

FAMILY LAW SECTION

The State Bar of Wisconsin's Family Law Section is proposing legislation to provide a clear process for a separated couple when one parent wants to move with their child(ren) more than 100 miles away from another parent.

Under current law, if there is a judgment awarding separated parents placement with their child(ren), the parties live close to each other, and one parent wants to move with the child(ren) more than 150 miles away from the other parent or out of the state of Wisconsin, that parent needs to provide the other parent with a written notice of the move at least 60 days prior to the move. The non-moving parent has the right to object to the proposed move. If the non-moving parent objects, the objection must be filed with the court, which will appoint a guardian ad litem and determine whether the parent should be able to move with the child(ren) based on the best interests of the child(ren).

There are several issues with current law which have resulted in the Family Law Section drafting a new procedure for parents who want to move with their minor child(ren) away from the other parent.

- Under current law, these provisions clearly apply to all divorced parents, however, it is not clear whether it applies to never-married parents. Given this lack of clarity, whether never-married parents are required to provide this notice may depend on which county the placement judgment was entered.
- Currently, there is no clear provision for what should happen to the placement order if the non-moving parent does not object. The parent may be allowed to move with the child(ren) if the other parent does not object, but that does not necessarily change the placement schedule, so under current law the moving parent may have to also file a motion to modify the placement schedule.
- Current law requires the moving parent to provide notice if they move out of state, regardless of how far away they are moving from the other parent. This requirement is no longer necessary given that jurisdictional issues are now well-clarified under the Uniform Child Custody Jurisdiction and Enforcement Act. For many parents who live along Wisconsin's borders with neighbor states, they are now required to provide this formal notice even if they move a few miles away (i.e. La Crosse, WI to La Crescent, MN; Beloit, WI to Rockford, IL; Hudson, WI to St. Paul, MN; Hurley, WI to Ironwood, MI). This impractical requirement is no longer necessary.

The Family Law Section's proposed change to Wis. Stat. 767.481 clarifies these uncertainties in the law. The new process also clearly applies to all family law actions, not just divorce cases. If parents already live far apart, this process does not apply. If parents agree on the move, they can simply file a stipulation with the court. If parents do not agree, then the new process requires a parent who wants to move with their child(ren) more than 100 miles away from the other parent to file a motion with the court, rather than simply provide written notice. The motion will require the moving parent to provide information about where, when, and why they are moving, as well as proposing a new placement schedule if the move is approved. The motion will provide the non-moving parent with a standard court form to file if they object to the move. There is a clear process for the court to use in scheduling these motions. If the non-moving parent does not object, then the court can approve the move and modify the placement schedule to the proposed schedule.

If the non-moving parent objects to the move, the standards for the court to decide the motion are clarified. The general standard is that the court should decide the motion based on the best interests of the minor. If, however, the objecting parent has not been exercising their periods of court ordered placement, then there is a presumption in favor of allowing the move. There is also an additional presumption which provides that if the moving parent is moving due to serious domestic abuse or child abuse, the court should approve the plan.

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The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.



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