engage in the abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk or the mistreatment of an animal.

(ar) An injunction granted under par. (a) shall order the respondent to do one or more of the following:

1. Avoid interference with an investigation of the elder adult at risk under s. 46.90 or the adult at risk under s. 55.043, the delivery of protective services to or a protective placement of the individual at risk under ch. 55, or the delivery of services to the elder adult at risk under s. 46.90 (5m).

2. Cease engaging in or threatening to engage in the abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk or the mistreatment of an animal.

2m. Refrain from removing, hiding, damaging, harming, or mistreating, or disposing of, a household pet and allow the individual at risk or a guardian, guardian ad litem, family member, or household member of the individual at risk acting on his or her behalf to retrieve a household pet.

3. Avoid the residence of the individual at risk or any other location temporarily occupied by the individual at risk, or both.

4. Avoid contacting or causing any person other than a party's attorney or a law enforcement officer to contact the individual at risk.

5. Any other appropriate remedy not inconsistent with the remedies requested in the petition.

(b) The injunction may be entered only against the respondent named in the petition.

(c) 1. An injunction under this subsection is effective according to its terms, but for not more than 4 years, except as provided in par. (d).

2. When an injunction expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect the individual at risk. This extension shall remain in effect until 6 months after the date on which the court first entered the injunction, except as provided in par. (d).

3. If the petitioner states that an extension is necessary to protect the individual at risk, the court may extend the injunction for not more than 2 years, except as provided in par. (d).

4. Notice need not be given to the respondent before extending an injunction under subd. 2. or 3. The clerk of courts shall notify the respondent after the court extends an injunction under subd. 2. or 3.

(d) 1. A judge may, upon issuing an injunction or granting an extension of an injunction issued under this subsection, order that the injunction is in effect for not more than 10 years, if the court finds, by a preponderance of the evidence stated on the record, that any of the following is true:

a. There is a substantial risk that the respondent may commit first-degree intentional homicide under s. 940.01, or 2nd-degree intentional homicide under s. 940.05, against the person at risk.

b. There is a substantial risk that the respondent may commit sexual assault under s. 940.225 (1), (2), or (3), or under s. 948.02 (1) or (2), against the person at risk.

1m. Upon request by the petitioner, a judge may order that the injunction is in effect permanently if the respondent has been convicted of a violation of s. 940.225 (1) to (3) in which the individual at risk was the crime victim. An order based on a finding under this subdivision is subject to review and modification under s. 813.126 (1m).

2. This paragraph does not prohibit a petitioner from requesting a new temporary restraining order under sub. (4) or injunction

under this subsection before or at the expiration of a previously entered order or injunction.

**(5c) ORDER; TELEPHONE SERVICES.** (a) Unless a condition described in par. (b) exists, a judge or circuit court commissioner who issues an injunction under sub. (5) may, upon request by the petitioner, order a wireless telephone service provider to transfer to the petitioner the right to continue to use a telephone number or numbers indicated by the petitioner and the financial responsibility associated with the number or numbers, as set forth in par. (c). The petitioner may request transfer of each telephone number he or she, or a minor child in his or her custody, uses. The order shall contain all of the following:

1. The name and billing telephone number of the account holder.

2. Each telephone number that will be transferred.

3. A statement that the provider transfers to the petitioner all financial responsibility for and right to the use of any telephone number transferred under this subsection. In this subdivision, "financial responsibility" includes monthly service costs and costs associated with any mobile device associated with the number.

(b) A wireless telephone service provider shall terminate the respondent's use of, and shall transfer to the petitioner use of, the telephone number or numbers indicated in par. (a) unless it notifies the petitioner, within 72 hours after it receives the order, that one of the following applies:

1. The account holder named in the order has terminated the account.

2. A difference in network technology would prevent or impair the functionality of a device on a network if the transfer occurs.

3. The transfer would cause a geographic or other limitation on network or service provision to the petitioner.

4. Another technological or operational issue would prevent or impair the use of the telephone number if the transfer occurs.

(c) The petitioner assumes all financial responsibility for and right to the use of any telephone number transferred under this subsection. In this paragraph, "financial responsibility" includes monthly service costs and costs associated with any mobile device associated with the number.

(d) A wireless telephone service provider may apply to the petitioner its routine and customary requirements for establishing an account or transferring a number, including requiring the petitioner to provide proof of identification, financial information, and customer preferences.

(e) A wireless telephone service provider is immune from civil liability for its actions taken in compliance with a court order issued under this subsection.

**(5g) CONFIDENTIALITY OF ADDRESSES.** The petition under sub. (6) and the court order under sub. (4), (5), or (5c) may not disclose the address of the petitioner or of the individual at risk. The petitioner shall provide the clerk of circuit court with the address of the petitioner and of the individual at risk when he or she files a petition under this section. The clerk shall maintain the addresses in a confidential manner.

**(5m) RESTRICTION ON FIREARM POSSESSION; SURRENDER OF FIREARMS.** (a) If a judge or circuit court commissioner issues an injunction under sub. (5) and the judge or circuit court commissioner determines, based on clear and convincing evidence presented at the hearing on the issuance of the injunction, that the respondent may use a firearm to cause physical harm to another or to endanger public safety, the judge or circuit court commissioner may prohibit the respondent from possessing a firearm.

(b) An order prohibiting a respondent from possessing a firearm issued under par. (a) remains in effect until the expiration of the injunction issued under sub. (5).

(c) An order issued under par. (a) that prohibits a respondent from possessing a firearm shall do all of the following:

1. Inform the respondent named in the petition of the requirements and penalties under s. 941.29 and any similar applicable federal laws and penalties.

2. Except as provided in par. (d), require in writing the respondent to surrender any firearms that he or she owns or has in his or her possession to the sheriff of the county in which the action under this section was commenced, to the sheriff of the county in which the respondent resides, or to another person designated by the respondent and approved by the judge or circuit court commissioner, in accordance with s. 813.1285.

(d) If the respondent is a peace officer, an order issued under par. (a) may not require the respondent to surrender a firearm that he or she is required, as a condition of employment, to possess whether or not he or she is on duty.

**(6) PETITION.** The petition shall allege facts sufficient to show the following:

(a) The name of the petitioner and the individual at risk.

(b) The name of the respondent and that the respondent is an adult.

(c) That the respondent interfered with or, based on prior conduct of the respondent, may interfere with an investigation of the elder adult at risk under s. 46.90 (5), an investigation of the adult at risk under s. 55.043, the delivery of protective services to or a protective placement of the individual at risk under ch. 55, or the delivery of services to the elder adult at risk under s. 46.90 (5m); or that the respondent engaged in, or threatened to engage in, the abuse, financial exploitation, neglect, stalking, or harassment of an individual at risk or mistreatment of an animal.

(d) If the petitioner knows of any other court proceeding in which the petitioner is a person affected by a court order or judgment that includes provisions regarding contact with the respondent, any of the following that are known by the petitioner:

1. The name or type of the court proceeding.

2. The date of the court proceeding.

3. The type of provisions regarding contact between the petitioner and respondent.

**(6g) ELDER ADULT–AT–RISK PETITIONER.** If the petitioner is an elder adult at risk, the court shall permit the petitioner to participate in hearings under this section by telephone or live audiovisual means.

**(7) INTERFERENCE ORDER.** Any order under sub. (4) (ar) 1. or 2. or (5) (ar) 1. or 2. also shall prohibit the respondent from intentionally preventing a representative or employee of the county protective services agency from meeting, communicating, or being in visual or audio contact with the adult at risk, except as provided in the order.

**(8) ENFORCEMENT ASSISTANCE.** (a) 1. The clerk of the circuit court shall forward to the sheriff any temporary restraining order, injunction, or other document or notice that must be served on the respondent under this section and the sheriff shall assist the petitioner in executing or serving the temporary restraining order, injunction, or other document or notice on the respondent. The petitioner may, at his or her expense, elect to use a private server to effect service.

2. If the petitioner elects service by the sheriff, the clerk of circuit court shall provide a form supplied by the sheriff to the petitioner that allows the petitioner to provide information about the respondent that may be useful to the sheriff in effecting service. The clerk shall forward the completed form to the sheriff. The clerk shall maintain the form provided under this subdivision in a confidential manner.

(b) Within one business day after an order or injunction is issued, extended, modified or vacated under this section, the clerk of circuit court shall send a copy of the order or injunction, or of the order extending, modifying or vacating an order or injunction, to the sheriff or to any other local law enforcement agency which

is the central repository for orders and injunctions and which has jurisdiction over the vulnerable adult's premises.

(c) The sheriff or other appropriate local law enforcement agency under par. (b) shall enter the information received under par. (b) concerning an order or injunction issued, extended, modified or vacated under this section into the transaction information for management of enforcement system no later than 24 hours after receiving the information and shall make available to other law enforcement agencies, through a verification system, information on the existence and status of any order or injunction issued under this section. The information need not be maintained after the order or injunction is no longer in effect.

(d) A law enforcement agency and a clerk of circuit court may use electronic transmission to facilitate the exchange of documents under this section. Any person who uses electronic transmission shall ensure that the electronic transmission does not allow unauthorized disclosure of the documents transmitted.

**(8m) NOTICE TO DEPARTMENT OF JUSTICE.** (a) If an order prohibiting a respondent from possessing a firearm is issued under sub. (5m), the clerk of the circuit court shall notify the department of justice of the existence of the order prohibiting a respondent from possessing a firearm and shall provide the department of justice with information concerning the period during which the order is in effect and information necessary to identify the respondent for purposes of responding to a request under s. 165.63 or for purposes of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

(b) Except as provided in par. (c), the department of justice may disclose information that it receives under par. (a) only to respond to a request under s. 165.63 or as part of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

(c) The department of justice shall disclose any information that it receives under par. (a) to a law enforcement agency when the information is needed for law enforcement purposes.

**(9) ARREST.** (am) A law enforcement officer shall arrest and take a person into custody if all of the following occur:

1. A petitioner presents the law enforcement officer with a copy of an order issued under sub. (4) or an injunction issued under sub. (5), or the law enforcement officer determines that such an order exists through communication with appropriate authorities.

2. The law enforcement officer has probable cause to believe that the person has violated the order issued under sub. (4) or the injunction issued under sub. (5).

(c) A respondent who does not appear at a hearing at which the court orders an injunction under sub. (5) but who has been served with a copy of the petition and notice of the time for hearing under sub. (5) (a) 2. that includes the information required under sub. (5) (a) 2. a., b., and c. has constructive knowledge of the existence of the injunction and may be arrested for violation of the injunction regardless of whether he or she has been served with a copy of the injunction.

**(10) PENALTY.** Whoever intentionally violates a temporary restraining order or injunction issued under this section shall be fined not more than \$1,000 or imprisoned for not more than 9 months or both.

**(12) NOTICE OF FULL FAITH AND CREDIT.** An order or injunction issued under sub. (4) or (5) shall include a statement that the order or injunction may be accorded full faith and credit in every civil or criminal court of the United States, civil or criminal courts of any other state and Indian tribal courts to the extent that such courts may have personal jurisdiction over nontribal members.

**History:** 1993 a. 445; 1995 a. 71, 306; 1997 a. 27; 2001 a. 61; 2005 a. 264, 387, 388; 2007 a. 45, 96, 124; 2009 a. 262; 2013 a. 223, 311, 321, 322; 2015 a. 109, 195, 253, 349, 353; 2017 a. 365 s. 111; 2021 a. 76, 256.

The First 30 Months: Wisconsin's Individual-at-Risk Restraining Order. Abramson, Mansfield, & Raymond. Wis. Law. Nov. 2010.



### 813.125 Harassment restraining orders and injunctions. (1) DEFINITIONS. (am) In this section:

3. “Elder person” means any individual who is 60 years of age or older.

4. “Harassment” means any of the following:

a. Striking, shoving, kicking or otherwise subjecting another person to physical contact; engaging in an act that would constitute abuse under s. 48.02 (1), sexual assault under s. 940.225, or stalking under s. 940.32; or attempting or threatening to do the same.

b. Engaging in a course of conduct or repeatedly committing acts which harass or intimidate another person and which serve no legitimate purpose.

(bm) In subs. (3) and (4), “household pet” means a domestic animal that is not a farm animal, as defined in s. 951.01 (3), that is kept, owned, or cared for by the petitioner or by a family member or a household member of the petitioner.

(2) COMMENCEMENT OF ACTION. (a) An action under this section may be commenced by filing a petition described under sub. (5) (a). No action under this section may be commenced by service of summons. The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. If the judge or a circuit court commissioner extends the time for a hearing under sub. (3) (c) and the petitioner files an affidavit with the court stating that personal service by the sheriff or a private server under s. 801.11 (1) (a) or (b) was unsuccessful because the respondent is avoiding service by concealment or otherwise, the judge or circuit court commissioner shall inform the petitioner that he or she may serve the respondent by publication of a summary of the petition as a class 1 notice, under ch. 985, and by mailing or sending a facsimile if the respondent’s post–office address or facsimile number is known or can with due diligence be ascertained. The mailing or sending of a facsimile may be omitted if the post–office address or facsimile number cannot be ascertained with due diligence. A summary of the petition published as a class 1 notice shall include the name of the respondent and of the petitioner, notice of the temporary restraining order, and notice of the date, time, and place of the hearing regarding the injunction. The court shall inform the petitioner in writing that, if the petitioner chooses to have the documents in the action served by the sheriff, the petitioner should contact the sheriff to verify the proof of service of the petition. Section 813.06 does not apply to an action under this section.

(b) Notwithstanding s. 803.01 (3) (a), a child, as defined in s. 813.122 (1) (b), or a parent, stepparent, or legal guardian of a child may be a petitioner under this section.

(2g) APPOINTMENT OF GUARDIAN AD LITEM. The court or circuit court commissioner, on its or his or her own motion, or on the motion of any party, may appoint a guardian ad litem for a child who is a party under this section when justice so requires.

(2m) TWO–PART PROCEDURE. If the fee under s. 814.61 (1) for filing a petition under this section is waived under s. 814.61 (1) (e), the procedure for an action under this section is in 2 parts. First, if the petitioner requests a temporary restraining order the court shall issue or refuse to issue that order. Second, the court shall hold a hearing under sub. (4) on whether to issue an injunction, which is the final relief. If the court issues a temporary restraining order, the order shall set forth the date for the hearing on an injunction. If the court does not issue a temporary restraining order, the date for the hearing shall be set upon motion by either party.

(3) TEMPORARY RESTRAINING ORDER. (a) A judge or circuit court commissioner may issue a temporary restraining order ordering the respondent to avoid contacting or causing any person other than a party’s attorney or a law enforcement officer to contact the petitioner without the petitioner’s written consent; to cease or avoid the harassment of another person; to avoid the petitioner’s residence, except as provided in par. (am), or any premises temporarily occupied by the petitioner or both; to refrain from removing, hiding, damaging, harming, or mistreating, or dispos-

ing of, a household pet; to allow the petitioner or a family member or household member of the petitioner acting on his or her behalf to retrieve a household pet; or any combination of these remedies requested in the petition, if all of the following occur:

1. The petitioner files a petition alleging the elements set forth under sub. (5) (a).

2. The judge or circuit court commissioner finds reasonable grounds to believe that the respondent has engaged in harassment with intent to harass or intimidate the petitioner.

(am) If the petitioner and the respondent are not married, and the respondent owns the premises where the petitioner resides, and the petitioner has no legal interest in the premises, in lieu of ordering the respondent to avoid the petitioner’s residence under par. (a) the judge or circuit court commissioner may order the respondent to avoid the premises for a reasonable time until the petitioner relocates and shall order the respondent to avoid the new residence for the duration of the order.

(b) Notice need not be given to the respondent before issuing a temporary restraining order under this subsection. A temporary restraining order may be entered only against the respondent named in the petition.

(c) The temporary restraining order is in effect until a hearing is held on issuance of an injunction under sub. (4), except that the court may extend the temporary restraining order under s. 813.1285. A judge or circuit court commissioner shall hold a hearing on issuance of an injunction within 14 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties, extended under s. 801.58 (2m), or extended once for 14 days upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence. A judge or court commissioner may not extend the temporary restraining order in lieu of ruling on the issuance of an injunction.

(d) The judge or circuit court commissioner shall advise the petitioner of the right to serve the respondent the petition by published notice if with due diligence the respondent cannot be served as provided under s. 801.11 (1) (a) or (b). The clerk of circuit court shall assist the petitioner with the preparation of the notice and filing of the affidavit of printing.

(e) The judge or circuit court commissioner may not dismiss or deny granting a temporary restraining order because of the existence of a pending action or of any other court order that bars contact between the parties, nor due to the necessity of verifying the terms of an existing court order.

(4) INJUNCTION. (a) A judge or circuit court commissioner may grant an injunction ordering the respondent to avoid contacting or causing any person other than a party’s attorney or a law enforcement officer to contact the petitioner without the petitioner’s written consent; to cease or avoid the harassment of another person; to avoid the petitioner’s residence, except as provided in par. (am), or any premises temporarily occupied by the petitioner or both; to refrain from removing, hiding, damaging, harming, or mistreating, or disposing of, a household pet; to allow the petitioner or a family member or household member of the petitioner acting on his or her behalf to retrieve a household pet; or any combination of these remedies requested in the petition, if all of the following occur:

1. The petitioner has filed a petition alleging the elements set forth under sub. (5) (a).

2. The petitioner serves upon the respondent a copy of a restraining order obtained under sub. (3) and notice of the time for the hearing on the issuance of the injunction under sub. (3) (c). The restraining order or notice of hearing served under this subdivision shall inform the respondent that, if the judge or circuit court commissioner issues an injunction, the judge or circuit court commissioner may also order the respondent not to possess a firearm while the injunction is in effect. The person who serves the respondent with the order or notice shall also provide the respondent with all of the following information:



a. Notice of the requirements and penalties under s. 941.29 and notice of any similar applicable federal laws and penalties.

b. An explanation of s. 813.1285, including the procedures for surrendering a firearm and the circumstances listed under s. 813.1285 under which a respondent must appear at a hearing to surrender firearms.

c. A firearm possession form developed under s. 813.1285 (5) (a), with instructions for completing and returning the form.

3. After hearing, the judge or circuit court commissioner finds reasonable grounds to believe that the respondent has engaged in harassment with intent to harass or intimidate the petitioner.

(aj) The judge or circuit court commissioner may not dismiss or deny granting an injunction because of the existence of a pending action or of any other court order that bars contact between the parties, nor due to the necessity of verifying the terms of an existing court order.

(am) If the petitioner and the respondent are not married, and the respondent owns the premises where the petitioner resides, and the petitioner has no legal interest in the premises, in lieu of ordering the respondent to avoid the petitioner's residence under par. (a) the judge or circuit court commissioner may order the respondent to avoid the premises for a reasonable time until the petitioner relocates and shall order the respondent to avoid the new residence for the duration of the order.

(b) The injunction may be entered only against the respondent named in the petition.

(c) An injunction under this subsection is effective according to its terms, but for not more than 4 years, except as provided in par. (d).

(d) 1. A judge or circuit court commissioner may, upon issuing an injunction or granting an extension of an injunction issued under this subsection, order that the injunction is in effect for not more than 10 years, if the court finds, by a preponderance of the evidence stated on the record, that any of the following is true:

a. There is a substantial risk that the respondent may commit first-degree intentional homicide under s. 940.01, or 2nd-degree intentional homicide under s. 940.05, against the petitioner.

b. There is a substantial risk that the respondent may commit sexual assault under s. 940.225 (1), (2), or (3), or under s. 948.02 (1) or (2), against the petitioner.

1m. Upon request by the petitioner, a judge or circuit court commissioner may order that the injunction is in effect permanently if the respondent has been convicted of a violation of s. 940.225 (1) to (3) in which the petitioner was the crime victim. An order based on a finding under this subdivision is subject to review and modification under s. 813.126 (1m).

2. This paragraph does not prohibit a petitioner from requesting a new temporary restraining order under sub. (3) or injunction under this subsection before or at the expiration of a previously entered order or injunction.

**(4g) ORDER; TELEPHONE SERVICES.** (a) Unless a condition described in par. (b) exists, a judge or circuit court commissioner who issues an injunction under sub. (4) may, upon request by the petitioner, order a wireless telephone service provider to transfer to the petitioner the right to continue to use a telephone number or numbers indicated by the petitioner and the financial responsibility associated with the number or numbers, as set forth in par. (c). The petitioner may request transfer of each telephone number he or she, or a minor child in his or her custody, uses. The order shall contain all of the following:

1. The name and billing telephone number of the account holder.

2. Each telephone number that will be transferred.

3. A statement that the provider transfers to the petitioner all financial responsibility for and right to the use of any telephone number transferred under this subsection. In this subdivision, "financial responsibility" includes monthly service costs and

costs associated with any mobile device associated with the number.

(b) A wireless telephone service provider shall terminate the respondent's use of, and shall transfer to the petitioner use of, the telephone number or numbers indicated in par. (a) unless it notifies the petitioner, within 72 hours after it receives the order, that one of the following applies:

1. The account holder named in the order has terminated the account.

2. A difference in network technology would prevent or impair the functionality of a device on a network if the transfer occurs.

3. The transfer would cause a geographic or other limitation on network or service provision to the petitioner.

4. Another technological or operational issue would prevent or impair the use of the telephone number if the transfer occurs.

(c) The petitioner assumes all financial responsibility for and right to the use of any telephone number transferred under this subsection. In this paragraph, "financial responsibility" includes monthly service costs and costs associated with any mobile device associated with the number.

(d) A wireless telephone service provider may apply to the petitioner its routine and customary requirements for establishing an account or transferring a number, including requiring the petitioner to provide proof of identification, financial information, and customer preferences.

(e) A wireless telephone service provider is immune from civil liability for its actions taken in compliance with a court order issued under this subsection.

**(4m) RESTRICTION ON FIREARM POSSESSION; SURRENDER OF FIREARMS.** (a) If a judge or circuit court commissioner issues an injunction under sub. (4) and the judge or circuit court commissioner determines, based on clear and convincing evidence presented at the hearing on the issuance of the injunction, that the respondent may use a firearm to cause physical harm to another or to endanger public safety, the judge or circuit court commissioner may prohibit the respondent from possessing a firearm.

(b) An order prohibiting a respondent from possessing a firearm issued under par. (a) remains in effect until the expiration of the injunction issued under sub. (4).

(c) An order issued under par. (a) that prohibits a respondent from possessing a firearm shall do all of the following:

1. Inform the respondent named in the petition of the requirements and penalties under s. 941.29 and any similar applicable federal laws and penalties.

2. Except as provided in par. (cg), require in writing the respondent to surrender any firearms that he or she owns or has in his or her possession to the sheriff of the county in which the action under this section was commenced, to the sheriff of the county in which the respondent resides or to another person designated by the respondent and approved by the judge or circuit court commissioner, in accordance with s. 813.1285.

(cg) If the respondent is a peace officer, an order issued under par. (a) may not require the respondent to surrender a firearm that he or she is required, as a condition of employment, to possess whether or not he or she is on duty.

**(5) PETITION.** (a) The petition shall allege facts sufficient to show the following:

1. The name of the person who is the alleged victim.

2. The name of the respondent.

3. That the respondent has engaged in harassment with intent to harass or intimidate the petitioner.

4. If the petitioner knows of any other court proceeding in which the petitioner is a person affected by a court order or judgment that includes provisions regarding contact with the respondent, any of the following that are known by the petitioner:

a. The name or type of the court proceeding.

b. The date of the court proceeding.

c. The type of provisions regarding contact between the petitioner and respondent.

(am) The petition shall inform the respondent that, if the judge or circuit court commissioner issues an injunction, the judge or circuit court commissioner may also order the respondent not to possess a firearm while the injunction is in effect.

(b) The clerk of circuit court shall provide simplified forms.

**(5b) ELDER PERSON PETITIONER.** If the petitioner is an elder person, the court shall permit the petitioner to participate in hearings under this section by telephone or live audiovisual means.

**(5g) ENFORCEMENT ASSISTANCE.** (a) Within one business day after an order or injunction is issued, extended, modified or vacated under this section, the clerk of the circuit court shall send a copy of the order or injunction, or of the order extending, modifying or vacating an order or injunction, to the sheriff or to any local law enforcement agency which is the central repository for orders and injunctions and which has jurisdiction over the petitioner's premises.

(b) The sheriff or other appropriate local law enforcement agency under par. (a) shall enter the information received under par. (a) concerning an order or injunction issued, extended, modified or vacated under this section into the transaction information for management of enforcement system no later than 24 hours after receiving the information and shall make available to other law enforcement agencies, through a verification system, information on the existence and status of any order or injunction issued under this section. The information need not be maintained after the order or injunction is no longer in effect.

(c) If an order is issued under this section, upon request by the petitioner the court or circuit court commissioner shall order the sheriff to accompany the petitioner and assist in placing him or her in physical possession of his or her residence.

(cm) 1. The clerk of the circuit court shall forward to the sheriff any temporary restraining order, injunction, or other document or notice that must be served on the respondent under this section and the sheriff shall assist the petitioner in executing or serving the temporary restraining order, injunction, or other document or notice on the respondent. The petitioner may, at his or her expense, elect to use a private server to effect service.

2. If the petitioner elects service by the sheriff, the clerk of circuit court shall provide a form supplied by the sheriff to the petitioner that allows the petitioner to provide information about the respondent that may be useful to the sheriff in effecting service. The clerk shall forward the completed form to the sheriff. The clerk shall maintain the form provided under this subdivision in a confidential manner. If a service fee is required by the sheriff under s. 814.70 (1), the petitioner shall pay the fee directly to the sheriff.

(d) The issuance of an order or injunction under sub. (3) or (4) is enforceable despite the existence of any other criminal or civil order restricting or prohibiting contact.

(e) A law enforcement agency and a clerk of circuit court may use electronic transmission to facilitate the exchange of documents under this section. Any person who uses electronic transmission shall ensure that the electronic transmission does not allow unauthorized disclosure of the documents transmitted.

**(5m) CONFIDENTIALITY OF VICTIM'S ADDRESS.** The petition under sub. (5) and the court order under sub. (3), (4), or (4g) may not disclose the address of the alleged victim. The petitioner shall provide the clerk of circuit court with the petitioner's address when he or she files a petition under this section. The clerk shall maintain the petitioner's address in a confidential manner.

**(5r) NOTICE TO DEPARTMENT OF JUSTICE.** (a) If an order prohibiting a respondent from possessing a firearm is issued under sub. (4m), the clerk of the circuit court shall notify the department of justice of the existence of the order prohibiting a respondent from possessing a firearm and shall provide the department of jus-

tice with information concerning the period during which the order is in effect and information necessary to identify the respondent for purposes of responding to a request under s. 165.63 or for purposes of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

(b) Except as provided in par. (c), the department of justice may disclose information that it receives under par. (a) only to respond to a request under s. 165.63 or as part of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

(c) The department of justice shall disclose any information that it receives under par. (a) to a law enforcement agency when the information is needed for law enforcement purposes.

**(6) ARREST.** (am) A law enforcement officer shall arrest and take a person into custody if all of the following occur:

1. A person named in a petition under sub. (5) presents the law enforcement officer with a copy of a court order issued under sub. (3) or (4), or the law enforcement officer determines that such an order exists through communication with appropriate authorities.

2. The law enforcement officer has probable cause to believe that the person has violated the court order issued under sub. (3) or (4).

(c) A respondent who does not appear at a hearing at which the court orders an injunction under sub. (4) but who has been served with a copy of the petition and notice of the time for hearing under sub. (4) (a) 2. that includes the information required under sub. (4) (a) 2. a., b., and c. has constructive knowledge of the existence of the injunction and shall be arrested for violation of the injunction regardless of whether he or she has been served with a copy of the injunction.

**(7) PENALTY.** Whoever violates a temporary restraining order or injunction issued under this section shall be fined not more than \$10,000 or imprisoned not more than 9 months or both.

**(8) NOTICE OF FULL FAITH AND CREDIT.** An order or injunction issued under sub. (3) or (4) shall include a statement that the order or injunction may be accorded full faith and credit in every civil or criminal court of the United States, civil or criminal courts of any other state and Indian tribal courts to the extent that such courts may have personal jurisdiction over nontribal members.

**History:** 1983 a. 336; 1991 a. 39, 194; 1995 a. 71, 306; 2001 a. 16, 61, 105; 2003 a. 321; 2005 a. 272; 2007 a. 124; 2009 a. 262; 2011 a. 35, 266; 2013 a. 20, 223, 311, 321, 322; 2015 a. 109; 2015 a. 195, 253, 349, 353; 2021 a. 76, 256.

This section is constitutional. *Bachowski v. Salamone*, 139 Wis. 2d 397, 407 N.W.2d 533 (1987).

A person convicted of violating a harassment injunction may not collaterally attack the validity of the injunction in a criminal prosecution to enforce the injunction. *State v. Bouzek*, 168 Wis. 2d 642, 484 N.W.2d 362 (Ct. App. 1992).

A hearing on issuing an injunction initially held within seven days of the issuance of the temporary restraining order, then continued for seven months at the defendant's request, did not result in the court losing competency to proceed. *W.W.W. v. M.C.S.*, 185 Wis. 2d 468, 518 N.W.2d 285 (Ct. App. 1994).

Discussing proof of intent. *W.W.W. v. M.C.S.*, 185 Wis. 2d 468, 518 N.W.2d 285 (Ct. App. 1994).

A municipal corporation is a "person" that may bring an action for an injunction under this section. *Village of Tigerton v. Minniecheske*, 211 Wis. 2d 777, 565 N.W.2d 586 (Ct. App. 1997), 96–1933.

Violating an injunction under this section is a crime and is not a lesser-included offense of harassment under s. 947.013 (1r). A defendant may be convicted for violating this section and s. 947.013 without violating the prohibition against double jeopardy. Convictions for violating this section may be counted for purposes of determining whether the defendant may be sentenced as a repeat offender under s. 939.62. *State v. Sveum*, 2002 WI App 105, 254 Wis. 2d 868, 648 N.W.2d 496, 01–0230.

Banishment from a particular place is not a per se violation of the right to travel. There is no exact formula for determining whether a geographic restriction is narrowly tailored. Each case must be analyzed on its own facts, circumstances, and total atmosphere to determine whether the geographic restriction is narrowly drawn. *Preddick v. O'Connor*, 2003 WI App 46, 260 Wis. 2d 323, 660 N.W.2d 1, 02–0503.

A violation of this section may not rest on conduct that serves a legitimate purpose, which is a determination that must of necessity be left to the fact finder, taking into account all the facts and circumstances. The legitimate purpose determination is such that the fact finder must determine if any legitimate purpose was intended at the time of the conduct. *Welytok v. Ziolkowski*, 2008 WI App 67, 312 Wis. 2d 435, 752 N.W.2d 359, 07–0347.

This section can extend injunctive protection to institutions as well as natural persons. Although sub. (1) (b) [now sub. (1) (am) 4.] describes harassment as "committing acts which harass or intimidate another person," s. 990.01 (26) defines a "person" as including "all partnerships, associations and bodies politic or corporate." *Board of Regents — UW System v. Decker*, 2014 WI 68, 355 Wis. 2d 800, 850 N.W.2d 112, 11–2902.

Conduct or repetitive acts that are intended to harass or intimidate do not serve a legitimate purpose. A person cannot shield the person's harassing conduct from regulation by labeling it "protest." If the person's purpose was even in part to harass, the conduct may be enjoined. The person's constitutional right to protest can be restricted when the person engages in harassment with the intent to harass or intimidate. Board of Regents — UW System v. Decker. 2014 WI 68, 355 Wis. 2d 800, 850 N.W.2d 112, 11–2902.

Sub. (3) (c) explicitly says that a temporary restraining order can be extended "once for 14 days upon a finding that the respondent has not been served with a copy of the temporary restraining order." It is not enough that the circuit court finally held the injunction hearing within the 14-day extension period permitted by the statute. To permit the circuit court to extend the temporary restraining order twice would be to ignore the statute's plain words. Hill v. D.C., 2014 WI App 99, 357 Wis. 2d 463, 855 N.W.2d 880, 13–1844.

Applicable law allows electronic transmission of certain confidential case information among clerks of circuit court, county sheriff's offices, and the Department of Justice through electronic interfaces involving the Department of Administration's Office of Justice Assistance, specifically including electronic data messages regarding a harassment protection order issued under this section in an action that the court has ordered sealed. OAG 2–10.

For an activity to violate an injunction issued under this section, it must be intentional and devoid of any legitimate purpose. Deputies did not have probable cause to arrest the subject of an injunction when they knew that the subject had entered a town hall to attend a meeting at which the subject had a personal interest in an agenda item prior to the persons protected by the injunction, that the persons protected by the injunction wished to attend the meeting, and that they possessed harassment injunctions commanding the subject of the injunction to avoid any premises temporarily occupied by the persons protected. Wagner v. Washington County, 493 F.3d 833 (2007).

**813.126 New hearing or petition for review. (1) TIME LIMITS FOR DE NOVO HEARING.** If a party seeks to have the judge conduct a hearing de novo under s. 757.69 (8) of a determination, order, or ruling entered by a court commissioner in an action under s. 813.12, 813.122, 813.123, or 813.125, including a denial of a request for a temporary restraining order, the motion requesting the hearing must be filed with the court within 30 days after the circuit court commissioner issued the determination, order, or ruling. The court shall hold the de novo hearing within 30 days after the motion requesting the hearing is filed with the court unless the court finds good cause for an extension. Any determination, order, or ruling entered by a court commissioner in an action under s. 813.12, 813.122, 813.123, or 813.125 remains in effect until the judge in the de novo hearing issues his or her final determination, order, or ruling.

**(1m) HEARING TO REVIEW A PERMANENT INJUNCTION.** If a respondent's criminal conviction that formed the basis for a permanent injunction in an action under s. 813.12, 813.122, 813.123, or 813.125 has been vacated, the respondent may file a motion requesting a hearing to review the injunction. The court shall hold the review hearing within 30 days after the motion requesting the hearing is filed with the court unless the court finds good cause for an extension. At the hearing, if the judge finds that the conviction that formed the basis for the permanent injunction has been vacated, the judge shall modify the duration of the injunction or vacate the injunction. In so modifying or vacating the injunction, the judge shall consider all relevant factors, including the risk to the petitioner and the time that has passed since the injunction was ordered. No modified injunction ordered under this subsection may be in effect for a longer period than the maximum period that would have been possible when the injunction was first ordered if the injunction had not been permanent. If the maximum possible period from the time the injunction was first ordered has elapsed, the judge shall vacate the injunction.

**(2) NOTICE.** The clerk of circuit court shall provide notice of a motion under sub. (1) or (1m) to the nonmoving party. This subsection does not apply to a motion to review a denial of a temporary restraining order.

**History:** 2009 a. 262; 2013 a. 322; 2015 a. 349; 2021 a. 256.

**813.127 Combined actions; domestic abuse, child abuse and harassment.** A petitioner may combine in one action 2 or more petitions under one or more of the provisions in ss. 813.12, 813.122 and 813.125 if the respondent is the same person in each petition. In any such action, there is only one fee applicable under s. 814.61 (1) (a). In any such action, the hearings for

different types of temporary restraining orders or injunctions may be combined.

**History:** 1985 a. 234.

**813.128 Uniform interstate enforcement of domestic violence protection orders act. (1g) DEFINITIONS.** In this section:

(a) "Bodily harm" has the meaning given in s. 939.22 (4).

(b) "Foreign mutual protection order" means a foreign protection order that includes provisions in favor of both the individual seeking enforcement of the order and the respondent.

(c) "Foreign protection order" means a protection order issued by a tribunal other than a tribunal of this state.

(d) "Protected individual" means an individual protected by a protection order.

(e) "Protection order" means any temporary or permanent injunction or order issued by a tribunal to prevent an individual from engaging in abuse, bodily harm, communication, contact, harassment, physical proximity, threatening acts or violence to another person, other than support or custody orders. This term includes an injunction or order issued under the antistalking laws of the issuing state.

(f) "Respondent" means the individual against whom enforcement of a protection order is sought.

(g) "Tribunal" means a court, agency, or other entity of a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, an American Indian tribe or band, or any territory or insular possession subject to the jurisdiction of the United States, authorized by law to issue or modify a protection order.

**(2g) STATUS OF A FOREIGN PROTECTION ORDER.** (a) A foreign protection order shall be accorded full faith and credit by the tribunals in this state and shall be enforced as if the order were an order of a tribunal of this state if the order meets all of the following conditions:

1. The foreign protection order was obtained after providing the respondent a reasonable notice and opportunity to be heard sufficient to protect his or her right to due process. If the foreign protection order is an ex parte injunction or order, the respondent shall have been given notice and an opportunity to be heard within a reasonable time after the order was issued sufficient to protect his or her right to due process.

2. The tribunal that issued the order had jurisdiction over the parties and over the subject matter.

3. The order identifies the protected individual and the respondent.

4. The order is currently in effect.

(b) A foreign protection order or modification of the foreign protection order that meets the requirements under this section has the same effect as an order issued under s. 813.12, 813.122, 813.123 or 813.125, except that the foreign protection order or modification shall be enforced according to its own terms.

(c) A foreign protection order issued against the person who filed a written pleading with a tribunal for a protection order is not entitled to full faith and credit under this subsection if any of the following occurred:

1. No written pleading was filed seeking the foreign protection order against the person who filed a written pleading with a tribunal for a protection order.

2. A cross or counter petition was filed but the tribunal did not make a specific finding that each party was entitled to a foreign protection order.

**(3g) FILING AND ENFORCEMENT OF A FOREIGN PROTECTION ORDER.** (a) 1. A copy of any foreign protection order, or of a modification of a foreign protection order that is on file with the circuit court, that is authenticated in accordance with an act of congress,

(5) A supplemental court commissioner shall refer to a court of record for appropriate action every alleged showing of contempt in the carrying out of the lawful decisions of the supplemental court commissioner.

(6) Supplemental court commissioners appointed under sub. (1) shall collect the fees prescribed in s. 814.68 (1).

**History:** 2001 a. 61 ss. 83, 87, 89, 105, 106, 108.

**757.68 Circuit court commissioners.** (1) Subject to subs. (2m) to (5m), in every county organized for judicial purposes, the county board shall establish the number of circuit court commissioner positions necessary for the efficient administration of judicial business within the circuit courts of the county. The circuit court commissioners may be employed on a full-time or part-time basis. SCR chapter 75 shall govern the qualifications for, and appointment, supervision, training, evaluation, and discipline of, circuit court commissioners. Any person qualified and acting as a judicial court commissioner on August 1, 1978, shall be considered a circuit court commissioner and shall continue in the classified county civil service but any person appointed as a court commissioner after August 1, 1978, shall be in the unclassified civil service. Each circuit court commissioner shall take and file the official oath in the office of the clerk of the circuit court of the county for which appointed before performing any duty of the office.

(2m) (a) *Counties other than Milwaukee.* 1. ‘Appointment.’ In each county, except in a county having a population of 750,000 or more, the chief judge of the judicial administrative district shall, by order filed in the office of the clerk of the circuit court on or before the first Monday of July of each year, appoint a circuit court commissioner to supervise the office of family court commissioner for the county.

2. ‘Powers; civil service; oath; temporary appointment; assistants.’ The circuit court commissioner appointed to supervise the office of family court commissioner is in addition to the maximum number of circuit court commissioners permitted by sub. (1). The circuit court commissioner supervising the office of family court commissioner, or any circuit court commissioner assisting in family matters, may be placed under a county civil service system by resolution of the county board.

(b) *Milwaukee County.* In counties having a population of 750,000 or more, there is created in the classified civil service a circuit court commissioner position to supervise the office of family court commissioner and such additional circuit court commissioner positions as the county board shall determine and authorize. Circuit court commissioners shall be appointed to these positions by the chief judge of the judicial administrative district under SCR 75.02 (1).

(3m) The board of supervisors of any county may establish one or more circuit court commissioner positions on a part-time or full-time basis to assist in matters affecting juveniles. A circuit court commissioner under this subsection shall serve at the discretion of the chief judge.

(4m) In counties having a population of 750,000 or more, there is created in the classified civil service a circuit court commissioner position to supervise the office of probate court commissioner and to assist the court in probate matters. In counties having a population of at least 100,000 but not more than 750,000, the county board may create a circuit court commissioner position to supervise the office of probate court commissioner and to assist in probate matters. That position may be in the classified civil service. If the chief judge delegates that authority to a judge assigned to probate jurisdiction, that judge may assign to the circuit court commissioner any matters over which the judge has jurisdiction, and the circuit court commissioner may determine such matters and may sign any order or certificate required by that determination.

(5m) In counties having a population of 750,000 or more, the county board shall establish at least one circuit court commissioner position on a full-time basis to assist in small claims mat-

ters under ch. 799. In counties having a population of less than 750,000, the county board may establish one or more circuit court commissioner positions on a part-time or full-time basis to assist in small claims matters under ch. 799.

(6) The county board shall set the salary of persons appointed as circuit court commissioners. The county board shall furnish circuit court commissioners with necessary office space, furnishings, supplies, and services.

(7) The chief judge of the judicial administrative district may assign law clerks, bailiffs, and deputies to a circuit court commissioner. The chief judge shall supervise those law clerks, bailiffs, and deputies assigned to the court, except that the chief judge may delegate that authority.

(8) Each circuit court commissioner shall participate in programs of continuing circuit court commissioner education required by the supreme court. The supreme court shall charge a fee for the costs of the continuing education programs required under this subsection. All moneys collected under this subsection shall be credited to the appropriation account under s. 20.680 (2) (ga).

**History:** 1973 c. 278; 1975 c. 39; 1975 c. 94 s. 3; 1975 c. 199; 1975 c. 430 s. 80; 1977 c. 187 s. 96; 1977 c. 323 ss. 7, 11; 1977 c. 345; 1977 c. 418 ss. 751, 752; 1977 c. 447 ss. 192 to 195; 1977 c. 449; Stats. 1977 s. 757.68; 1979 c. 32 s. 92 (16); 1981 c. 317 ss. 85pg, 2202; 1987 a. 151, 208; 2001 a. 61 ss. 10, 84 to 92, 113, 168, 170; 2001 a. 105 s. 73; 2009 a. 180; 2017 a. 207 s. 5.

**757.69 Powers and duties of circuit court commissioners.** (1) A circuit court commissioner may:

(a) Direct a case to the proper court if the defendant wishes to enter a plea after intelligent waiver of rights.

(b) In criminal matters issue summonses, arrest warrants or search warrants, determine probable cause to support a warrantless arrest, conduct initial appearances of persons arrested, set bail, inform the defendant in accordance with s. 970.02 (1), refer the person to the authority for indigency determinations specified under s. 977.07 (1), conduct the preliminary examination and arraignment, and, with the consent of both the state and the defendant, accept a guilty plea. If a court refers a disputed restitution issue under s. 973.20 (13) (c) 4., the circuit court commissioner shall conduct the hearing on the matter in accordance with s. 973.20 (13) (c) 4.

(bn) In matters involving a civil violation of s. 346.63 or of a local ordinance that conforms with s. 346.63, issue search warrants.

(c) Conduct initial appearances in traffic cases and county ordinance cases, in traffic regulation cases and county ordinance cases receive noncontested forfeiture pleas, order the revocation or suspension of operating privileges and impose monetary penalties according to a schedule adopted by a majority of the judges of the courts of record within the county, and refer applicable cases to court for enforcement for nonpayment.

(d) In small claims actions, conduct initial return appearance and conciliation conferences.

(e) Conduct noncontested probate proceedings.

(f) Issue warrants and capiases for those who do not appear as summoned.

(g) When assigned to assist a court in juvenile matters:

1. Issue summonses and warrants.

2. Order the release or detention of children or expectant mothers of unborn children taken into custody.

3. Conduct detention and shelter care hearings.

4. Conduct preliminary appearances.

5. Conduct uncontested proceedings under s. 48.13, 48.133, 48.9795, 938.12, 938.13, or 938.18.

6. Enter into consent decrees or amended consent decrees under s. 48.32 or 938.32.

7. Exercise the powers and perform the duties specified in par. (j) or (m), whichever is applicable, in proceedings under s. 813.122 or 813.125 in which the respondent is a child.

8. Conduct hearings under s. 48.21, 48.217, 938.21, or 938.217 and thereafter order a child or juvenile held in or released from custody.

9. Conduct hearings under s. 48.213 or 48.217 and thereafter order an adult expectant mother of an unborn child to be held in or released from custody.

10. Conduct plea hearings.

11. Conduct prehearing conferences.

12. Issue orders requiring compliance with deferred prosecution agreements.

13. Conduct all proceedings on petitions or citations under s. 938.125.

14. Conduct permanency reviews under s. 48.38 (5) or 938.38 (5) and permanency hearings under s. 48.38 (5m) or 938.38 (5m).

15. Conduct emergency in-home to out-of-home changes in placement hearings under s. 48.357 (2) (b) or 938.357 (2) (b).

(h) Hear petitions for commitment and conduct probable cause hearings under ss. 51.20, 51.45, 55.13, and 55.135, conduct reviews of guardianships under ch. 54 and reviews of protective placements and protective services under ch. 55, advise a person alleged to be mentally ill of his or her rights under the United States and Wisconsin constitutions, and, if the person claims or appears to be unable to afford counsel, refer the person to the authority for indigency determinations specified under s. 977.07 (1) or, if the person is a child, refer that child to the state public defender who shall appoint counsel for the child without a determination of indigency, as provided in s. 48.23 (4).

(i) Conduct inquests under ch. 979.

(j) Hold hearings, make findings and issue temporary restraining orders under s. 813.122 or 813.123.

(k) Administer oaths, take, certify, and report depositions and testimony, take and certify acknowledgments, allow accounts, and fix the amount and approve the sufficiency of bonds.

(m) Hold hearings, make findings, and issue temporary restraining orders and injunctions under s. 813.12 or 813.125.

(n) Hold hearings, make findings and issue orders under s. 49.856 (4).

(o) Hold hearings and issue orders on petitions under s. 173.23 (3).

(p) When assigned to assist in matters affecting the family:

1. Preside at any hearing held to determine whether a judgment of divorce or legal separation shall be granted if both parties to a divorce action state that the marriage is irretrievably broken, or if both parties to a legal separation action state that the marital relationship is broken, and that all material issues, including but not limited to division of property or estate, legal custody, physical placement, child support, spousal maintenance and family support, are resolved. A court commissioner may also preside at any hearing held to determine whether a judgment of divorce or legal separation shall be granted if one party does not participate in the action for divorce or legal separation. A circuit court commissioner may grant and enter judgment in any action over which he or she presides under this subdivision unless the judgment modifies an agreement between the parties on material issues. If the circuit court commissioner does not approve an agreement between the parties on material issues, the action shall be certified to the court for trial.

2. Conduct hearings and enter judgments in actions for enforcement of, or revision of judgment for, maintenance, custody, physical placement or visitation.

3. Except when prohibited by the chief judge of the judicial administrative district, conduct hearings and enter orders and judgments in actions to establish paternity, in actions to establish or enforce a child support or a family support obligation and in actions to revise orders or judgments for child support or family support.

(1m) Circuit court commissioners assigned to assist a court in juvenile matters shall sit at the children's court center, the usual court facility for juvenile matters, or such other facility designated by the chief judge of the judicial administrative district. Those commissioners may not do any of the following:

(a) Conduct fact-finding or dispositional hearings except on petitions or citations under s. 938.125 and except as provided in sub. (1) (g) 5.

(b) Make dispositions other than approving consent decrees, ordering compliance with deferred prosecution agreements and ordering dispositions in uncontested proceedings under s. 48.13, 48.133, 938.12, or 938.13.

(c) Conduct hearings for the termination of parental rights or for adoptions.

(d) Make changes in placements of children, of juveniles, or of the expectant mothers of unborn children, or revisions or extensions of dispositional orders, except pursuant to petitions or citations under s. 938.125, in uncontested proceedings under s. 48.13, 48.133, 938.12, or 938.13, or as permitted under sub. (1) (g) 6., 8., 9., and 15.

(e) Conduct hearings, make findings, or issue orders in proceedings under s. 48.977 or 48.978.

(f) Conduct waiver hearings under s. 938.18, except as provided in sub. (1) (g) 5.

(g) Make any dispositional order under s. 938.34 (4d), (4h), or (4m).

(2) A judge may refer to a circuit court commissioner cases in which:

(a) The trial of an issue of fact requires the examination of an account, in which case the circuit court commissioner may be directed to report upon any specific question of fact involved therein.

(b) The taking of an account is necessary for the information of the court before judgment or for carrying a judgment or order into effect.

(c) A question of fact other than upon the pleadings arises.

(d) Proposed findings of fact and conclusions of law are to be prepared pertaining to default mortgage and land contract foreclosures and mechanics liens.

(2m) Circuit court commissioners may exercise, under their own authority, all of the powers listed under s. 757.675 (2) to (5).

(2t) A circuit court commissioner shall cooperate with the county and the department to ensure that all dependent children receive reasonable and necessary child support.

(8) Any decision of a circuit court commissioner shall be reviewed by the judge of the branch of court to which the case has been assigned, upon motion of any party. Any determination, order, or ruling by a circuit court commissioner may be certified to the branch of court to which the case has been assigned, upon a motion of any party for a hearing de novo.

**History:** 1977 c. 323, 449; 1979 c. 32; 1979 c. 89; 1979 c. 209 s. 4; 1979 c. 352, 356; 1983 a. 279; 1985 a. 126, 202, 234, 332; 1987 a. 3, 27, 71, 378, 398; 1989 a. 7, 12, 31, 246; Sup. Ct. Order, 158 Wis. 2d xxv (1990); 1991 a. 39, 269; 1993 a. 318, 451, 481; 1995 a. 77; 1997 a. 191, 192, 292; 1999 a. 32; 2001 a. 16; 2001 a. 61 ss. 93 to 109, 173, 175, 177, 180; 2001 a. 105; 2005 a. 264, 387; 2007 a. 45, 179; 2009 a. 79; 2011 a. 181; 2015 a. 373; 2017 a. 117; 2019 a. 109; 2021 a. 169.

Section 970.04 specifically limits the availability of a second preliminary examination in a criminal matter and precludes a request for a de novo hearing under the more general sub. (8). *State v. Gillespie*, 2005 WI App 35, 278 Wis. 2d 630, 693 N.W.2d 320, 04–1758.

A party who requests a hearing de novo under sub. (8) is entitled to a hearing that includes testimony from the parties and their witnesses. *Stuligross v. Stuligross*, 2009 WI App 25, 316 Wis. 2d 344, 763 N.W.2d 241, 08–0311.

The issuance of a search warrant is not an exercise of “[t]he judicial power,” as that phrase is employed in article VII, section 2. Instead, issuance of a valid search warrant requires that the individual be authorized by law to issue the warrant, that he or she be neutral and detached, and that the warrant be issued only upon a showing of probable cause. Sub. (1) (b) does not impermissibly intrude upon “[t]he judicial power” granted to the courts by article VII, section 2 and is constitutional. *State v. Williams*, 2012 WI 59, 341 Wis. 2d 191, 814 N.W.2d 460, 10–1551.

The provision in sub. (8) for a circuit court to conduct a “hearing de novo” on review of a court commissioner’s order presupposes that the court commissioner has conducted a hearing. A de novo hearing is a new hearing of a matter, conducted as

if the original hearing had not taken place. Thus, a local rule precluding a new hearing upon stipulation or default does nothing more than expressly advise as to the practical consequences of consenting to a court commissioner's order. *Nehls v. Nehls*, 2012 WI App 85, 343 Wis. 2d 499, 819 N.W.2d 335, 11–2330.

**757.70 Hearings before court commissioners.** (1) All proceedings and hearings before a court commissioner, including proceedings held by telephone or videoconferencing technology, shall be public and open to every citizen, except juvenile proceedings or when it is necessary for the court in which the action or proceeding is pending to impose by order restrictions under its inherent power to conduct proceedings in camera.

(2) All hearings before a circuit or supplemental court commissioner shall be held in accordance with s. 753.24. This provision does not apply to nontestimonial proceedings, supplementary hearings on the present financial status of a debtor under s. 757.675 (2) (h), or depositions taken before a circuit or supplemental court commissioner.

**History:** 1977 c. 323; 2001 a. 61; Sup. Ct. Order No. 21–03, 2022 WI 23, filed 4–21–22, eff. 7–1–22; s. 35.17 correction in (2).

**757.81 Definitions.** In ss. 757.81 to 757.99:

(1) “Commission” means the judicial commission created by s. 757.83.

(3) “Judge” means a judge of any court established by or pursuant to article VII, section 2 or 14, of the constitution, or a supreme court justice.

(4) “Misconduct” includes any of the following:

(a) Willful violation of a rule of the code of judicial ethics.

(b) Willful or persistent failure to perform official duties.

(c) Habitual intemperance, due to consumption of intoxicating beverages or use of dangerous drugs, which interferes with the proper performance of judicial duties.

(d) Conviction of a felony.

(5) “Panel” means a judicial conduct and disability panel constituted under s. 757.87.

(6) “Permanent disability” means a physical or mental incapacity which impairs the ability of a judge or circuit or supplemental court commissioner to substantially perform the duties of his or her judicial office and which is or is likely to be of a permanent or continuing nature.

**History:** 1977 c. 449; 1983 a. 378; 1991 a. 269; 1995 a. 77; 2001 a. 61.

The provisions for judicial disciplinary proceedings under ss. 757.81 to 757.99 are constitutional. In *Matter of Complaint Against Seraphim*, 97 Wis. 2d 485, 294 N.W.2d 485 (1980).

A violation of the code of judicial conduct is “willful” for purposes of sub. (4) when the judge’s conduct was not the result of duress or coercion and when the judge knew or should have known that the conduct was prohibited by the code. Although a judge may commit a “willful” violation constituting judicial misconduct when the judge has no actual knowledge that his or her conduct is prohibited by the code, the judge’s actual knowledge, or lack thereof, of the code is relevant to the issue of discipline. *Wisconsin Judicial Commission v. Ziegler*, 2008 WI 47, 309 Wis. 2d 253, 750 N.W.2d 710, 07–2066.

**757.83 Judicial commission.** (1) **MEMBERSHIP; APPOINTMENT; TERMS.** (a) There is created a judicial commission of 9 members: 5 nonlawyers nominated by the governor and appointed with the advice and consent of the senate; one trial judge of a court of record and one court of appeals judge appointed by the supreme court; and 2 members of the State Bar of Wisconsin, who are not judges or court commissioners, appointed by the supreme court. The commission shall elect one of its members as chairperson.

(b) The term of a member is 3 years, but a member shall not serve more than 2 consecutive full terms. A vacancy is filled by the appointing authority for the unexpired term. Members of the commission shall receive compensation of \$25 per day for each day on which they were actually and necessarily engaged in the performance of their duties and shall be reimbursed for expenses necessarily incurred as members of the commission.

(2) **QUORUM; VOTING.** A majority of the commission constitutes a quorum. The commission may issue a formal complaint or a petition only upon a finding of probable cause by a majority of the total membership not disqualified from voting. A member

must be present to vote on the question of probable cause. A member shall not participate in any matter if a judge similarly situated would be disqualified in a court proceeding.

(3) **RULES.** The commission shall promulgate rules under ch. 227 for its proceedings.

(4) **STAFF.** The judicial commission shall hire an executive director, and may hire one staff member, in the unclassified service. The executive director shall be a member of the State Bar of Wisconsin and shall provide staff services to the judicial commission.

**History:** 1977 c. 449; 1979 c. 34, 154; 1983 a. 27, 378; 1987 a. 27; 1991 a. 269; 1995 a. 27; 2001 a. 103; 2007 a. 20.

**Cross-reference:** See also JC, Wis. adm. code.

**757.85 Investigation; prosecution.** (1) (a) The commission shall investigate any possible misconduct or permanent disability of a judge or circuit or supplemental court commissioner. Misconduct constitutes cause under article VII, section 11, of the constitution. Except as provided in par. (b), judges, circuit or supplemental court commissioners, clerks, court reporters, court employees and attorneys shall comply with requests by the commission for information, documents and other materials relating to an investigation under this section.

(b) The judge or circuit or supplemental court commissioner who is under investigation is not subject to the request procedure under par. (a) but is subject to the subpoena procedure under sub. (2).

(2) The commission may issue subpoenas to compel the attendance and testimony of witnesses and to command the production of books, papers, documents or tangible things designated in the subpoena in connection with an investigation under this section.

(3) The commission may notify a judge or circuit or supplemental court commissioner that the commission is investigating possible misconduct by or permanent disability of the judge or circuit or supplemental court commissioner. Before finding probable cause, the commission shall notify the judge or circuit or supplemental court commissioner of the substance of the complaint or petition and afford the judge or circuit or supplemental court commissioner a reasonable opportunity to respond. If the judge or circuit or supplemental court commissioner responds, the commission shall consider the response before it finds probable cause.

(4) The commission may require a judge or circuit or supplemental court commissioner who is under investigation for permanent disability to submit to a medical examination arranged by the commission.

(5) The commission shall, upon a finding of probable cause that a judge or circuit or supplemental court commissioner has engaged or is engaging in misconduct, file a formal complaint with the supreme court. Upon a finding of probable cause that a judge or circuit or supplemental court commissioner has a permanent disability, the commission shall file a petition with the supreme court. If the commission requests a jury under s. 757.87 (1), the request shall be attached to the formal complaint or the petition.

(6) The commission shall prosecute any case of misconduct or permanent disability in which it files a formal complaint or a petition.

(7) Insofar as practicable, the procedures applicable to civil actions apply to proceedings under ss. 757.81 to 757.99 after the filing of a complaint or petition.

**History:** 1977 c. 449; 1983 a. 192; 1983 a. 378 s. 11m; 1985 a. 332; 1987 a. 72; 1991 a. 269; 2001 a. 61.

**Cross-reference:** See also JC, Wis. adm. code.

**757.87 Request for jury; panel.** (1) After the commission has found probable cause that a judge or circuit or supplemental court commissioner has engaged in misconduct or has a permanent disability, and before the commission files a formal complaint or a petition under s. 757.85 (5), the commission may, by a majority of its total membership not disqualified from voting,

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ment was met. *Siemering v. Siemering*, 95 Wis. 2d 111, 288 N.W.2d 881 (Ct. App. 1980).

**767.313 Annulment.** (1) **GROUNDING WHEN SUIT MAY BE BROUGHT.** A court may annul a marriage upon any of the following grounds:

(a) A party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of age, because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other incapacitating substances, or a party was induced to enter into a marriage by force or duress, or by fraud involving the essentials of marriage. Suit may be brought by either party, or by the legal representative of a party lacking the capacity to consent, no later than one year after the petitioner obtained knowledge of the described condition.

(b) A party lacks the physical capacity to consummate the marriage by sexual intercourse, and at the time the marriage was solemnized the other party did not know of the incapacity. Suit may be brought by either party no later than one year after the petitioner obtained knowledge of the incapacity.

(c) A party was 16 or 17 years of age and did not have the consent of his or her parent or guardian or judicial approval, or a party was under 16 years of age. Suit may be brought by the underaged party or a parent or guardian at any time prior to the party's attaining the age of 18 years, but a parent or guardian must bring suit within one year of obtaining knowledge of the marriage.

(d) The marriage is prohibited by the laws of this state. Suit may be brought by either party within 10 years of the marriage, except that the 10-year limitation shall not apply where the marriage is prohibited because either party has another spouse living at the time of the marriage and the impediment has not been removed under s. 765.24.

(2) **JUDICIAL PROCEEDING REQUIRED; NO ANNULMENT AFTER DEATH.** A judicial proceeding is required to annul a marriage. A marriage may not be annulled after the death of a party to the marriage.

**History:** 1977 c. 105; 1979 c. 32 ss. 50, 92 (2); Stats. 1979 s. 767.03; 2005 a. 443 ss. 22, 23, 145; Stats. 2005 s. 767.313.

**NOTE:** 2005 Wis. Act 443 contains explanatory notes.

A remarriage, although unlawful in Wisconsin and dissolved through an annulment, is sufficient to terminate maintenance under s. 767.32 (3) [now s. 767.59 (2)]. The requirement that maintenance be terminated following remarriage is unconditional. *Falk v. Falk*, 158 Wis. 2d 184, 462 N.W.2d 547 (Ct. App. 1990).

Although a marriage may be "void," the marriage governs the parties' legal relations unless it is annulled. *Sinai Samaritan Medical Center, Inc. v. McCabe*, 197 Wis. 2d 709, 541 N.W.2d 190 (Ct. App. 1995), 95-0012.

Annulment is an appropriate remedy to void a marriage when the parties to the marriage are still alive, but it is not the exclusive remedy to challenge the validity of a marriage. The common law draws a distinction between an annulment and a declaration that a marriage is void, especially a declaration after the death of one of the parties. Statutes and case law have preserved that distinction. *McLeod v. Mudlaff*, 2013 WI 76, 350 Wis. 2d 182, 833 N.W.2d 735, 11-1176.

**767.315 Grounds for divorce and legal separation.**

(1) **IRRETRIEVABLE BREAKDOWN.** (a) If both of the parties to a legal separation or divorce action by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or if the parties have voluntarily lived apart continuously for 12 months or more immediately prior to commencement of the action and one party has so stated, the court, after hearing, shall make a finding that the marriage is irretrievably broken for purposes of s. 767.35 (1) (b) 1.

(b) If the parties to a legal separation or divorce action have not voluntarily lived apart for at least 12 months immediately prior to commencement of the action and if only one party has stated under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to filing the petition and the prospect of reconciliation, and proceed as follows:

1. If the court finds no reasonable prospect of reconciliation, it shall make a finding that the marriage is irretrievably broken for purposes of s. 767.35 (1) (b) 1.

2. If the court finds that there is a reasonable prospect of reconciliation, it shall continue the matter for further hearing not

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fewer than 30 nor more than 60 days later, or as soon thereafter as the matter may be reached on the court's calendar, and may suggest to the parties that they seek counseling. The court, at the request of either party or on its own motion, may order counseling. At the adjourned hearing, if either party states under oath or affirmation that the marriage is irretrievably broken, the court shall make a finding whether the marriage is irretrievably broken for purposes of s. 767.35 (1) (b) 1.

(2) **BREAKDOWN OF MARITAL RELATIONSHIP.** If both of the parties to a legal separation or divorce action by petition or otherwise have stated under oath or affirmation that the marital relationship is broken, the court, after hearing, shall make a finding that the marital relationship is broken for purposes of s. 767.35 (1) (b) 2.

**History:** 2005 a. 443 ss. 66, 146.

Abolition of Guilt in Marriage Dissolution: Wisconsin's Adoption of No-Fault Divorce. *Di Pronio*. 61 MLR 672 (1978).

**767.317 Defenses abolished.** Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

**History:** 2005 a. 443 s. 50.

**767.323 Suspension of proceedings to effect reconciliation.** During the pendency of an action for divorce or legal separation, the court may, upon written stipulation of both parties that they desire to attempt a reconciliation, enter an order suspending any and all orders and proceedings for such period, not exceeding 90 days, as the court determines advisable to permit the parties to attempt a reconciliation without prejudice to their respective rights. During the suspension period, the parties may resume living together as husband and wife and their acts and conduct do not constitute an admission that the marriage is not irretrievably broken or a waiver of the ground that the parties have voluntarily lived apart continuously for 12 months or more immediately prior to the commencement of the action. Suspension may be revoked upon the motion of either party by an order of the court. If the parties become reconciled, the court shall dismiss the action. If the parties are not reconciled after the period of suspension, the action shall proceed as though no reconciliation period was attempted.

**History:** 1971 c. 220; 1977 c. 105; 1979 c. 32 s. 50; Stats. 1979 s. 767.082; 2005 a. 443 s. 44; Stats. 2005 s. 767.323.

**767.331 Actions for certain interspousal remedies.** If a spouse has begun an action against the other spouse under s. 766.70 and either or both spouses subsequently bring an action under this chapter for divorce, annulment or legal separation, the actions may be consolidated by the court exercising jurisdiction under this chapter. If the actions are consolidated, to the extent the procedural and substantive requirements of this chapter conflict with the requirements under s. 766.70, this chapter controls. No action under s. 766.70 may be brought by a spouse against the other spouse while an action for divorce, annulment or legal separation is pending under this chapter.

**History:** 2005 a. 443 s. 34.

The prohibition under sub. (7) [now this section] of commencing an action under s. 766.70 while a divorce, annulment, or legal separation action is pending is constitutional. *Haack v. Haack*, 149 Wis. 2d 243, 440 N.W.2d 794 (Ct. App. 1989).

**767.333 Initial orders based on stipulation prior to judgment.** (1) **INITIAL ORDERS BASED ON STIPULATION ALLOWED.** Prior to obtaining a judgment of divorce, annulment, or legal separation, the parties may agree to physical placement, legal custody, child support, property division, maintenance, or related provisions. If the parties agree on one or more of the issues set forth under this section, the parties shall file a stipulation with the court that specifies the agreed-upon terms.

(2) **STIPULATIONS REGARDING LEGAL CUSTODY, PHYSICAL PLACEMENT, OR RELATED PROVISIONS.** (a) If the judge approves the stipulation, the judge shall incorporate and enter the terms of a stipulation regarding legal custody, physical placement, or related provisions as an initial order of physical placement or legal cus-

tody unless the judge finds that the terms are not in the best interest of the child.

(b) The provisions for modifications of orders regarding legal custody or physical placement under this section shall commence on the date of entry of the order, not the date of judgment, for purposes of s. 767.451.

(c) Prior to entering a stipulation under this section, the judge shall comply with any requirements under s. 767.41.

(d) If the judge finds that a parent has engaged in a pattern or serious incident of interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), the safety and well-being of the child and the safety of the parent who was the victim of the battery or abuse shall be paramount concerns in determining legal custody and periods of physical placement.

(e) A stipulation under this section is effective and enforceable as an initial order regarding legal custody or physical placement when entered, pursuant to s. 767.41.

**(3) STIPULATIONS REGARDING CHILD SUPPORT.** Prior to approving a stipulation under this section regarding child support, the judge shall comply with any requirements under s. 767.511. A party seeking modification of a stipulation entered under this section regarding child support must comply with s. 767.59.

**(4) STIPULATIONS REGARDING MAINTENANCE.** Prior to approving a stipulation under this section regarding maintenance, the judge shall comply with any requirements under s. 767.56. A party seeking modification of a stipulation entered under this section regarding maintenance must comply with s. 767.59.

**(5) STIPULATIONS REGARDING PROPERTY DIVISION.** Prior to approving a stipulation under this section regarding property division, the judge shall comply with any requirements under s. 767.61. A party seeking relief from a stipulation entered under this section regarding property division must comply with s. 806.07.

**(6) HEARING.** (a) Prior to entering a stipulation under this section, the judge shall hold a hearing on the record with both parties and the child support agency, if a party, to determine the parties' understanding of the stipulation and ensure that it is intended by both parties as the initial order on the terms set forth.

(b) Any hearing held under par. (a) may be held by telephone, video, or electronic means. A party or a party's attorney may appear via telephone or video for good cause shown, but each party is required to attend the hearing by telephone, video, electronic means, or in person.

**History:** 2021 a. 204.

**767.335 Waiting period for final hearing or trial.** An action for divorce or legal separation may not be brought to final hearing or trial until the first of the following occurs:

**(1) GENERALLY.** The expiration of 120 days after service of the summons and petition upon the respondent or the expiration of 120 days after the filing of the joint petition.

**(2) EMERGENCY.** An order by the court, after consideration of the recommendation of a circuit court commissioner, directing an immediate hearing on the petition for the protection of the health or safety of either of the parties or of any child of the marriage or for other emergency reasons consistent with the policies of this chapter. The court shall, upon granting the order, specify the grounds for the order.

**History:** 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.083; 1987 a. 355; 2001 a. 61; 2005 a. 443 s. 45; Stats. 2005 s. 767.335.

**767.34 Court-approved stipulation.** **(1) AUTHORITY.** The parties in an action for an annulment, divorce, or legal separation may, subject to the approval of the court, stipulate for a division of property, for maintenance payments, for the support of children, or for legal custody and physical placement, in case a divorce or legal separation is granted or a marriage annulled.

**(2) LIMITATIONS ON COURT APPROVAL.** (a) A court may not approve a stipulation for child support or family support unless the stipulation provides for payment of child support determined in a manner consistent with s. 767.511 or 767.89.

(am) A court may not approve a stipulation for expressing child support or family support as a percentage of the payer's income unless all of the following apply:

1. The state is not a real party in interest in the action under any of the circumstances specified in s. 767.205 (2) (a).

2. The payer is not subject to any other order, in any other action, for the payment of child or family support or maintenance.

3. All payment obligations included in the order, other than the annual receiving and disbursing fee under s. 767.57 (1e) (a), are expressed as a percentage of the payer's income.

(b) A court may not approve a stipulation for a division of property that assigns substantially all of the property to one of the parties in the action if the other party in the action is in the process of applying for medical assistance under subch. IV of ch. 49 or if the court determines that it can be reasonably anticipated that the other party in the action will apply for medical assistance under subch. IV of ch. 49 within 30 months of the stipulation.

**(3) APPROVAL OF STIPULATION FOR MODIFICATIONS CONTINGENT ON FUTURE EVENT.** (a) In this subsection, "future event" means a life event of a party or of the child or a change in the developmental or educational needs of the child.

(b) A court may approve a stipulation for legal custody and physical placement that includes modifications to legal custody or physical placement upon the occurrence of a specified future event that is reasonably certain to occur within 2 years of the date of the stipulation. A court may not approve a stipulation under this subsection that is based on an anticipated behavior modification of a party.

**History:** 1971 c. 220; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); Stats. 1979 s. 767.10; 1985 a. 29; 1987 a. 355; 1993 a. 16; 1993 a. 490 s. 276; 1995 a. 27; 2001 a. 16; 2005 a. 443 ss. 54, 168; Stats. 2005 s. 767.34; 2021 a. 20, 35.

A trial court is not required to give effect to a property division agreement entered into before divorce proceedings are instituted. It should make its own determination of whether the agreement adequately provides for the parties. *Ray v. Ray*, 57 Wis. 2d 77, 203 N.W.2d 724 (1973).

There are two types of postnuptial agreements: 1) family settlement agreements that contemplate the continuation of the marriage; and 2) separation agreements that are made after separation or in contemplation of separation. The former are presumed binding on the parties under s. 767.255 (3) (L) [now s. 767.61 (3) (L)]. The latter are governed by s. 767.10 [now this section] and constitute a recommendation jointly made by the parties to the court regarding what the judgment should provide. *Evenson v. Evenson*, 228 Wis. 2d 676, 598 N.W.2d 232 (Ct. App. 1999), 98-0803. See also *Van Boxtel v. Van Boxtel*, 2001 WI 40, 242 Wis. 2d 474, 625 N.W.2d 284, 99-0341.

An agreement made in contemplation of divorce, entered into after the parties agreed to the divorce, was subject to s. 767.10 [now this section], not s. 767.255 [now s. 767.61]. When a party withdrew the party's consent before court approval, the agreement was unenforceable. *Ayres v. Ayres*, 230 Wis. 2d 431, 602 N.W.2d 132 (Ct. App. 1999), 98-3450.

A trial court may refuse to incorporate a stipulation in a divorce judgment when a party repudiates the party's consent. A party is free to withdraw from a stipulation until it is incorporated in a judgment, and repudiation may render the stipulation non-existent. *Van Boxtel v. Van Boxtel*, 2001 WI 40, 242 Wis. 2d 474, 625 N.W.2d 284, 99-0341.

The specific language of sub. (1) controls stipulations in divorces rather than the general language of s. 807.05. All agreements entered into after a divorce is filed are stipulations subject to sub. (1) and must be approved by the court. *Polakowski v. Polakowski*, 2003 WI App 20, 259 Wis. 2d 765, 657 N.W.2d 102, 02-1961.

A stipulation under this section is not a contract that would be binding on the parties once entered into, but is only a recommendation to the court. The court need not accept it but has a duty to decide whether that recommendation is a fair and reasonable resolution of the issues that the court wants to adopt. When a court adopts a stipulation, it does so on its own responsibility within its discretion, and the provisions become the court's judgment. Once the court decides to do so, the right of a party to withdraw from the stipulation comes to an end. *Hottenroth v. Hetsko*, 2006 WI App 249, 298 Wis. 2d 200, 727 N.W.2d 38, 05-1212.

Before approving a stipulation, the circuit court is not required to take evidence and make an investigation in essentially the same manner as if the stipulated matters were contested. Under the facts of this case, it was unnecessary to define the minimum requirements that must be met before a court approves a stipulation. *Hottenroth v. Hetsko*, 2006 WI App 249, 298 Wis. 2d 200, 727 N.W.2d 38, 05-1212.

**767.35 Judgment of divorce or legal separation.**

**(1) WHEN GRANTED.** A court shall grant a judgment of divorce or legal separation if all of the following conditions are met:



Petitioner/Joint Petitioner A: \_\_\_\_\_  
 Respondent/Joint Petitioner B: \_\_\_\_\_

**This form is available in Spanish.**  
<https://www.wicourts.gov/forms1/circuit/index.htm>  
*(Este formulario está disponible en español.)*

Enter the name of the county in which this case is filed.	<b>STATE OF WISCONSIN, CIRCUIT COURT,</b> _____ <b>COUNTY</b>
Mark marriage or paternity. If paternity, enter initials of child.	IN RE: THE <input type="checkbox"/> MARRIAGE <input type="checkbox"/> PATERNITY OF _____ <b>Petitioner/Joint Petitioner A</b>
Enter the name of the Petitioner/Joint Petitioner A.	Name (First, Middle and Last) _____
Enter the name of the Respondent/Joint Petitioner B. Check box to indicate whether plan being submitted by one parent or both parents.	<b>Respondent/Joint Petitioner B</b> Name (First, Middle and Last) _____
Enter the case number.	<div style="text-align: right;"> <b>Proposed Parenting Plan</b>  <input type="checkbox"/> Individual  <input type="checkbox"/> Joint/Both Parties             Case No. _____         </div>

**I understand that Wisconsin law states that in an action in which legal custody or physical placement is contested:**

Check Petitioner/Petitioner/Joint Petitioner A or Respondent/Joint Petitioner B.

Check both boxes if plan is being submitted by both parents.

- I am required to file a proposed parenting plan within 60 days after the court waives mediation or within 60 days after the mediator notifies the court that no agreement has been reached.
- I am required to submit a proposed parenting plan to the mediator at least 10 days before the initial mediation session.
- If I fail to file such a plan, I may lose my right to contest the plan submitted by the other parent unless I can show good cause for my delay.

I am  Petitioner/Joint Petitioner A  Respondent/Joint Petitioner B of the minor children of this case.

**I AM PROPOSING THE FOLLOWING PARENTING PLAN:**

**Note:** Legal custody is the right and responsibility to make major decisions about a child, except for those specific decisions described in 2, if any.

Enter the name of each child and check who you believe should have legal custody.

**A. Legal Custody**

1. **Legal custody** of the minor children shall be as follows:

Name of Child	Date of Birth	Joint Legal Custody	Sole Legal Custody Petitioner/ Joint Petitioner A	Sole Legal Custody to Respondent/ Joint Petitioner B
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. **Specific Decision Making Authority**

Decisions in the following listed areas will be made as follows:

Check who will be making the specific decisions for

Decision	Jointly	Petitioner/ Joint Petitioner A	Respondent/ Joint Petitioner B
a. Non-Emergency Health Care	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Education/School Activities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Child Care Providers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Petitioner/Joint Petitioner A: \_\_\_\_\_  
 Respondent/Joint Petitioner B: \_\_\_\_\_

each subject area in a-d. If other, please specify.

d. Non-School Activities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**B. Physical Placement**

In allocating the time the minor children spend between the parents, the court should award the placement on a day-to-day basis as follows:

**Note:** Physical Placement is the right to have a child physically placed with a party.

Enter the name of each child and check which parent you believe should have physical placement of that child.

Name of Child	Equal Shared Placement	Primary Physical Placement to Petitioner/ Joint Petitioner A	Primary Physical Placement to Respondent/ Joint Petitioner B
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Check 1 or 2. If a, attach a schedule. If b, describe how placement will be shared in the chart provided.

AND the physical placement schedule shall be:

- 1. as listed in the attached document.
- 2. as proposed below (on a biweekly basis):

	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.
Week 1							
Week 2							

If checked, enter reasons.

If either parent is receiving less than 25% physical placement with the minor child(ren), the specific reasons more placement with that parent is not in the child(ren)'s best interest is as follows:

Check if attachments.

See attached

**C. Summer and Holiday Placement Schedule**

The summer and holiday placement schedule should be as follows:

- 1. as proposed here:

Check 1, 2 or 3.

If 1, enter the year [every/odd/even] in which the schedule will begin. Check which parent you believe should have the children for each holiday break.

HOLIDAYS	With Petitioner/ Joint Petitioner A the following years			With Respondent/ Joint Petitioner B the following years		
	Every year	Even years	Odd years	Every year	Even years	Odd years
a. Mother's Day	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Memorial Day	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Father's Day	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. July 4th	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Labor Day	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Halloween	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Thanksgiving	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. Christmas Eve	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. Christmas Day	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j. New Year's Eve	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k. New Year's Day	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l. Religious Holiday _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
m. Religious Holiday _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
n. Petitioner/Joint Petitioner A's Birthday	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Petitioner/Joint Petitioner A: \_\_\_\_\_  
 Respondent/Joint Petitioner B: \_\_\_\_\_

o. Respondent/Joint Petitioner B's Birthday	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
p. Children's Birthday(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
q. Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
r. Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
s. School Spring Break	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
t. School Teacher Conventions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
u. Summer Break to be shared as follows: _____						

If 2, write the name of the county whose schedule you are using.  
 If 3, enter the other schedule.

Check 1 or 2.  
 If 2, enter the name of the childcare provider and indicate in a and b the percent you propose each parent should pay toward the cost. The total amount must equal 100%.

Check a, b, c, or d.

If c, check 1 or 2.

If d, enter the other proposal.

For 2, check a, b, or c.

If b or c, enter the location for the drop-off.

If d, check 1,2,3 or 4. For each enter the requested information.

For 3, check a or b.  
 If b, enter how you propose the transportation costs should be paid.

Enter the name of each child and indicate which school you propose he/she attend.

Enter the percentage each parent should pay.

2. According to the attached \_\_\_\_\_ County standard placement schedule.
3. Other: \_\_\_\_\_  See attached

**D. Child Care**

1. The children do not require child care.
2. The child care will be provided by \_\_\_\_\_  
**And** the cost of child care will be paid as follows:  
 a. Petitioner/Joint Petitioner A to pay \_\_\_\_%.  
 b. Respondent/Joint Petitioner B to pay \_\_\_\_%.

**E. Transportation Issues**

1. The physical transfer of the children for placement should be as follows:
- a. All transportation to and from placements will be provided by Petitioner/ Joint Petitioner A.
  - b. All transportation to and from placements will be provided by Respondent/ Joint Petitioner B.
  - c. Transportation will be shared with:
    - 1) parent with children shall deliver.
    - 2) parent without children shall pick up.
  - d. Other: \_\_\_\_\_
2. Transfers of children shall take place at:
- a. parent's home.
  - b. halfway point: \_\_\_\_\_
  - c. other location: \_\_\_\_\_
  - d. Inter-spousal battery/domestic violence is an issue in this relationship and in order to ensure the safety of the children and/or parent, transfers of the children between the parents shall be:
    - 1) supervised by \_\_\_\_\_
    - 2) at a neutral public site \_\_\_\_\_
    - 3) at a home of the following person \_\_\_\_\_
    - 4) Other: \_\_\_\_\_
3. Transportation Costs shall be:
- a. paid by party who incurs the costs.
  - b. paid as follows: \_\_\_\_\_

**F. School**

1. The children will attend school at:

Name of Child	School/ School District

Petitioner/Joint Petitioner A: \_\_\_\_\_  
 Respondent/Joint Petitioner B: \_\_\_\_\_

The total amount must equal 100%.

Check a or b.  
 If a, enter the address.

If b, enter your general location.


2. Education costs will be paid as follows:
- Petitioner/Joint Petitioner A to pay \_\_\_\_\_%.
  - Respondent/Joint Petitioner B to pay \_\_\_\_\_%.

Check a or b. If a, enter the address at which you intend to live for the next two years.  
 If b, enter the general location of where you intend to live for the next two years.

**G. Residence**

**1. Current**

- a. I currently reside at:  
 Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_
- b. This is a domestic violence case; I decline to give a specific address, but my general location is currently \_\_\_\_\_.
- c. The other party resides at:  
 Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

**2. Future**

- a. For the next two years it is my intention to reside at:  
 Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_
- b. This is a domestic violence case; I decline to give a specific future address, but it is my intention to generally reside for the next two years at: \_\_\_\_\_.

Check 1 or 2.

If 1, enter your current employer and your general work schedule.

If 2, enter your general employment.

**H. Current Employer**

1. I am currently employed at:  
 Employer \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Days/Hrs. \_\_\_\_\_
2. This is a domestic violence case; I decline to give my specific employment, but where I generally work is \_\_\_\_\_.
3. The other party is currently employed at:  
 Employer Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Enter the name of each provider. If other, enter the description along with the provider name.

**I. Health Care**

- Providers:** Healthcare services will be provided to the children by the following:  
 Doctors/Pediatrician/Clinic \_\_\_\_\_  
 Eye/Optomtrist \_\_\_\_\_  
 Dentist/Orthodontist \_\_\_\_\_  
 Insurance/Health Plan (if any) \_\_\_\_\_  
 Other: \_\_\_\_\_

In J., check all that is applicable. Use "Other" to indicate additional variable expense that is not listed.

**J. Variable Expenses**

I expect the child(ren) to incur the following variable costs:  See attached

CHILDCARE	Yes	No	N/A
day care	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

TRANSPORTATION	Yes	No	N/A
driver's education fees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Petitioner/Joint Petitioner A: \_\_\_\_\_  
 Respondent/Joint Petitioner B: \_\_\_\_\_

child's car insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
child's vehicle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
bus pass	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<b>SCHOOL ITEMS</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>
school supplies/backpack	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
school fees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
school lunches	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
pre-k – 12 parochial/private school tuition	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
class trips	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
letter jacket, class ring, high school graduation expenses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
tutoring fees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
advanced placement class test fees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
school pictures (including senior pictures)/yearbooks	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
prom dress/formalwear (tuxes, tickets/flowers)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
high school graduation costs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
costs of college search - application fees, travel expenses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SAT/ACT prep classes/fees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<b>CLOTHING</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>
winter coats/boots	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
school uniforms	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<b>ACTIVITIES / RECREATION</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>
extracurricular activities: fees, lessons, equipment, uniforms, instruments, etc. required for participation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
religious activities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
club/traveling team sports membership fees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
recreational safety courses and licenses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
health club/fitness membership	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
classes (art, life guarding, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
residential summer camp	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
music lessons	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<b>GENERAL LIFESTYLE</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>
haircuts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
child's gifts to others	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
cell phone and related expenses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
luggage/backpacks	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
laptops/desktop computer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
computer accessories/software/hardware	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
game system	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
birthday/graduation parties for child	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Petitioner/Joint Petitioner A: \_\_\_\_\_  
 Respondent/Joint Petitioner B: \_\_\_\_\_

Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Check 1 or 2.  
 If 1, enter the name of the religion.

**K. Religious Upbringing**

- 1. The minor children will be raised in the following religion: \_\_\_\_\_
- 2. No religious affiliation is planned.

Check all that apply in 1-10. If other, enter a description.

**L. Maintaining Contact with Other Parent**

I shall assist the children in maintaining contact with the other parent by:

- 1. direct contact through periods of placement.
- 2. telephone contact.
- 3. cards/letters.
- 4. e-mail.
- 5. providing copies of children's school projects.
- 6. providing photographs of children participating in activities.
- 7. assisting children with gift purchasing for other parent for birthdays and holidays.
- 8. assisting children with letter writing to other parent.
- 9. creating personal web-site for posting pictures, letters, information, comments.
- 10. Other: \_\_\_\_\_

**(Note:** Each parent is expected to take personal responsibility for contacting the schools to obtain school calendars and report cards and attending parent-teacher meetings.)

Check all that apply.

**M. Resolving Disagreements**

If there are disagreements between myself and the other parent on issues that are to be joint decisions, the way to resolve the disagreements will be

- 1. the parent who has primary physical placement will decide.
- 2. the parent who has physical placement at the time of the disagreement will decide.
- 3. to allow the parent who generally made this type of decision before these court proceedings were started to make the same type of decision in the future.
- 4. to review the issues from the other parent's or children's standpoint and reconsider my position.
- 5. to determine whether my opposition is in good faith and in the best interests of the children or whether it is an attempt to spite the other parent.
- 6. to determine whether this is a situation in which the children is/are attempting to manipulate one parent against the other and, if so, consult with the other parent.
- 7. to ask for assistance from friends, relatives, clergy, or others who can be neutral and fair.
- 8. I would suggest the following person(s) to serve as a third-party neutral(s): \_\_\_\_\_
- 9. to contact the family court mediation program.
- 10. Other: \_\_\_\_\_

If 8, enter the name(s) of the individuals.

If 10, enter your suggested method.

Enter the date on which you signed your name.  
**Note:** This signature does not need to be notarized.  
 If plan is being submitted by both parents, each parent must sign on a separate signature block.

Petitioner/Joint Petitioner A **OR**  Respondent/Joint Petitioner B

\_\_\_\_\_  
 Name Printed or Typed

\_\_\_\_\_  
 Address

\_\_\_\_\_  
 Email Address Telephone Number

\_\_\_\_\_  
 Date State Bar No. (if any)

Petitioner/Joint Petitioner A: \_\_\_\_\_  
Respondent/Joint Petitioner B: \_\_\_\_\_

Enter the date on which you signed your name.
<b>Note:</b> This signature does not need to be notarized.
Check box if a lawyer mediator helped to complete this form.

Petitioner/Joint Petitioner A **OR**  Respondent/Joint Petitioner B

\_\_\_\_\_  
Name Printed or Typed

\_\_\_\_\_  
Address

\_\_\_\_\_  
Email Address Telephone Number

\_\_\_\_\_  
Date State Bar No. (if any)

**This document was prepared with the assistance of a lawyer acting as mediator.**

## CHAPTER 324

DEPLOYED PARENTS  
CUSTODY AND VISITATION

	SUBCHAPTER I GENERAL PROVISIONS		CUSTODIAL RESPONSIBILITY DURING DEPLOYMENT
324.01	Short title.	324.31	Proceeding for temporary deployment custody order.
324.02	Definitions.	324.32	Expedited hearing.
324.03	Remedies for noncompliance.	324.33	Testimony by electronic means.
324.04	Jurisdiction.	324.34	Effect of prior judicial order or agreement.
324.05	Notification required by deploying parent.	324.345	Best interest of the child.
324.06	Duty to notify of change of address.	324.35	Grant of physical placement to nonparent.
	SUBCHAPTER II AGREEMENT FOR CUSTODIAL RESPONSIBILITY DURING DEPLOYMENT	324.37	Nature of authority created by temporary custodial responsibility order.
324.21	Form of agreement.	324.38	Content of temporary custodial responsibility order.
324.22	Nature of authority created by agreement.	324.39	Order for child support.
324.23	Modification of agreement.	324.395	Modifying or terminating grant of custodial responsibility to nonparent.
324.25	Filing agreement with court.		SUBCHAPTER IV MISCELLANEOUS PROVISIONS
	SUBCHAPTER III JUDICIAL PROCEDURE FOR GRANTING	324.42	Uniformity of application and construction.
		324.43	Relation to Electronic Signatures in Global and National Commerce Act.
		324.44	Savings clause.

## SUBCHAPTER I

## GENERAL PROVISIONS

**324.01 Short title.** This chapter may be cited as the Uniform Deployed Parents Custody and Visitation Act.

**History:** 2021 a. 161.

**324.02 Definitions.** In this chapter:

(1) “Adult” means an individual who has attained 18 years of age or who is an emancipated minor.

(2) “Child” means any of the following:

(a) An individual who has not attained 18 years of age and who is not an emancipated minor.

(b) An adult son or daughter by birth or adoption, or under the law of this state other than this chapter, who is the subject of a court order concerning custodial responsibility.

(3) “Court” means a tribunal, including an administrative agency, that is authorized under the law of this state other than this chapter to make, enforce, or modify a decision regarding custodial responsibility.

(4) “Custodial responsibility” includes physical placement, legal custody, and visitation.

(5) “Deployed” means subject to a deployment.

(6) “Deploying parent” means a service member who is deployed, or who has been notified of impending deployment, and who is any of the following:

(a) A parent of a child under the law of this state other than this chapter.

(b) An individual who has custodial responsibility for a child under the law of this state other than this chapter.

(7) “Deployment” means the movement or mobilization of a service member for more than 30 days but less than 18 months in accordance with service orders that are designated as unaccompanied, do not authorize dependent travel, or otherwise do not permit the movement of a child to the location to which the service member is deployed.

(8) “Emancipated minor” has the meaning given in s. 48.375 (2) (e).

(9) “Family member” means a grandparent, great-grandparent, or stepparent.

(10) “Legal custody” has the meaning given in s. 767.001 (2).

(11) “Nonparent” means an individual other than a deploying parent or other parent.

(12) “Other parent” means an individual who, in common with a deploying parent, is any of the following:

(a) A parent of a child under the law of this state other than this chapter.

(b) An individual who has custodial responsibility for a child under the law of this state other than this chapter.

(13) “Physical placement” has the meaning given in s. 767.001 (5).

(14) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) “Return from deployment” means the conclusion of a service member’s deployment as specified in service orders.

(16) “Service member” means a member of any of the following:

(a) The U.S. armed forces, including any reserve component.

(b) The merchant marine.

(c) The commissioned corps of the U.S. public health service.

(d) The commissioned corps of the national oceanic and atmospheric administration.

(e) The national guard of any state.

(17) “Sign” means to do any of the following with present intent to authenticate or adopt a record:

(a) Execute or adopt a tangible symbol.

(b) Attach to or logically associate with the record an electronic symbol, sound, or process.

(18) “State” means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or possession of the United States.

(19) “Visitation” means rights conferred to an individual to reasonable visitation with a child in accordance with s. 767.43.

**History:** 2021 a. 161.

**324.03 Remedies for noncompliance.** In addition to other remedies under the law of this state other than this chapter, if a court finds that a party to a proceeding under this chapter has acted in bad faith or intentionally failed to comply with this chapter or a court order issued under this chapter, the court may assess rea-



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sonable attorney fees and costs against the party and order other appropriate relief.

History: 2021 a. 161.

**324.04 Jurisdiction.** (1) A court may issue an order regarding custodial responsibility under this chapter only if the court has jurisdiction under ch. 822.

(2) If a court has issued a temporary order regarding custodial responsibility under subch. III, the residence of the deploying parent is not changed by reason of the deployment for purposes of ch. 822 during the deployment.

(3) If a court has issued a permanent order regarding custodial responsibility before notice of deployment and the parents modify that order temporarily by agreement under subch. II, the residence of the deploying parent is not changed by reason of the deployment for purposes of ch. 822.

(4) If a court in another state has issued a temporary order regarding custodial responsibility as a result of impending or current deployment, the residence of the deploying parent is not changed by reason of the deployment for purposes of ch. 822.

(5) This section does not prevent a court from exercising temporary emergency jurisdiction under s. 822.24.

History: 2021 a. 161.

**324.05 Notification required by deploying parent.**

(1) Except as provided in sub. (4) and subject to sub. (3), a deploying parent shall, in a record, notify the other parent of a pending deployment not later than 7 days after the deploying parent receives notice of deployment unless reasonably prevented from doing so by the circumstances of deployment. If the circumstances of deployment prevent giving notification within the 7 days, the deploying parent shall give the notification as soon as reasonably possible.

(2) Except as provided in sub. (4) and subject to sub. (3), the deploying parent and the other parent shall, in a record, provide each other with a plan for fulfilling their respective shares of custodial responsibility during deployment. Each parent shall provide the plan as soon as reasonably possible after the deploying parent gives notification of deployment under sub. (1).

(3) If a court order currently in effect prohibits disclosure of the address or contact information of the other parent, notification of deployment under sub. (1) or notification by the deploying parent of a plan for custodial responsibility during deployment under sub. (2) may be made only to the issuing court. If the address of the other parent is available to the issuing court, the court shall forward the notification to the other parent. The court shall keep confidential the address or contact information of the other parent.

(4) Notification in a record under sub. (1) or (2) is not required if the parents are living in the same residence and both parents have actual notice of the deployment or plan.

(5) In a proceeding regarding custodial responsibility, a court may consider the reasonableness of a parent's efforts to comply with this section.

History: 2021 a. 161.

**324.06 Duty to notify of change of address.** (1) Except as provided in sub. (2), an individual to whom custodial responsibility has been granted during deployment under subch. II or III shall, until the grant is terminated, notify all of the following of any change in the individual's mailing address or residence:

- (a) The deploying parent.
- (b) Any other individual with custodial responsibility for the child.
- (c) Any court that has issued a custody or child support order concerning the child that is in effect.

(2) If a court order currently in effect prohibits disclosure of the address or contact information of an individual to whom custodial responsibility has been granted, a notification under sub. (1) may be made only to the court that issued the order. The court shall

keep confidential the mailing address or residence of the individual to whom custodial responsibility has been granted.

History: 2021 a. 161.

## SUBCHAPTER II

## AGREEMENT FOR CUSTODIAL RESPONSIBILITY DURING DEPLOYMENT

**324.21 Form of agreement.** (1) The parents of a child may enter into a temporary agreement under this subchapter granting custodial responsibility during deployment.

(2) An agreement under sub. (1) shall be in writing and signed by both parents and any nonparent to whom custodial responsibility is granted.

(3) Subject to sub. (4), an agreement under sub. (1) shall, if feasible, do all of the following:

(a) Identify the destination, duration, and conditions of the deployment that is the basis for the agreement.

(b) Specify the allocation of physical placement and legal custody among the deploying parent, the other parent, and any nonparent.

(d) Specify any visitation rights of a nonparent.

(e) If, under the agreement, custodial responsibility is shared by 2 or more individuals, provide a process to resolve any dispute that may arise.

(f) Specify the frequency, duration, and means, including electronic means, by which the deploying parent may have contact with the child, any role to be played by the other parent or by a nonparent in facilitating the contact, and the allocation of any costs of contact.

(g) Specify the contact between the deploying parent and child during the time that the deploying parent is on leave or is otherwise available.

(h) Acknowledge that any party's child support obligation cannot be modified by the agreement and that changing the terms of the obligation during deployment requires modification in the appropriate court.

(i) Specify that the temporary arrangement will terminate in accordance with s. 324.22 (1).

(j) If the agreement is required to be filed under s. 324.25, specify which parent is required to file the agreement.

(4) The omission of any of the items specified in sub. (3) does not invalidate an agreement under this section.

History: 2021 a. 161.

**324.22 Nature of authority created by agreement.**

(1) An agreement under this subchapter is temporary and does not create an independent, continuing right to physical placement, legal custody, or visitation for an individual to whom custodial responsibility is given. The temporary agreement terminates according to one of the following:

(a) If deployment is for less than 6 months, the temporary agreement terminates immediately after the deploying parent returns.

(b) If deployment is for 6 months or more, the temporary agreement terminates 30 days after the deploying parent returns.

(c) The temporary agreement terminates on a date that has been stipulated by all of the parties to the agreement or by modification under s. 324.23.

(d) The temporary agreement terminates on a date ordered by the court.

(2) A nonparent who has physical placement, legal custody, or visitation by an agreement under this subchapter has standing to enforce the agreement until it has been terminated.

History: 2021 a. 161.

**324.23 Modification of agreement.** (1) By mutual consent, the parents of a child may modify an agreement regarding

custodial responsibility made under this subchapter subject to any visitation rights granted by court order under s. 767.43.

(2) If an agreement is modified under sub. (1) before deployment of a deploying parent, the modification must be in writing and signed by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.

(3) If an agreement is modified under sub. (1) during deployment of a deploying parent, the modification must be agreed to in a record by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.

History: 2021 a. 161.

**324.25 Filing agreement with court.** If a court order on custodial responsibility or child support is in effect concerning a child who is the subject of an agreement under this subchapter, the agreement shall be filed within a reasonable time with that ordering court. The case number and heading of the underlying action affecting the family under ch. 767 concerning custodial responsibility or child support shall be provided to the court with the agreement.

History: 2021 a. 161.

### SUBCHAPTER III

#### JUDICIAL PROCEDURE FOR GRANTING CUSTODIAL RESPONSIBILITY DURING DEPLOYMENT

**324.31 Proceeding for temporary deployment custody order.** (1) After a deploying parent receives notice of deployment and until the deployment terminates, a court may issue a temporary order granting custodial responsibility, unless prohibited by the Servicemembers Civil Relief Act, 50 USC Appendix 521 and 522. A court may not issue a permanent order granting custodial responsibility without the consent of the deploying parent.

(2) At any time after a deploying parent receives notice of deployment, the deploying parent or other parent may file a motion regarding custodial responsibility for a child during deployment. The motion shall be filed in an underlying action affecting the family under ch. 767 for custodial responsibility in a court with jurisdiction under s. 324.04 or, if there is no underlying action affecting the family under ch. 767 in a court with jurisdiction under s. 324.04, in a new action for granting custodial responsibility during deployment.

History: 2021 a. 161.

**324.32 Expedited hearing.** If a motion to grant custodial responsibility is filed under s. 324.31 (2) before a deploying parent deploys, the court shall conduct a hearing within 30 days of filing.

History: 2021 a. 161.

**324.33 Testimony by electronic means.** In a proceeding under this subchapter, a party or witness who is not reasonably available to appear personally may appear, provide testimony, and present evidence by electronic means unless the court finds good cause to require a personal appearance.

History: 2021 a. 161.

**324.34 Effect of prior judicial order or agreement.** In a proceeding for a grant of custodial responsibility under this subchapter, all of the following apply:

(1) A prior judicial order designating custodial responsibility in the event of deployment is binding on the court unless the circumstances meet the requirements of the law of this state other than this chapter for modifying a judicial order regarding custodial responsibility.

(2) The court shall enforce a prior written agreement between the parents for designating custodial responsibility in the event of

deployment, including an agreement executed under subch. II, unless the court finds that the agreement is contrary to the best interest of the child.

History: 2021 a. 161.

**324.345 Best interest of the child.** In determining the best interest of the child under this chapter, the court shall consider the factors in custody and physical placement determinations under s. 767.41 (5), with a particular emphasis on maintaining sibling relationships. The court may not grant legal custody, physical placement, or visitation to an individual in a temporary legal custody or physical placement order under this chapter if that individual has previously been denied legal custody, physical placement, visitation, guardianship, or any other custodial rights for the child under ch. 48, 54, 55, or 767.

History: 2021 a. 161.

**324.35 Grant of physical placement to nonparent.**

(1) On the motion of a deploying parent and in accordance with the law of this state other than this chapter, if it is in the best interest of the child, a court may grant physical placement to a nonparent who is an adult family member of the child or an adult who has maintained a relationship similar to a parent–child relationship with the child.

(2) Unless a grant of physical placement to a nonparent under sub. (1) is agreed to by the other parent, the grant is limited to an amount of time not greater than either of the following:

(a) The amount of time granted to the deploying parent under a permanent legal custody or physical placement order, but the court may add unusual travel time necessary to transport the child.

(b) In the absence of a permanent legal custody or physical placement order that is currently in effect, the amount of time that the deploying parent habitually cared for the child before being notified of deployment, but the court may add unusual travel time necessary to transport the child.

History: 2021 a. 161.

**324.37 Nature of authority created by temporary custodial responsibility order.** (1) A grant of authority under this subchapter is temporary and does not create an independent, continuing right to physical placement, legal custody, or visitation in an individual to whom it is granted. The temporary order terminates according to one of the following:

(a) If deployment is for less than 6 months, the temporary order terminates immediately after the deploying parent returns.

(b) If deployment is for 6 months or more, the temporary order terminates 30 days after the deploying parent returns.

(c) The temporary order terminates on a date that has been stipulated by all of the parties to the proceeding.

(d) The temporary order terminates according to a modification or termination under s. 324.395.

(2) A nonparent granted physical placement, legal custody, or visitation under this subchapter has standing to enforce the grant until it is terminated.

History: 2021 a. 161.

**324.38 Content of temporary custodial responsibility order.** (1) An order granting custodial responsibility under this subchapter shall do all of the following:

(a) Designate the order as temporary.

(b) Identify to the extent feasible the destination, duration, and conditions of the deployment.

(2) If applicable, an order for custodial responsibility under this subchapter shall do all of the following:

(a) Specify the allocation of physical placement, legal custody, and visitation among the deploying parent, the other parent, and any nonparent.

(b) If custodial responsibility is shared by 2 or more individuals under the order, or the order grants physical placement to one

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or more individuals and visitation to other individuals, provide a process to resolve any dispute that may arise.

(c) Provide for liberal communication between the deploying parent and the child during deployment, including through electronic means, unless contrary to the best interest of the child, and allocate any costs of communications.

(d) Provide for liberal contact between the deploying parent and the child during the time the deploying parent is on leave or otherwise available, unless contrary to the best interest of the child.

(f) Provide that the order will terminate on the applicable date under s. 324.37 (1).

**History:** 2021 a. 161.

**324.39 Order for child support.** If the court issues an order granting physical placement under this subchapter, or an agreement granting physical placement has been executed under subch. II, the court may enter a temporary order for child support consistent with the law of this state other than this chapter if the court has jurisdiction under ch. 769.

**History:** 2021 a. 161.

**324.395 Modifying or terminating grant of custodial responsibility to nonparent.** Except for an order described in s. 324.34 (1), and consistent with the Servicemembers Civil Relief Act, 50 USC Appendix 521 and 522, on the motion of a deploying parent or other parent or any nonparent to whom physical placement, legal custody, or visitation has been granted, the

court may modify or terminate the grant if the modification or termination is consistent with this subchapter and it is in the best interest of the child.

**History:** 2021 a. 161.

## SUBCHAPTER IV

## MISCELLANEOUS PROVISIONS

**324.42 Uniformity of application and construction.** In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the Uniform Deployed Parents Custody and Visitation Act.

**History:** 2021 a. 161.

**324.43 Relation to Electronic Signatures in Global and National Commerce Act.** This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 USC 7001 to 7031, except that the chapter does not modify, limit, or supersede 15 USC 7001 (c) or authorize electronic delivery of any of the notices described in 15 USC 7003 (b).

**History:** 2021 a. 161.

**324.44 Savings clause.** This chapter does not affect the validity of a temporary court order concerning custodial responsibility during deployment that was entered before March 13, 2022.

**History:** 2021 a. 161.