

SUMMARY OF 2003 WISCONSIN ACT 130

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Overview

2003 Wisconsin Act 130 was passed in 2003 and went into effect in May 2004. This act provides an exception to the presumption for joint custody in Wis. Stat. § [767.41\(2\)\(am\)](#). This exception, under § [767.41\(2\)\(d\)1.](#), states that “if the court finds by a preponderance of the evidence that a party has engaged in a pattern or serious incident of interspousal battery... there is a rebuttable presumption that it is detrimental to the child and contrary to the best interest of the child to award joint or sole legal custody to that party.” This presumption may only be rebutted by a preponderance of the evidence that the party who committed the battery has successfully completed a batterers treatment program and that it is in the best interest of the child for the party who committed the battery to be awarded joint or sole legal custody. § [767.41\(2\)\(d\)1.a.](#)

Effect on Custody

The court must now make custody determinations using factors “relevant to the best interest of the child.” Where there is a preponderance of the evidence that a parent has engaged in a pattern or serious incident of interspousal battery, there is a rebuttable presumption that awarding joint or sole legal custody to the abuse parent is contrary to the best interest of the child. Where both parents have engaged in interspousal battery or domestic abuse, the presumption is against awarding joint or sole custody to the “primary physical aggressor.” § [767.41\(2\)\(d\)\(2\).](#)

Effect on Physical Placement

If periods of physical placement are awarded to both parents, despite a finding that a parent has engaged in domestic abuse or interspousal battery, the court must make the safety and wellbeing of the child and parent who was the victim its paramount concern.

§ [767.41\(5\)\(bm\)](#). The court must order one or more of the following measures, as appropriate

to ensure safety: that the exchange of the child occur in a protected setting or in the presence of an appropriate and agreed upon third party; that the child's periods of physical placement with the abusive or battering parent occur under the supervision of an appropriate and agreed upon third party; that the abusive or battering parent pay the costs of supervised physical placement; that the abusive or battering parent attend and complete certified treatment for batterers as a condition of exercising his periods of physical placement; that the abusive or battering parent not receive overnight physical placement; that the abusive or battering parent post a bond for the return and safety of the child; that the abusive or battering parent not possess or be under the influence of alcohol or any controlled substance when the parents exchange the child for periods of physical placement and during his periods of physical placement; any condition that is necessary for the safety and wellbeing of the child and parent who was the victim of the battery of abuse. Wis. Stat. § [767.41\(6\)\(f\)\(1\)-\(8\)](#).