

Wisconsin Divorce Laws

Chapter 766 Property Rights Of Married Persons; Marital Property

766.17 Variation by marital property agreement.

(1) Except as provided in ss. 766.15, 766.55 (4m), 766.57 (3) and 766.58 (2), a marital property agreement may vary the effect of this chapter.

(2) Section 859.18 (6) governs the effect of a marital property agreement upon property available for satisfaction of obligations after the death of a spouse.

766.31 Classification of property of spouses.

(1) All property of spouses is marital property except that which is classified otherwise by this chapter and that which is described in sub. (8).

(2) All property of spouses is presumed to be marital property.

(3) Each spouse has a present undivided one-half interest in each item of marital property, but the marital property interest of the nonemployee spouse in a deferred employment benefit plan or in assets in an individual retirement account that are traceable to the rollover of a deferred employment benefit plan terminates at the death of the nonemployee spouse if he or she predeceases the employee spouse.

(4) Except as provided under subs. (7) (a), (7p) and (10), income earned or accrued by a spouse or attributable to property of a spouse during marriage and after the determination date is marital property.

(5) The transfer of property to a trust does not by itself change the classification of the property.

(6) Property owned at a marriage which occurs after 12:01 a.m. on January 1, 1986, is individual property of the owning spouse if, at the marriage, both spouses are domiciled in this state.

(7) Property acquired by a spouse during marriage and after the determination date is individual property if acquired by any of the following means:

(a) By gift during lifetime or by a disposition at death by a 3rd person to that spouse and not to both spouses. A distribution of principal or income from a trust created by a 3rd person to one spouse is the individual property of that spouse unless the trust provides otherwise.

(b) In exchange for or with the proceeds of other individual property of the spouse.

(c) From appreciation of the spouse's individual property except to the extent that the appreciation is classified as marital property under s. 766.63.

(d) By a decree, marital property agreement or reclassification under sub. (10) designating it as the individual property of the spouse.

(e) As a recovery for damage to property under s. 766.70, except as specifically provided otherwise in a decree or marital property agreement.

(f) As a recovery for personal injury except for the amount of that recovery attributable to expenses paid or otherwise satisfied from marital property and except for the amount attributable to loss of income during marriage.

(7p) Income attributable to all or specified property other than marital property, with respect to which a spouse has executed under s. 766.59 a statement unilaterally designating that income as his or her individual property, is individual property.

(8) Except as provided otherwise in this chapter, the enactment of this chapter does not alter the classification and ownership rights of property acquired before the determination date or the classification and ownership rights of property acquired after the determination date in exchange for or with the proceeds of property acquired before the determination date.

(9) Except as provided otherwise in this chapter and except to the extent that it would affect the spouse's ownership rights in the property existing before the determination date, during marriage the interest of a spouse in property owned immediately before the determination date is treated as if it were individual property.

(10) Spouses may reclassify their property by gift, conveyance, as defined in s. 706.01 (4), signed by both spouses, marital property agreement, written consent under s. 766.61 (3) (e) or unilateral statement under s. 766.59 and, if the property is a security, as defined in s. 705.21 (11), by an instrument, signed by both spouses, which conveys an interest in the security. If a spouse gives property to the other spouse and intends at the time the gift is made that the property be the individual property of the donee spouse, the income from the property is the individual property of the donee spouse unless a contrary intent of the donor spouse regarding the classification of income is established.

766.58 Marital property agreements.

(1) A marital property agreement shall be a document signed by both spouses. Only the spouses may be parties to a marital property agreement. A marital property agreement is enforceable without consideration.

(2) A marital property agreement may not adversely affect the right of a child to support.

(3) Except as provided in ss. 766.15, 766.55 (4m), 766.57 (3) and 859.18 (6), and in sub. (2), in a marital property agreement spouses may agree with respect to any of the following:

(a) Rights in and obligations with respect to any of either or both spouses' property whenever and wherever acquired or located.

(b) Management and control of any of either or both spouses' property.

(c) Disposition of any of either or both spouses' property upon dissolution or death or upon the occurrence or nonoccurrence of any other event.

(d) Modification or elimination of spousal support, except as provided in sub. (9).

(e) Making a will, trust or other arrangement to carry out the marital property agreement.

(f) Providing that upon the death of either spouse any of either or both spouses' property, including after-acquired property, passes without probate to a designated person, trust or other entity by nontestamentary disposition. Any such provision in a marital property agreement is revoked upon dissolution of the marriage as provided in s. 767.266 (1). If a marital property agreement provides for the nontestamentary disposition of property, without probate, at the death of the

2nd spouse, at any time after the death of the first spouse the surviving spouse may amend the marital property agreement with regard to property to be disposed of at his or her death unless the marital property agreement expressly provides otherwise and except to the extent property is held in a trust expressly established under the marital property agreement.

(g) Choice of law governing construction of the marital property agreement.

(h) Any other matter affecting either or both spouses' property not in violation of public policy or a statute imposing a criminal penalty.

(3m) Chapter 854 applies to transfers at death under a marital property agreement.

(4) A marital property agreement may be amended or revoked only by a later marital property agreement.

(5) Persons intending to marry each other may enter into a marital property agreement as if married, but the marital property agreement becomes effective only upon their marriage.

(6) A marital property agreement executed before or during marriage is not enforceable if the spouse against whom enforcement is sought proves any of the following:

(a) The marital property agreement was unconscionable when made.

(b) That spouse did not execute the marital property agreement voluntarily.

(c) Before execution of the marital property agreement, that spouse:

1. Did not receive fair and reasonable disclosure, under the circumstances, of the other spouse's property or financial obligations; and

2. Did not have notice of the other spouse's property or financial obligations.

(7)

(a) Unless the marital property agreement expressly provides otherwise, a marital property agreement that classifies a deferred employment benefit plan or an individual retirement account as marital property does not affect the operation of s. 766.62 (5).

(b) Unless the marital property agreement expressly provides otherwise, marital property agreement that classifies as marital property the noninsured spouse's interest in a policy that designates the other spouse as the owner and insured does not affect the operation of s. 766.61 (7). In this paragraph, "owner" has the meaning given in s. 766.61 (1) (a) and "policy" has the meaning given in s. 766.61 (1) (c).

(8) The issue of whether a marital property agreement is unconscionable is for the court to decide as a matter of law. In the event that legal counsel is retained in connection with a marital property agreement the fact that both parties are represented by one counsel or that one party is represented by counsel and the other party is not represented by counsel does not by itself make a marital property agreement unconscionable or otherwise affect its enforceability.

(9)

(a) Modification or elimination of spousal support during the marriage may not result in a spouse having less than necessary and adequate support, taking into consideration all sources of support.

(b) If a marital property agreement modifies or eliminates spousal support so as to make one spouse eligible for public assistance at the time of dissolution of the marriage or termination of the marriage by death, the court may require the other spouse or the other spouse's estate to provide support necessary to avoid that eligibility, notwithstanding the marital property agreement.

(10) If the spouses agree in writing to arbitrate any controversies arising under this chapter or a marital property agreement, the arbitration agreement is enforceable under ch. 788.

(11) Married persons or persons intending to marry each other may record a marital property agreement in the county register of deeds office under s. 59.43 (1) (r).

(12)

(a) A provision of a document signed before the determination date by spouses or unmarried persons who subsequently married each other, which provision affects the property of either of them and is enforceable by either of them without reference to this chapter, is not affected by this chapter except as provided otherwise in a marital property agreement made after the determination date.

(b) If a provision or an amendment to a provision in a document described under par. (a) is intended to negate, apply or modify any right or obligation which may be acquired under 1983 Wisconsin Act 186, 1985 Wisconsin Act 37, or a community property system, the provision or amendment is enforceable after the determination date if the document was enforceable when executed or, if it is executed after April 4, 1984, either was enforceable when executed or would be enforceable if it were executed after the determination date.

(c) This subsection does not affect a marital property agreement executed under s. 766.585.

(13)

(a) With respect to a provision of a marital property agreement that is effective upon or after dissolution of the marriage or termination of the marriage by death, any statute of limitations applicable to enforcement of the provision is tolled until dissolution of the marriage or termination of the marriage by death, respectively.

(b) After the death of a spouse, no action concerning a marital property agreement may be brought later than 6 months after the inventory is filed under s. 858.01. If an amended inventory is filed, the action may be brought within 6 months after the filing of the amended inventory if the action relates to information contained in the amended inventory that was not contained in a previous inventory.

(c) The court may extend the 6-month period under par. (b) for cause if a motion for extension is made within the applicable 6-month period.

(14) Limitations on the effect of marital property agreements for state income tax purposes are set forth in ch. 71.

766.587 Statutory individual property classification agreement.

(1) Generally.

(a) Spouses may execute a statutory individual property classification agreement under this section to classify all the property of the spouses, including property presently owned and property acquired in the future but before the agreement terminates, as the individual property of the owner. Ownership of the property of the spouses is determined as if it were December 31, 1985. Except as provided in this section, s. 766.58 applies to an agreement under this section. Persons intending to marry each other may execute an agreement as if married, but the agreement becomes effective only upon their marriage. The form of the agreement is set forth in sub. (7).

(b) If, while an agreement is in effect, spouses acquire property as a joint tenancy exclusively between themselves or as survivorship marital property, the property is classified as the individual property of the owners and is owned as a joint tenancy. If, while an agreement is in effect, spouses acquire property held in a form as provided under s. 766.60 (1) or (2), the property is classified as the individual property of the owners and is owned as a tenancy in common.

(2) Execution. An agreement under this section is executed when signed by both spouses.

(3) Effective period.

(a) An agreement under this section may be executed on or after January 1, 1986. If executed before January 1, 1986, it is effective on January 1, 1986, or upon the marriage of the parties, whichever is later. If executed on or after January 1, 1986, it is effective when executed or upon the marriage of the parties, whichever is later.

(b) An agreement under this section terminates on January 1, 1987. Termination does not affect the classification of property acquired before termination. Property acquired after termination is classified as provided under this chapter.

(4) Enforceability. An agreement under this section is enforceable without the disclosure of a spouse's property or financial obligations to the other spouse.

(5) Effect on support and at divorce. An agreement under this section does not affect the duty of support that spouses have to each other or the determination of property division under s. 767.255 or of maintenance payments under s. 767.26.

(6) Rights of surviving spouse. Notwithstanding the fact that an agreement under this section is in effect at, or has terminated before, the death of a spouse who is a party to the agreement, the surviving spouse may elect under s. 861.02. For the purpose of the election, in addition to the property described in s. 851.055, property acquired during marriage and after the determination date which would have been marital property but for the agreement is deferred marital property.

(7) Statutory individual property classification agreement form. The following is the form for a statutory individual property classification agreement under this section:

NOTICE TO PERSONS WHO SIGN THIS AGREEMENT:

1. EFFECTIVE JANUARY 1, 1986, A NEW PROPERTY LAW, KNOWN AS THE MARITAL PROPERTY SYSTEM, GOVERNS THE PROPERTY RIGHTS OF MARRIED PERSONS IN WISCONSIN. UNDER THE MARITAL PROPERTY SYSTEM, EACH SPOUSE HAS A 50% OWNERSHIP INTEREST IN PROPERTY ACQUIRED DURING MARRIAGE DUE TO THE EFFORTS OF EITHER OR BOTH SPOUSES, SUCH AS WAGES, DEFERRED EMPLOYMENT BENEFITS, LIFE INSURANCE, INCOME FROM PROPERTY AND CERTAIN APPRECIATION OF PROPERTY. BY ENTERING INTO THIS AGREEMENT, YOU HAVE AGREED TO RELINQUISH YOUR RIGHTS TO AN AUTOMATIC OWNERSHIP INTEREST IN SUCH PROPERTY ACQUIRED DURING 1986.

2. CLASSIFICATION BY THIS AGREEMENT OF YOUR AND YOUR SPOUSE'S PROPERTY AS THE INDIVIDUAL PROPERTY OF THE OWNER MAY AFFECT YOUR ACCESS TO CREDIT, THE ACCUMULATION OF AND THE MANAGEMENT AND CONTROL OF PROPERTY BY YOU DURING YOUR MARRIAGE AND THE AMOUNT OF PROPERTY YOU HAVE TO DISPOSE OF AT YOUR DEATH.
3. THIS AGREEMENT TERMINATES ON JANUARY 1, 1987. IF YOU WISH TO CHANGE THIS AGREEMENT BEFORE JANUARY 1, 1987, OR IF YOU WISH TO CONTINUE TO CLASSIFY YOUR PROPERTY AS PROVIDED IN THIS AGREEMENT AFTER IT TERMINATES ON JANUARY 1, 1987, YOU MAY DO SO BY EXECUTING A NEW MARITAL PROPERTY AGREEMENT THAT COMPLIES WITH SECTION 766.58, WISCONSIN STATUTES.
4. THIS AGREEMENT DOES NOT AFFECT RIGHTS AT DIVORCE.
5. IN GENERAL, THIS AGREEMENT IS NOT BINDING ON CREDITORS UNLESS THE CREDITOR IS FURNISHED A COPY OF THE AGREEMENT BEFORE CREDIT IS EXTENDED. IN ADDITION, THIRD PARTIES OTHER THAN CREDITORS MIGHT NOT BE BOUND BY THIS AGREEMENT UNLESS THEY HAVE ACTUAL KNOWLEDGE OF THE TERMS OF THE AGREEMENT.
6. THIS AGREEMENT MAY AFFECT YOUR TAXES.
7. THIS AGREEMENT MAY AFFECT ANY PREVIOUS MARRIAGE AGREEMENT ENTERED INTO BY YOU AND YOUR SPOUSE.
8. THIS AGREEMENT DOES NOT ALTER THE LEGAL DUTY OF SUPPORT THAT SPOUSES HAVE TO EACH OTHER OR THAT A SPOUSE HAS TO HIS OR HER CHILDREN.
9. BOTH SPOUSES MUST SIGN THIS AGREEMENT. IF SIGNED BEFORE JANUARY 1, 1986, IT IS EFFECTIVE ON JANUARY 1, 1986, OR THE DATE THE PARTIES MARRY, WHICHEVER IS LATER. IF SIGNED ON OR AFTER JANUARY 1, 1986, IT IS EFFECTIVE ON THE DATE SIGNED OR THE DATE THE PARTIES MARRY, WHICHEVER IS LATER.

STATUTORY INDIVIDUAL PROPERTY CLASSIFICATION AGREEMENT

(Pursuant to Section 766.587, Wisconsin Statutes)

This agreement is made and entered into by ____ and ____, (husband and wife) (who intend to marry) (strike one).

The parties to this agreement agree to classify all their property, including property owned by them now and property acquired before January 1, 1987, as the individual property of the owning spouse, and agree that ownership of their property shall be determined as if it were December 31, 1985.

This agreement terminates on January 1, 1987.

Signature ____ Date ____

Print Name

Here: ____

Address: ____

Signature ____ Date ____

Print Name

Here: _____

Address: _____

[Note: Each spouse should retain a copy of the agreement for himself or herself.]

(8) Other means of classification. This section is not the exclusive means by which spouses may, before January 1, 1987, classify their property as the individual property of the owner.

766.588 Statutory terminable marital property classification agreement.

(1) Generally.

(a) Spouses may execute an agreement under this section to classify the property of the spouses presently owned and property acquired, reclassified or created in the future, as marital property. Except as provided in this section, s. 766.58 applies to an agreement under this section. The form of the agreement is set forth in sub. (9). Persons intending to marry each other may execute an agreement as if married, but the agreement becomes effective only upon their determination date.

(b) Notwithstanding an agreement under this section:

1. The marital property interest of the nonemployee spouse in a deferred employment benefit plan or in assets in an individual retirement account that are traceable to the rollover of a deferred employment benefit plan terminates at the death of the nonemployee spouse if he or she predeceases the employee spouse; and
2. The marital property interest of a decedent spouse in a life insurance policy which designates the surviving spouse as the owner and insured is limited as provided under s. 766.61 (7).

(c)

1. If property is held as survivorship marital property under s. 766.60 (5) (a) or 766.605 at the time an agreement under this section becomes effective, or if property is held as or acquired as survivorship marital property under s. 766.60 (5) (a) or 766.605 while an agreement is in effect, the property remains survivorship marital property as long as it is so held.
2. A joint tenancy which is held exclusively between the spouses when an agreement under this section becomes effective or while an agreement is in effect is survivorship marital property.
3. A tenancy in common which is held exclusively between the spouses when an agreement under this section becomes effective or while an agreement is in effect is marital property.
4. With respect to a tenancy in common or joint tenancy not described under subds. 2. and 3. in which at least one spouse is a tenant when an agreement under this section becomes effective or while an agreement is in effect, to the extent the incidents of the tenancy in common or joint tenancy conflict with or differ from the incidents of marital property, the incidents of the tenancy in common or of the joint tenancy, including the incident of survivorship, control.

(d)

1. In this paragraph:

- a. "Joint account" has the meaning given in s. 705.01 (4).

b. "Marital account" has the meaning given in s. 705.01 (4m).

2. An agreement under this section does not defeat the survivorship feature of a joint account under s. 705.04 (1).

3. An agreement under this section does not affect the ownership, under s. 705.04 (2m), of sums remaining on deposit in a marital account at the death of a party to the account, regardless of when the agreement became effective or the marital account was established.

(2) Execution. An agreement under this section shall be signed by both parties to the agreement. An agreement under this section is executed when the signature of each party to the agreement is authenticated or acknowledged. The agreement executed shall conform to the requirements under sub. (9).

(3) Effective date and effective period.

(a) An agreement under this section is effective when executed or upon the determination date, whichever is later.

(b) If the spouses have not completed the financial disclosure form under sub. (9) before or contemporaneously with execution of the agreement, the agreement terminates 3 years after the date that both spouses have signed the agreement, unless terminated earlier by one of the spouses under sub. (4).

(c) If the spouses have completed the financial disclosure form under sub. (9), the agreement terminates when the terms of the agreement no longer apply after dissolution or the death of a spouse, unless terminated earlier by one of the spouses under sub. (4).

(3m) Limitation on execution of 3-year agreement. If spouses execute an agreement under this section which becomes effective for any period and if the spouses did not complete the financial disclosure form under sub. (9) for that agreement, the spouses may not execute a subsequent agreement under this section for the same marriage unless the financial disclosure form under sub. (9) is completed.

(4) Termination by one spouse.

(a) An agreement under this section terminates 30 days after a notice of termination is given under par. (b) by one spouse to the other spouse. An example of a termination form is set forth in sub. (9).

(b) Notice of termination is given to the other spouse on the date:

1. That a signed termination is personally delivered to the other spouse; or

2. That a signed termination is sent by certified mail to the address of the other spouse last known to the spouse giving notice of termination.

(c) This subsection does not affect the ability to amend, revoke or supplement an agreement under this section by separate marital property agreement under s. 766.58 (4).

(d) With respect to its effect on 3rd parties, a termination under this section shall be treated as a marital property agreement.

(5) Enforceability.

(a) If the spouses do not complete the financial disclosure form under sub. (9), the agreement terminates as provided under sub. (3) (b) and the agreement is enforceable without the disclosure of a spouse's property or financial obligations.

(b) If the spouses complete the financial disclosure form under sub. (9), the maximum duration of the agreement is 3 years after both spouses have signed the agreement if the spouse against whom enforcement is sought proves that the information on the disclosure form did not provide fair and reasonable disclosure, under the circumstances, of the other spouse's property or financial obligations. This paragraph applies notwithstanding the fact that a spouse had notice of the other spouse's property or financial obligations.

(c) Section 766.58 (6) (c) does not apply to an agreement under this section.

(6) Effect on support and divorce. An agreement under this section does not affect any of the following:

(a) The duty of support that spouses otherwise have to each other.

(b) The determination of property division under s. 767.255.

(c) The determination of maintenance payments under s. 767.26.

(7) Other means of classification. This section is not the exclusive means by which spouses may reclassify their property as marital property.

(8) Effect of termination. Termination of an agreement under sub. (3) or (4) does not affect the classification of property acquired before termination. Property acquired after termination is classified as provided under this chapter.

(9) Statutory terminable marital property classification agreement form. The language of a statutory terminable marital property classification agreement shall be identical to the language included in the form set forth under this subsection. The format of a statutory terminable marital property classification agreement shall be substantially as follows:

Notice to persons who sign this agreement:

1. A PROPERTY LAW KNOWN AS THE MARITAL PROPERTY SYSTEM GOVERNS THE PROPERTY RIGHTS OF MARRIED PERSONS IN WISCONSIN. AFTER THE MARITAL PROPERTY SYSTEM APPLIES TO A MARRIED COUPLE, EACH SPOUSE HAS AN UNDIVIDED ONE-HALF OWNERSHIP INTEREST IN PROPERTY, SUCH AS WAGES, DEFERRED EMPLOYMENT BENEFITS, LIFE INSURANCE, INCOME FROM PROPERTY AND CERTAIN APPRECIATION OF PROPERTY, THEREAFTER ACQUIRED DURING MARRIAGE DUE TO THE EFFORTS OF EITHER OR BOTH SPOUSES. PROPERTY WHICH IS BROUGHT TO THE MARRIAGE AND PROPERTY WHICH IS ACQUIRED BY ONE SPOUSE DURING THE MARRIAGE BY GIFT OR INHERITANCE IS NOT MARITAL PROPERTY BUT IS SOLELY OWNED BY THE ACQUIRING SPOUSE. THIS AGREEMENT ALTERS THE LAW GOVERNING YOUR PROPERTY RIGHTS. THE PURPOSE OF THE FOLLOWING INFORMATION IS TO APPRISE YOU, IN VERY GENERAL TERMS, OF SOME OF THE MORE IMPORTANT ASPECTS AND POSSIBLE EFFECTS OF THIS AGREEMENT. THE INFORMATION IS NOT INTENDED TO BE A PRECISE OR COMPLETE RECITATION OF THE LAW APPLICABLE TO THIS AGREEMENT AND IS NOT A SUBSTITUTE FOR LEGAL ADVICE.

2. BY ENTERING INTO THIS AGREEMENT, YOU HAVE AGREED TO RELINQUISH YOUR RIGHTS TO A SOLE OWNERSHIP INTEREST IN YOUR SOLELY OWNED PROPERTY; HOWEVER, YOU ARE ACQUIRING AUTOMATIC, EQUAL OWNERSHIP RIGHTS, WITH YOUR SPOUSE, TO ALL PROPERTY THAT YOU AND YOUR SPOUSE OWN OR ACQUIRE.

3. THIS AGREEMENT MAY AFFECT:

- A. YOUR ACCESS TO CREDIT AND THE PROPERTY AVAILABLE TO SATISFY OBLIGATIONS INCURRED BY YOU OR YOUR SPOUSE.
 - B. THE ACCUMULATION OF AND THE MANAGEMENT AND CONTROL OF PROPERTY BY YOU DURING YOUR MARRIAGE.
 - C. THE AMOUNT OF PROPERTY YOU HAVE TO DISPOSE OF AT YOUR DEATH.
 - D. YOUR TAXES.
 - E. ANY PREVIOUS MARRIAGE AGREEMENT ENTERED INTO BY YOU AND YOUR SPOUSE.
4. THIS AGREEMENT DOES NOT:
- A. AFFECT RIGHTS AT DIVORCE.
 - B. ALTER THE LEGAL DUTY OF SUPPORT THAT SPOUSES HAVE TO EACH OTHER OR THAT A SPOUSE HAS TO HIS OR HER CHILDREN.
 - C. BY ITSELF PROVIDE THAT, UPON YOUR DEATH, YOUR MARITAL PROPERTY PASSES TO YOUR SURVIVING SPOUSE. IF THAT IS WHAT YOU INTEND, YOU ARE ENCOURAGED TO SEEK LEGAL ADVICE TO DETERMINE WHAT MUST BE DONE TO ACCOMPLISH THAT RESULT.
5. IN GENERAL, THIS AGREEMENT IS NOT BINDING ON CREDITORS UNLESS THE CREDITOR IS FURNISHED A COPY OF THE AGREEMENT BEFORE CREDIT IS EXTENDED. (It is not necessary to furnish a copy of the financial disclosure form.) IN ADDITION, THIRD PARTIES OTHER THAN CREDITORS MIGHT NOT BE BOUND BY THIS AGREEMENT UNLESS THEY HAVE ACTUAL KNOWLEDGE OF THE TERMS OF THE AGREEMENT.
6. IF YOU WISH TO AFFECT AN INTEREST IN YOUR REAL PROPERTY WITH THIS AGREEMENT, PARTICULARLY IN RELATION TO THIRD PARTIES, ADDITIONAL LEGAL PROCEDURES AND FORMALITIES MAY BE REQUIRED. IF YOU HAVE QUESTIONS REGARDING THE EFFECT OF THIS AGREEMENT ON YOUR REAL PROPERTY, YOU ARE URGED TO SEEK LEGAL ADVICE.
7. IF YOU DO NOT COMPLETE SCHEDULE "A", "FINANCIAL DISCLOSURE", AND THE AGREEMENT BECOMES EFFECTIVE, THE AGREEMENT TERMINATES 3 YEARS AFTER THE DATE THAT YOU BOTH HAVE SIGNED THE AGREEMENT AND YOU MAY NOT, EXECUTE A SUBSEQUENT STATUTORY TERMINABLE MARITAL PROPERTY CLASSIFICATION AGREEMENT WITH THE SAME SPOUSE DURING THE SAME MARRIAGE UNLESS YOU COMPLETE THE FINANCIAL DISCLOSURE FORM. IF YOU INTEND THAT THIS AGREEMENT EXTEND BEYOND 3 YEARS, EACH OF YOU, BEFORE SIGNING THE AGREEMENT, MUST DISCLOSE TO THE OTHER YOUR EXISTING PROPERTY AND YOUR EXISTING FINANCIAL OBLIGATIONS, BY COMPLETING SCHEDULE "A", "FINANCIAL DISCLOSURE". IF SCHEDULE "A" HAS BEEN FILLED OUT BUT, IN A LEGAL ACTION AGAINST YOU TO ENFORCE THE AGREEMENT, YOU SHOW THAT THE INFORMATION ON SCHEDULE "A" DID NOT PROVIDE YOU WITH FAIR AND REASONABLE DISCLOSURE UNDER THE CIRCUMSTANCES, THE DURATION OF THE AGREEMENT IS 3 YEARS AFTER BOTH PARTIES SIGNED THE AGREEMENT.
8. ONE SPOUSE MAY TERMINATE THIS AGREEMENT AT ANY TIME BY GIVING SIGNED NOTICE OF TERMINATION TO THE OTHER SPOUSE. THE AGREEMENT TERMINATES 30 DAYS AFTER NOTICE IS GIVEN.
9. TERMINATION OF THIS AGREEMENT DOES NOT BY ITSELF CHANGE THE CLASSIFICATION OF PROPERTY CLASSIFIED BY THE AGREEMENT.

10. THIS AGREEMENT MAY BE AMENDED, REVOKED OR SUPPLEMENTED BY A LATER MARITAL PROPERTY AGREEMENT.

11. BOTH PARTIES MUST SIGN THIS AGREEMENT AND THE SIGNATURES MUST BE AUTHENTICATED BY OR ACKNOWLEDGED BEFORE A NOTARY. THE AGREEMENT BECOMES EFFECTIVE ON THE DATE THAT YOU HAVE BOTH SIGNED IT, THE DATE THAT YOU MARRY, OR THE DATE ON WHICH YOU ARE BOTH DOMICILED IN WISCONSIN, WHICHEVER IS LATER. IF YOU ALTER THE LANGUAGE OF THE AGREEMENT ON THIS FORM THE AGREEMENT WILL NOT CONSTITUTE A STATUTORY TERMINABLE MARITAL PROPERTY CLASSIFICATION AGREEMENT (BUT IT MAY QUALIFY AS A GENERAL MARITAL PROPERTY AGREEMENT UNDER SECTION 766.58, WISCONSIN STATUTES).

12. EACH SPOUSE SHOULD RETAIN A COPY OF THIS AGREEMENT, INCLUDING ANY DISCLOSURE OF PROPERTY AND OBLIGATIONS, WHILE THE AGREEMENT IS IN EFFECT AND AFTER IT TERMINATES. RETENTION OF A COPY MAY BE IMPORTANT TO PROTECT INTERESTS ACQUIRED UNDER OR AFFECTED BY THE AGREEMENT.

13. IF AFTER ENTERING INTO THIS AGREEMENT ONE OR BOTH OF YOU ESTABLISH A DOMICILE OUTSIDE THIS STATE, YOU ARE URGED TO SEEK LEGAL ADVICE CONCERNING THE CONTINUED EFFECTIVENESS OF THIS AGREEMENT.

Statutory terminable marital Property classification agreement

(Pursuant to Section 766.588, Wisconsin Statutes)

This agreement is entered into by ____ and ____ (husband and wife) (who intend to marry) (strike one). The parties hereby classify all of the property owned by them when this agreement becomes effective, and property acquired during the term of this agreement, as marital property.

One spouse may terminate this agreement at any time by giving signed notice of termination to the other spouse. Notice of termination by a spouse is given upon personal delivery or when sent by certified mail to the other spouse's last-known address. The agreement terminates 30 days after such notice is given.

The parties (have) (have not) (strike one) completed Schedule "A", "Financial Disclosure", attached to this agreement. If Schedule "A" has not been completed, the duration of this agreement is 3 years after both parties have signed the agreement. If Schedule "A" has been completed, the duration of this agreement is not limited to 3 years after it is signed.

IF THE DURATION OF THIS AGREEMENT IS NOT TO BE LIMITED TO 3 YEARS, MAKE SURE SCHEDULE "A", "FINANCIAL DISCLOSURE", IS COMPLETED AND THAT YOU HAVE REVIEWED THE SCHEDULE BEFORE SIGNING THE AGREEMENT. IF YOU AND YOUR SPOUSE HAVE PREVIOUSLY ENTERED INTO A STATUTORY TERMINABLE MARITAL PROPERTY CLASSIFICATION AGREEMENT WITH EACH OTHER WHICH WAS EFFECTIVE DURING YOUR PRESENT MARRIAGE AND YOU AND YOUR SPOUSE DID NOT COMPLETE SCHEDULE "A", YOU MAY NOT EXECUTE THIS AGREEMENT IF YOU DO NOT COMPLETE SCHEDULE "A".

Signature of One Spouse: ____

Date: ____

Print Name Here: ____

Residence Address: ____

(Make Sure Your Signature is Authenticated or Acknowledged Below.)

Authentication

Signature ____ authenticated this ____ day of ____, ____ (year)

* ____

TITLE: MEMBER STATE BAR OF WISCONSIN

(If not, ____ authorized by s. 706.06, Wis. Stats.)

Acknowledgment

STATE OF WISCONSIN)

) ss.

____ County)

Personally came before me this ____ day of ____, ____ (year) the above named ____ to me known to be the person who executed the foregoing instrument and acknowledge the same.

* ____

Notary Public ____, ____ County, Wisconsin.

My Commission is permanent.

(If not, state expiration date: ____, ____ (year))

(Signatures may be authenticated or
acknowledged. Both are not necessary.)

*Names of persons signing in any capacity should be
typed or printed below their signatures.

Signature of Other Spouse: ____

Date: ____

Print Name Here: ____

Residence Address: ____

(Make Sure Your Signature is Authenticated or Acknowledged Below.)

Authentication

Signature ____ authenticated this ____ day of ____, ____ (year)

* ____

TITLE: MEMBER STATE BAR OF WISCONSIN

(If not, ____ authorized by s. 706.06, Wis. Stats.)

Acknowledgment

STATE OF WISCONSIN)

) ss.

____ County)

Personally came before me this ____ day of ____, ____ (year) the above named ____ to me known to be the person who executed the foregoing instrument and acknowledge the same.

* ____

Notary Public ____, ____ County, Wisconsin.

My Commission is permanent.

(If not, state expiration date: ____, ____ (year))

(Signatures may be authenticated or
acknowledged. Both are not necessary.)

*Names of persons signing in any capacity should be
typed or printed below their signatures.

Termination of statutory terminable
marital property classification agreement

I UNDERSTAND THAT:

1. THIS TERMINATION TAKES EFFECT 30 DAYS AFTER MY SPOUSE IS NOTIFIED OF THE TERMINATION, AS PROVIDED UNDER SECTION 766.588 (4) OF THE WISCONSIN STATUTES.
2. THIS TERMINATION IS PROSPECTIVE; IT DOES NOT AFFECT THE CLASSIFICATION OF PROPERTY ACQUIRED BEFORE THE TERMINATION BECOMES EFFECTIVE. PROPERTY ACQUIRED AFTER THE TERMINATION BECOMES EFFECTIVE IS CLASSIFIED AS PROVIDED UNDER THE MARITAL PROPERTY LAW.
3. IN GENERAL, THIS TERMINATION IS NOT BINDING ON CREDITORS UNLESS THEY ARE PROVIDED A COPY OF THE TERMINATION BEFORE CREDIT IS EXTENDED.

The undersigned terminates the statutory terminable marital property classification agreement entered into by me and my spouse on ____ (date last spouse signed the agreement) under section 766.588 of the Wisconsin Statutes.

Signature: ____

Date: _____

Print Name Here: _____

Residence Address: _____

Schedule "a"

Financial Disclosure

The following general categories of assets and liabilities are not all inclusive and if other assets or liabilities exist they should be listed. Assets should be listed according to which spouse has title (including assets owned by a spouse or the spouses with one or more third parties) and at their approximate market value.

Husband Wife Both Names

I. Assets

A. Real estate (gross value)

B. Stocks, bonds and mutual funds

C. Accounts at and certificates or

other instruments issued by

financial institutions

D. Mortgages, land contracts,

promissory notes and cash

E. Partnership interests

EL. Limited liability company interests.

F. Trust interests

G. Livestock, farm products, crops

H. Automobiles and other vehicles

I. Jewelry and personal effects

J. Household furnishings

K. Life insurance and annuities:

1. Face value

2. Cash surrender value

L. Retirement benefits (include value):

1. Pension plans
2. Profit sharing plans
3. HR-10 KEOGH plans
4. IRAs
5. Deferred compensation plans

M. Other assets not listed elsewhere

II. Obligations (total outstanding balance):

A. Mortgages and liens

B. Credit cards

C. Other obligations to financial
institutions

D. Alimony, maintenance and child
support (per month)

E. Other obligations (such as other obligations
to individuals, guarantees,
contingent liabilities)

III. Annual compensation for services:

(for example, wages and income from self-
employment; also include social security,
disability and similar income here)

(IF YOU NEED ADDITIONAL SPACE,
ADD ADDITIONAL SHEETS)

766.589 Statutory terminable individual property classification agreement.

(1) Generally.

(a) For purposes of determining ownership of property classified by an agreement under this section, a spouse owns property if the property is held by that spouse. If property classified by an agreement under this section is not held by

either or both spouses, ownership of the property is determined as if the spouses were unmarried when the property was acquired.

(b) Spouses may execute an agreement under this section to classify the marital property of the spouses presently owned and property acquired, reclassified or created in the future that would otherwise be marital property, as the individual property of the owner. At the death of the owning spouse, property classified by an agreement under this section is subject to the rights of the surviving spouse under sub. (7). Except as provided in this section, s. 766.58 applies to an agreement under this section. The form of the agreement is set forth in sub. (10). Persons intending to marry each other may execute an agreement as if married, but the agreement becomes effective only upon their determination date.

(c)

1. If at the time an agreement under this section is executed property is held as survivorship marital property, the property is classified as the individual property of the owners and is owned as a joint tenancy. If at the time an agreement under this section is executed property is held in a form as provided under s. 766.60 (1) or (2), the property is classified as the individual property of the owners and is owned as a tenancy in common. If while an agreement is in effect spouses acquire property as a joint tenancy exclusively between themselves or as survivorship marital property, the property is classified as the individual property of the owners and is owned as a joint tenancy. If while an agreement is in effect spouses acquire property as tenants in common exclusively between themselves, the spouses' respective ownership interests in the property are classified as the individual property of the owners. If while an agreement is in effect spouses acquire property held in a form as provided under s. 766.60 (1) or (2), the property is classified as the individual property of the owners and is owned as a tenancy in common. An agreement under this section does not affect the incidents under ch. 705 of a joint account, as defined in s. 705.01 (4).

2. For purposes of an agreement under this section, to the extent the incidents of a joint tenancy or tenancy in common conflict with or differ from the incidents of individual property, the incidents of the tenancy in common or joint tenancy, including the incident of survivorship, control.

(2) Execution. An agreement under this section shall be signed by both parties to the agreement. An agreement under this section is executed when the signature of each party to the agreement is authenticated or acknowledged. The agreement executed shall conform to the requirements under sub. (10).

(3) Effective date and effective period.

(a) An agreement under this section is effective when executed or upon the determination date, whichever is later.

(b) If the spouses have not completed the financial disclosure form under sub. (10) before or contemporaneously with execution of the agreement, the agreement terminates 3 years after the date that both spouses signed the agreement, unless terminated earlier by one of the spouses under sub. (4).

(c) If the spouses have completed the financial disclosure form under sub. (10), the agreement terminates when the terms of the agreement no longer apply after dissolution or the death of a spouse, unless terminated earlier by one of the spouses under sub. (4).

(3m) Limitation on execution of 3-year agreement. If spouses execute an agreement under this section which becomes effective for any period and, for that agreement, do not complete the financial disclosure form under sub. (10), the spouses may not execute a subsequent agreement under this section for the same marriage unless the financial disclosure form under sub. (10) is completed.

(4) Termination by one spouse; good faith duty.

(a) An agreement under this section terminates 30 days after a notice of termination is given under par. (b) by one spouse to the other spouse. An example of a termination form is set forth in sub. (10).

(b) Notice of termination is given to the other spouse on the date:

1. That signed termination is personally delivered to the other spouse; or

2. That signed termination is sent by certified mail to the address of the other spouse last known to the spouse giving notice of termination.

(c) After notice of termination is given under this subsection and until the agreement terminates, each spouse shall act in good faith with respect to the other spouse in matters involving the property of the spouse who is required to act in good faith which is classified as individual property by the agreement. Management and control by a spouse of that property in a manner that limits, diminishes or fails to produce income from that property does not violate this paragraph.

(d) This subsection does not affect the ability to amend, revoke or supplement an agreement under this section by separate marital property agreement under s. 766.58 (4).

(e) With respect to its effect on 3rd parties, a termination under this section shall be treated as a marital property agreement.

(5) Enforceability.

(a) If the spouses do not complete the financial disclosure form under sub. (10), the agreement terminates as provided under sub. (3) (b) and the agreement is enforceable without the disclosure of a spouse's property or financial obligations.

(b) If the spouses complete the financial disclosure form under sub. (10), the maximum duration of the agreement is 3 years after both spouses have signed the agreement if the spouse against whom enforcement is sought proves that the information on the disclosure form did not provide fair and reasonable disclosure, under the circumstances, of the other spouse's property or financial obligations. This paragraph applies notwithstanding the fact that a spouse had notice of the other spouse's property or financial obligations.

(c) Section 766.58 (6) (c) does not apply to an agreement under this section.

(6) Effect on support and divorce. An agreement under this section does not affect any of the following:

(a) The duty of support that spouses otherwise have to each other.

(b) The determination of property division under s. 767.255.

(c) The determination of maintenance payments under s. 767.26.

(7) Rights of surviving spouse. Notwithstanding the fact that an agreement under this section is in effect at, or has terminated before, the time of death of a spouse who is party to the agreement, the surviving spouse may elect under s. 861.02. For the purpose of the election, in addition to the property described in s. 851.055, property acquired during marriage and after the determination date which would have been marital property but for the agreement is deferred marital property.

(8) Other means of classification. This section is not the exclusive means by which spouses may reclassify their marital property.

(9) Effect of termination. Termination of an agreement under sub. (3) or (4) does not affect the classification of property acquired before termination. Property acquired after termination is classified as provided under this chapter.

(10) Statutory terminable individual property classification agreement form. The language of a statutory terminable individual property classification agreement form shall be identical to the language included in the form set forth under this subsection. The format of a statutory terminable individual property classification agreement shall be substantially as follows:

Notice to persons who sign this agreement

1. A PROPERTY LAW KNOWN AS THE MARITAL PROPERTY SYSTEM GOVERNS THE PROPERTY RIGHTS OF MARRIED PERSONS IN WISCONSIN. AFTER THE MARITAL PROPERTY SYSTEM APPLIES TO A MARRIED COUPLE, EACH SPOUSE HAS AN UNDIVIDED ONE-HALF OWNERSHIP INTEREST IN PROPERTY, SUCH AS WAGES, DEFERRED EMPLOYMENT BENEFITS, LIFE INSURANCE, INCOME FROM PROPERTY AND CERTAIN APPRECIATION OF PROPERTY, THEREAFTER ACQUIRED DURING MARRIAGE DUE TO THE EFFORTS OF EITHER OR BOTH SPOUSES. THIS AGREEMENT ALTERS THE LAW GOVERNING YOUR PROPERTY RIGHTS. THE PURPOSE OF THE FOLLOWING INFORMATION IS TO APPRISE YOU, IN VERY GENERAL TERMS, OF SOME OF THE MORE IMPORTANT ASPECTS AND POSSIBLE EFFECTS OF THIS AGREEMENT. THE INFORMATION IS NOT INTENDED TO BE A PRECISE OR COMPLETE RECITATION OF THE LAW APPLICABLE TO THIS AGREEMENT AND IS NOT A SUBSTITUTE FOR LEGAL ADVICE.

2. BY ENTERING INTO THIS AGREEMENT, YOU HAVE AGREED TO RELINQUISH YOUR RIGHTS TO AN AUTOMATIC OWNERSHIP INTEREST IN PROPERTY ACQUIRED AS A RESULT OF SPOUSAL EFFORT DURING MARRIAGE AND THE TERM OF THE AGREEMENT; HOWEVER, YOU ARE ACQUIRING AUTOMATIC OWNERSHIP RIGHTS TO PROPERTY TITLED IN YOUR NAME.

3. THIS AGREEMENT MAY AFFECT:

A. YOUR ACCESS TO CREDIT AND THE PROPERTY AVAILABLE TO SATISFY OBLIGATIONS INCURRED BY YOU OR YOUR SPOUSE.

B. THE ACCUMULATION OF AND THE MANAGEMENT AND CONTROL OF PROPERTY BY YOU DURING YOUR MARRIAGE.

C. THE AMOUNT OF PROPERTY YOU HAVE TO DISPOSE OF AT YOUR DEATH.

D. YOUR TAXES.

E. ANY PREVIOUS MARRIAGE AGREEMENT ENTERED INTO BY YOU AND YOUR SPOUSE.

4. THIS AGREEMENT DOES NOT:

A. AFFECT RIGHTS AT DIVORCE.

B. ALTER THE LEGAL DUTY OF SUPPORT THAT SPOUSES HAVE TO EACH OTHER OR THAT A SPOUSE HAS TO HIS OR HER CHILDREN.

5. NOTWITHSTANDING THIS AGREEMENT, THE PROPERTY CLASSIFIED BY THIS AGREEMENT WHICH IS OWNED BY THE FIRST SPOUSE TO DIE IS SUBJECT TO CERTAIN ELECTIVE RIGHTS OF THE SURVIVING SPOUSE. YOU MAY BAR THESE ELECTIVE RIGHTS BY SEPARATE MARITAL PROPERTY AGREEMENT.

6. IN GENERAL, THIS AGREEMENT IS NOT BINDING ON CREDITORS UNLESS THE CREDITOR IS FURNISHED A COPY OF THE AGREEMENT BEFORE CREDIT IS EXTENDED. (IT IS NOT NECESSARY TO FURNISH A COPY OF THE FINANCIAL DISCLOSURE FORM.) IN ADDITION, THIRD PARTIES OTHER THAN CREDITORS MIGHT NOT BE BOUND BY THIS AGREEMENT UNLESS THEY HAVE ACTUAL KNOWLEDGE OF THE TERMS OF THE AGREEMENT.

7. IF YOU WISH TO AFFECT AN INTEREST IN YOUR REAL PROPERTY WITH THIS AGREEMENT, PARTICULARLY IN RELATION TO THIRD PARTIES, ADDITIONAL LEGAL PROCEDURES AND FORMALITIES MAY BE REQUIRED. IF YOU HAVE QUESTIONS REGARDING THE EFFECT OF THIS AGREEMENT ON YOUR REAL PROPERTY, YOU ARE URGED TO SEEK LEGAL ADVICE.

8. IF YOU DO NOT COMPLETE SCHEDULE "A", "FINANCIAL DISCLOSURE", AND THE AGREEMENT BECOMES EFFECTIVE, THE AGREEMENT TERMINATES 3 YEARS AFTER THE DATE THAT YOU BOTH HAVE SIGNED THE AGREEMENT AND YOU MAY NOT EXECUTE A SUBSEQUENT STATUTORY TERMINABLE INDIVIDUAL PROPERTY CLASSIFICATION AGREEMENT WITH THE SAME SPOUSE DURING THE SAME MARRIAGE UNLESS YOU COMPLETE THE FINANCIAL DISCLOSURE FORM. IF YOU INTEND THAT THIS AGREEMENT EXTEND BEYOND 3 YEARS, EACH OF YOU, BEFORE SIGNING THE AGREEMENT, MUST DISCLOSE TO THE OTHER YOUR EXISTING PROPERTY AND YOUR EXISTING FINANCIAL OBLIGATIONS, BY COMPLETING SCHEDULE "A", "FINANCIAL DISCLOSURE". IF SCHEDULE "A" HAS BEEN FILLED OUT BUT IN A LEGAL ACTION AGAINST YOU TO ENFORCE THE AGREEMENT YOU SHOW THAT THE INFORMATION ON SCHEDULE "A" DID NOT PROVIDE YOU WITH FAIR AND REASONABLE DISCLOSURE UNDER THE CIRCUMSTANCES, THE DURATION OF THE AGREEMENT IS 3 YEARS AFTER BOTH PARTIES SIGNED THE AGREEMENT.

9. ONE SPOUSE MAY TERMINATE THIS AGREEMENT AT ANY TIME BY GIVING SIGNED NOTICE OF TERMINATION TO THE OTHER SPOUSE. THE AGREEMENT TERMINATES 30 DAYS AFTER NOTICE IS GIVEN. IF SUCH NOTICE OF TERMINATION IS GIVEN BY ONE SPOUSE TO THE OTHER SPOUSE, EACH SPOUSE HAS A DUTY TO THE OTHER SPOUSE TO ACT IN GOOD FAITH IN MATTERS INVOLVING THE PROPERTY OF THE SPOUSE WHO IS REQUIRED TO ACT IN GOOD FAITH WHICH HAS BEEN CLASSIFIED AS INDIVIDUAL PROPERTY BY THIS AGREEMENT. THE GOOD FAITH DUTY CONTINUES UNTIL THE AGREEMENT TERMINATES (30 DAYS AFTER NOTICE IS GIVEN).

10. TERMINATION OF THIS AGREEMENT DOES NOT BY ITSELF CHANGE THE CLASSIFICATION OF PROPERTY CLASSIFIED BY THE AGREEMENT.

11. THIS AGREEMENT MAY BE AMENDED, REVOKED OR SUPPLEMENTED BY A LATER MARITAL PROPERTY AGREEMENT.

12. BOTH PARTIES MUST SIGN THIS AGREEMENT AND THE SIGNATURES MUST BE AUTHENTICATED OR ACKNOWLEDGED BEFORE A NOTARY. THE AGREEMENT BECOMES EFFECTIVE ON THE DATE THAT YOU HAVE BOTH SIGNED IT, THE DATE THAT YOU MARRY, OR THE DATE ON WHICH YOU ARE BOTH DOMICILED IN WISCONSIN, WHICHEVER IS LATER. IF YOU ALTER THE LANGUAGE OF THE AGREEMENT ON THIS FORM, THE AGREEMENT WILL NOT CONSTITUTE A STATUTORY TERMINABLE INDIVIDUAL PROPERTY CLASSIFICATION AGREEMENT (BUT IT MAY QUALIFY AS A GENERAL MARITAL PROPERTY AGREEMENT UNDER SECTION 766.58, WISCONSIN STATUTES).

13. EACH SPOUSE SHOULD RETAIN A COPY OF THIS AGREEMENT, INCLUDING ANY DISCLOSURE OF PROPERTY AND OBLIGATIONS, WHILE THE AGREEMENT IS IN EFFECT AND AFTER IT TERMINATES. RETENTION OF A COPY MAY BE IMPORTANT TO PROTECT INTERESTS ACQUIRED UNDER OR AFFECTED BY THE AGREEMENT.

14. IF AFTER ENTERING INTO THIS AGREEMENT ONE OR BOTH OF YOU ESTABLISH A DOMICILE OUTSIDE THIS STATE, YOU ARE URGED TO SEEK LEGAL ADVICE CONCERNING THE CONTINUED EFFECTIVENESS OF THIS AGREEMENT.

Statutory terminable individual Property classification agreement

(Pursuant to Section 766.589, Wisconsin Statutes)

This agreement is entered into by ____ and ____ (husband and wife) (who intend to marry) (strike one). The parties hereby classify the marital property owned by them when this agreement becomes effective, and property acquired during the term of this agreement which would otherwise have been marital property, as the individual property of the owning spouse. The parties agree that ownership of such property shall be determined by the name in which the property is held and, if property is not held by either or both spouses, ownership shall be determined as if the parties were unmarried persons when the property was acquired.

Upon the death of either spouse the surviving spouse may, except as otherwise provided in a subsequent marital property agreement, and regardless of whether this agreement has terminated, elect against the property of the decedent spouse as provided in section 766.589 (7) of the Wisconsin Statutes.

One spouse may terminate this agreement at any time by giving signed notice of termination to the other spouse. Notice of termination by a spouse is given upon personal delivery or when sent by certified mail to the other spouse's last-known address. The agreement terminates 30 days after such notice is given.

The parties (have) (have not) (strike one) completed Schedule "A", "Financial Disclosure", attached to this agreement. If Schedule "A" has not been completed, the duration of this agreement is 3 years after both parties have signed the agreement. If Schedule "A" has been completed, the duration of this agreement is not limited to 3 years after it is signed.

IF THE DURATION OF THIS AGREEMENT IS NOT TO BE LIMITED TO 3 YEARS, MAKE SURE THAT SCHEDULE "A", "FINANCIAL DISCLOSURE", IS COMPLETED AND THAT YOU HAVE REVIEWED THE SCHEDULE BEFORE SIGNING THE AGREEMENT. IF YOU AND YOUR SPOUSE HAVE PREVIOUSLY ENTERED INTO A STATUTORY TERMINABLE INDIVIDUAL PROPERTY CLASSIFICATION AGREEMENT WITH EACH OTHER WHICH WAS EFFECTIVE DURING YOUR PRESENT MARRIAGE AND YOU AND YOUR SPOUSE DID NOT COMPLETE SCHEDULE "A", YOU MAY NOT EXECUTE THIS AGREEMENT IF YOU DO NOT COMPLETE SCHEDULE "A".

Signature of One Spouse: ____

Date: ____

Print Name Here: ____

Residence Address: ____

(Make Sure Your Signature is Authenticated or Acknowledged Below.)

Authentication

Signature ____ authenticated this ____ day of ____, ____ (year)

* ____

TITLE: MEMBER STATE BAR OF WISCONSIN

(If not, ____ authorized by s. 706.06, Wis. Stats.)

Acknowledgment

STATE OF WISCONSIN)

) ss.

____ County)

Personally came before me this ____ day of ____, ____ (year) the above named ____ to me known to be the person who executed the foregoing instrument and acknowledge the same.

* ____

Notary Public ____, ____ County, Wisconsin.

My Commission is permanent.

(If not, state expiration date: ____, ____ (year))

(Signatures may be authenticated or acknowledged. Both are not necessary.)

*Names of persons signing in any capacity should be typed or printed below their signatures.

Signature of Other Spouse: ____

Date: ____

Print Name Here: ____

Residence Address: ____

(Make Sure Your Signature is Authenticated or Acknowledged Below.)

Authentication

Signature ____ authenticated this ____ day of ____, ____ (year)

* ____

TITLE: MEMBER STATE BAR OF WISCONSIN

(If not, ____ authorized by s. 706.06, Wis. Stats.)

Acknowledgment

STATE OF WISCONSIN)

) ss.
____ County)
Personally came before me this ____ day of ____, ____ (year) the above named ____ to me known to be the person who executed the foregoing instrument and acknowledge the same.

* ____

Notary Public ____, ____ County, Wisconsin.

My Commission is permanent.

(If not, state expiration date: ____, ____ (year))

(Signatures may be authenticated or
acknowledged. Both are not necessary.)

*Names of persons signing in any capacity should
be typed or printed below their signatures.

Termination of

Statutory terminable individual

Property classification agreement

I UNDERSTAND THAT:

1. THIS TERMINATION TAKES EFFECT 30 DAYS AFTER MY SPOUSE IS NOTIFIED OF THE TERMINATION, AS PROVIDED UNDER SECTION 766.589 (4) OF THE WISCONSIN STATUTES.
2. THIS TERMINATION IS PROSPECTIVE; IT DOES NOT AFFECT THE CLASSIFICATION OF PROPERTY ACQUIRED BEFORE THE TERMINATION BECOMES EFFECTIVE. PROPERTY ACQUIRED AFTER THE TERMINATION BECOMES EFFECTIVE IS CLASSIFIED AS PROVIDED UNDER THE MARITAL PROPERTY LAW.
3. IN GENERAL, THIS TERMINATION IS NOT BINDING ON CREDITORS UNLESS THEY ARE PROVIDED A COPY OF THE TERMINATION BEFORE CREDIT IS EXTENDED.

The undersigned terminates the statutory terminable individual property classification agreement entered into by me and my spouse on ____ (date last spouse signed the agreement) under section 766.589 of the Wisconsin Statutes.

Signature: ____

Date: ____

Print Name Here: ____

Residence Address: ____

Schedule "a"

Financial Disclosure

The following general categories of assets and liabilities are not all inclusive and if other assets or liabilities exist they should be listed. Assets should be listed according to which spouse has title (including assets owned by a spouse or the spouses with one or more third parties) and at their approximate market value.

Husband Wife Both Names

I. Assets:

A. Real estate (gross value)

B. Stocks, bonds and mutual funds

C. Accounts at and certificates and

other instruments issued by

financial institutions

D. Mortgages, land contracts,

promissory notes and cash

E. Partnership interests

EL. Limited liability company interests

F. Trust interests

G. Livestock, farm products, crops

H. Automobiles and other vehicles

I. Jewelry and personal effects

J. Household furnishings

K. Life insurance and annuities:

1. Face value

2. Cash surrender value

L. Retirement benefits (include value):

1. Pension plans

2. Profit sharing plans

3. HR-10 KEOGH plans
4. IRAs
5. Deferred compensation plans
- M. Other assets not listed elsewhere
- II. Obligations (total outstanding balance):
 - A. Mortgages and liens
 - B. Credit cards
 - C. Other obligations to financial institutions
 - D. Alimony, maintenance and child support (per month)
 - E. Other obligations (such as other obligations to individuals guarantees, contingent liabilities)
- III. Annual compensation for services:
(for example, wages and income from self-employment; also include social security, disability and similar income here)
(IF YOU NEED ADDITIONAL SPACE, ADD ADDITIONAL SHEETS.)

766.59 Unilateral statement; income from nonmarital property.

(1) A spouse may unilaterally execute a written statement which classifies the income attributable to all or certain of that spouse's property other than marital property as individual property.

(2)

(a) The statement is executed when signed by the executing spouse and acknowledged by a notary. If executed before January 1, 1986, the statement is effective on January 1, 1986, or at a later time if provided otherwise in the statement. If executed on or after January 1, 1986, the statement is effective when executed or at a later time if provided otherwise in the statement.

(b) Within 5 days after the statement is signed, the executing spouse shall notify the other spouse of the statement's contents by personally delivering a copy to the other spouse or by sending a copy by certified mail to the other spouse's last-known address. Failure to give notice is a breach of the duty of good faith imposed by s. 766.15.

(c) The executing spouse may record the statement in the county register of deeds office under s. 59.43 (1) (r).

(3) Any income of the property designated in the statement which accrues on or after the date the statement becomes effective and before a revocation under sub. (4) is individual property. However, a statement only affects income accrued during the marriage during which the statement was executed.

(4) A statement may be revoked in writing by the executing spouse. The revoking spouse shall notify the other spouse of the revocation by personally delivering a copy to the other spouse or by sending a copy by certified mail to the other spouse's last-known address. The revoking spouse may record the revocation in the county register of deeds office under s. 59.43 (1) (r).

(5) With respect to its effect on 3rd parties, a statement or a revocation shall be treated as if it were a marital property agreement.

(6) A person intending to marry may execute a statement under this section as if married. A statement executed by a person intending to marry is effective upon the marriage or at a later time if so provided in the statement. Within 5 days after the statement is executed, the person executing the statement shall notify the person whom he or she intends to marry or has married of the statement's contents by personally delivering a copy of the statement to that person or by sending a copy by certified mail to that person's address. Failure to give notice is a breach of the duty of good faith imposed by s. 766.15.

766.75 Treatment of certain property at dissolution.

After a dissolution each former spouse owns an undivided one-half interest in the former marital property as a tenant in common, except as provided otherwise in a decree or an agreement entered into by the former spouses after dissolution.

Chapter 767 Actions Affecting The Family

767.03 Annulment.

No marriage may be annulled or held void except pursuant to judicial proceedings. No marriage may be annulled after the death of either party to the marriage. A court may annul a marriage entered into under the following circumstances:

(1) 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.

(2) 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.

(3) 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.

(4) 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.

767.07 Judgment of divorce or legal separation.

A court of competent jurisdiction shall grant a judgment of divorce or legal separation if:

(1) The requirements of this chapter as to residence and marriage assessment counseling have been complied with;

(2)

(a) In connection with a judgment of divorce or legal separation, the court finds that the marriage is irretrievably broken under s. 767.12 (2), unless par. (b) applies.

(b) In connection with a judgment of legal separation, the court finds that the marital relationship is broken under s. 767.12 (3); and

(3) To the extent it has jurisdiction to do so, the court has considered, approved or made provision for legal custody, the support of any child of the marriage entitled to support, the maintenance of either spouse, the support of the family under s. 767.261 and the disposition of property.

767.08 Actions to compel support.

(1) In this section:

(a) "Nonlegally responsible relative" means a relative who assumes responsibility for the care of a child without legal custody, but is not in violation of a court order. "Nonlegally responsible relative" does not include a relative who has physical custody of a child during a court-ordered visitation period.

(b) "Relative" means any person connected with a child by blood, marriage or adoption.

(2)

(a) If a person fails or refuses to provide for the support and maintenance of his or her spouse or minor child, any of the following may commence an action in any court having jurisdiction in actions affecting the family to compel the person to provide any legally required support and maintenance:

1. The person's spouse.

2. The minor child.

3. The person with legal custody of the child.

4. A nonlegally responsible relative.

(b) The court in the action shall, as provided under s. 767.25 or 767.26, determine and adjudge the amount, if any, the person should reasonably contribute to the support and maintenance of the spouse or child and how the sum should be

paid. This amount must be expressed as a fixed sum unless the parties have stipulated to expressing the amount as a percentage of the payer's income and the requirements under s. 767.10 (2) (am) 1. to 3. are satisfied. The amount so ordered to be paid may be changed or modified by the court upon notice of motion or order to show cause by either party upon sufficient evidence.

(c) The determination may be enforced by contempt proceedings, an account transfer under s. 767.267 or other enforcement mechanisms as provided under s. 767.30.

(d) In any such support action there shall be no filing fee or other costs taxable to the person's spouse, the minor child, the person with legal custody or the nonlegally responsible relative, but after the action has been commenced and filed the court may direct that any part of or all fees and costs incurred shall be paid by either party.

(3) If the state or any subdivision thereof furnishes public aid to a spouse or dependent child for support and maintenance and the spouse, person with legal custody or nonlegally responsible relative fails or refuses to institute an appropriate court action under this chapter to provide for the same, the person in charge of county welfare activities, the county child support agency under s. 59.53 (5) or the department is a real party in interest under s. 767.075 and shall initiate an action under this section, for the purpose of obtaining support and maintenance. Any attorney employed by the state or any subdivision thereof may initiate an action under this section. The title of the action shall be "In re the support or maintenance of A.B. (Child)".

767.082 Suspension of proceedings to effect reconciliation.

During the pendency of any 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 so as to permit the parties to attempt a reconciliation without prejudice to their respective rights. During the period of suspension the parties may resume living together as husband and wife and their acts and conduct shall 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 if such is the case. Suspension may be revoked upon motion of either party by 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.

767.083 Waiting period in certain actions.

No petition for divorce or legal separation may be brought to trial until the happening of whichever of the following events occurs first:

(1) 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; or

(2) 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 such order specify the grounds therefor.

767.085 Petition and response.

(1) Petition, contents.

Except as otherwise provided, in any action affecting the family, the petition shall state:

(a) The name and birthdate of the parties, the social security numbers of the husband and wife and their occupations, the date and place of marriage and the facts relating to the residence of both parties.

(b) The name, birthdate and social security number of each minor child of the parties and each other child born to the wife during the marriage, and whether the wife is pregnant.

(c) If the relief requested is a divorce or a legal separation in which the parties do not file a petition under s. 767.12 (3), that the marriage is irretrievably broken, or, alternatively, that both parties agree that the marriage is irretrievably broken.

(cm) If the relief requested is a legal separation and the parties have filed a petition under s. 767.12 (3), that both parties agree that the marital relationship is broken.

(d) Whether or not an action for divorce or legal separation by either of the parties was or has been at any time commenced, or is pending in any other court or before any judge thereof, in this state or elsewhere, and if either party was previously married, and if so the manner in which such marriage was terminated, and if terminated by court judgment, the name of the court in which the judgment was granted and the time and place the judgment was granted, if known.

(e) Whether the parties have entered into any written agreements as to support, legal custody and physical placement of the children, maintenance of either party, and property division; and if so, the written agreement shall be attached.

(f) The relief requested. When the relief requested is a legal separation, the petition shall state the specific reason for requesting such relief.

(h) That during the pendency of the action, the parties are prohibited from, and may be held in contempt of court for, harassing, intimidating, physically abusing or imposing any restraint on the personal liberty of the other party or a minor child of either party.

(i) If the action is one under s. 767.02 (1) (a), (b), (c), (d), (h) or (i), that during the pendency of the action, without the consent of the other party or an order of the court or a circuit court commissioner, the parties are prohibited from, and may be held in contempt of court for, encumbering, concealing, damaging, destroying, transferring or otherwise disposing of property owned by either or both of the parties, except in the usual course of business, in order to secure necessities or in order to pay reasonable costs and expenses of the action, including attorney fees.

(j) Unless the action is one under s. 767.02 (1) (g) or (h), that during the pendency of the action, the parties are prohibited from, and may be held in contempt of court for, doing any of the following without the consent of the other party or an order of the court or a circuit court commissioner:

1. Establishing a residence with a minor child of the parties outside the state or more than 150 miles from the residence of the other party within the state.

2. Removing a minor child of the parties from the state for more than 90 consecutive days.

3. Concealing a minor child of the parties from the other party.

(2) Initiation of action.

(a) Either or both of the parties to the marriage may initiate the action. The party initiating the action or his or her attorney shall sign the petition. Both parties or their respective attorneys shall sign a joint petition.

(b) The clerk of court shall provide without charge, to each person filing a petition requesting child support, a document setting forth the percentage standard established by the department under s. 49.22 (9) and listing the factors which a court may consider under s. 767.25 (1m).

(2m) Summons, contents.

(a) Except as provided in par. (b), if only one party initiates the action and the parties have minor children, the summons served on the other party:

1. Shall include notification of the availability of information under s. 767.081 (2) and of the contents of s. 948.31.

2. Shall be accompanied by a document, provided without charge by the clerk of court, setting forth the percentage standard established by the department under s. 49.22 (9) and listing the factors which a court may consider under s. 767.25 (1m).

(b) If service is by publication, notification regarding s. 948.31 may consist of references to the statute numbers and titles, and information relating to the percentage standard and the factors need not be provided.

(3) Service. If only one party initiates the action, the other shall be served under ch. 801 and may serve a response or counterclaim within 20 days after the date of service, except that questions of jurisdiction may be raised at any time prior to judgment. Service shall be made upon the petitioner and upon the circuit court commissioner as provided in s. 767.14, and the original copy of the response shall be filed in court. If the parties together initiate the action with a joint petition, service of summons is not required.

(4) 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.

767.087 Prohibited acts during pendency of action.

(1) In an action affecting the family, the petitioner upon filing the petition, the joint petitioners upon filing the joint petition and the respondent upon service of the petition are prohibited from doing any of the following:

(a) Harassing, intimidating, physically abusing or imposing any restraint on the personal liberty of the other party or a minor child of either of the parties.

(b) If the action is one under s. 767.02 (1) (a), (b), (c), (d), (h) or (i), encumbering, concealing, damaging, destroying, transferring or otherwise disposing of property owned by either or both of the parties, without the consent of the other party or an order of the court or a circuit court commissioner, except in the usual course of business, in order to secure necessities or in order to pay reasonable costs and expenses of the action, including attorney fees.

(c) Unless the action is one under s. 767.02 (1) (g) or (h), without the consent of the other party or an order of the court or a circuit court commissioner, establishing a residence with a minor child of the parties outside the state or more than 150 miles from the residence of the other party within the state, removing a minor child of the parties from the state for more than 90 consecutive days or concealing a minor child of the parties from the other party.

(2) The prohibitions under sub. (1) shall apply until the action is dismissed, until a final judgment in the action is entered or until the court or a circuit court commissioner orders otherwise.

(3)

(a) Except as provided in par. (b), a party who violates any provision of sub. (1) may be proceeded against under ch. 785 for contempt of court.

(b) An act in violation of sub. (1) (c) is not a contempt of court if the court finds that the action was taken to protect a party or a minor child of the parties from physical abuse by the other party and that there was no reasonable opportunity under the circumstances for the party to obtain an order under sub. (2) authorizing the action.

767.09 Power of court in divorce and legal separation actions.

(1) When a party requests a legal separation rather than a decree of divorce, the court shall grant the decree in that form unless the other party requests a divorce, in which case the court shall hear and determine which decree shall be granted. A decree of separation shall provide that in case of a reconciliation at any time thereafter, the parties may apply for a revocation of the judgment. Upon such application the court shall make such orders as may be just and reasonable.

(2) By stipulation of both parties, or upon motion of either party not earlier than one year after entry of a decree of legal separation, the court shall convert the decree to a decree of divorce.

767.10 Stipulation and property division.

(1) 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, for periodic family support payments under s. 767.261 or for legal custody and physical placement, in case a divorce or legal separation is granted or a marriage annulled.

(2)

(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. 767.25 or 767.51.

(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. 767.075 (1).

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. 767.29 (1) (d), 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.

767.11 Family court counseling services.

(1) Director.

(a) Except as provided in par. (b) and subject to approval by the chief judge of the judicial administrative district, the circuit judge or judges in each county shall designate a person meeting the qualifications under sub. (4) as the director of family court counseling services in that county.

(b) If 2 or more contiguous counties enter into a cooperative agreement under sub. (3) (b), the circuit judges for the counties involved shall, subject to approval by the chief judge of the judicial administrative district, designate a person meeting the qualifications under sub. (4) as the director of family court counseling services for those counties.

(c) A county or counties may designate the supervisor of the office of family court commissioner as the director under par. (a) or (b).

(2) Duties. A director of family court counseling services designated under sub. (1) shall administer a family court counseling office if such an office is established under sub. (3) (a) or (b). Regardless of whether such an office is established, the director shall:

(a) Employ staff to perform mediation and to perform any legal custody and physical placement study services authorized under sub. (14), arrange and monitor staff training, and assign and monitor staff case load.

(b) Contract under sub. (3) (c) with a person or public or private entity to perform mediation and to perform any legal custody and physical placement study services authorized under sub. (14).

(c) Supervise and perform mediation and any legal custody and physical placement study services authorized under sub. (14), and evaluate the quality of any such mediation or study services.

(d) Administer and manage funding for family court counseling services.

(3) Mediation provided. Mediation shall be provided in every county in this state by any of the following means:

(a) A county may establish a family court counseling office to provide mediation in that county.

(b) Two or more contiguous counties may enter into a cooperative agreement to establish one family court counseling office to provide mediation in those counties.

(c) A director of family court counseling services designated under sub. (1) may contract with any person or public or private entity, located in a county in which the director administers family court counseling services or in a contiguous county, to provide mediation in such a county.

(4) Mediator qualifications. Every mediator assigned under sub. (6) (a) shall have not less than 25 hours of mediation training or not less than 3 years of professional experience in dispute resolution. Every mediator assigned under sub. (6) (a) shall have training on the dynamics of domestic violence and the effects of domestic violence on victims of domestic violence and on children.

(5) Mediation referrals.

(a) Except as provided in sub. (8) (b), in any action affecting the family, including a revision of judgment or order under s. 767.32 or 767.325, in which it appears that legal custody or physical placement is contested, the court or circuit court

commissioner shall refer the parties to the director of family court counseling services for possible mediation of those contested issues. The court or circuit court commissioner shall inform the parties of all of the following:

1. That the confidentiality of communications in mediation is waived if the parties stipulate under sub. (14) (c) that the person who provided mediation to the parties may also conduct the legal custody or physical placement study under sub. (14).

2. That the court may waive the requirement to attend at least one mediation session if the court determines that attending the session will cause undue hardship or would endanger the health or safety of one of the parties and the bases on which the court may make its determination.

(b) If both parties to any action affecting the family wish to have joint legal custody of a child, either party may request that the court or circuit court commissioner refer the parties to the director of family court counseling services for assistance in resolving any problem relating to joint legal custody and physical placement of the child. Upon request, the court shall so refer the parties.

(c) A person who is awarded periods of physical placement, a child of such a person, a person with visitation rights or a person with physical custody of a child may notify a circuit court commissioner of any problem he or she has relating to any of these matters. Upon notification, the circuit court commissioner may refer any person involved in the matter to the director of family court counseling services for assistance in resolving the problem.

(6) Action upon referral.

(a) Whenever a court or circuit court commissioner refers a party to the director of family court counseling services for possible mediation, the director shall assign a mediator to the case. The mediator shall provide mediation if he or she determines it is appropriate. If the mediator determines mediation is not appropriate, he or she shall so notify the court. Whenever a court or circuit court commissioner refers a party to the director of family court counseling services for any other family court counseling service, the director shall take appropriate action to provide the service.

(b) Any intake form that the family court counseling services requires the parties to complete before commencement of mediation shall ask each party whether either of the parties has engaged in interspousal battery, as described in s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am).

(7) Private mediator. The parties to any action affecting the family may, at their own expense, receive mediation services from a mediator other than one who provides services under sub. (3). Parties who receive services from such a mediator shall sign and file with the director of family court counseling services and with the court or circuit court commissioner a written notice stating the mediator's name and the date of the first meeting with the mediator.

(8) Initial session of mediation required.

(a) Except as provided in par. (b), in any action affecting the family, including an action for revision of judgment or order under s. 767.32 or 767.325, in which it appears that legal custody or physical placement is contested, the parties shall attend at least one session with a mediator assigned under sub. (6) (a) or contracted with under sub. (7) and, if the parties and the mediator determine that continued mediation is appropriate, no court may hold a trial of or a final hearing on legal custody or physical placement until after mediation is completed or terminated.

(b) A court may, in its discretion, hold a trial or hearing without requiring attendance at the session under par. (a) if the court finds that attending the session will cause undue hardship or would endanger the health or safety of one of the

parties. In making its determination of whether attendance at the session would endanger the health or safety of one of the parties, the court shall consider evidence of the following:

1. That a party engaged in abuse, as defined in s. 813.122 (1) (a), of the child, as defined in s. 48.02 (2).
2. Interspousal battery as described under s. 940.19 or 940.20 (1m) or domestic abuse as defined in s. 813.12 (1) (am).
3. That either party has a significant problem with alcohol or drug abuse.
4. Any other evidence indicating that a party's health or safety will be endangered by attending the session.

(c) The initial session under par. (a) shall be a screening and evaluation mediation session, including screening for domestic abuse, to determine whether mediation is appropriate and whether both parties wish to continue in mediation.

(9) Prohibited issues in mediation. If mediation is provided by a mediator assigned under sub. (6) (a), no issue relating to property division, maintenance, or child support may be considered during the mediation unless all of the following apply:

(a) The property division, maintenance or child support issue is directly related to the legal custody or physical placement issue.

(b) The parties agree in writing to consider the property division, maintenance or child support issue.

(10) Powers and duties of mediator. A mediator assigned under sub. (6) (a) shall be guided by the best interest of the child and may do any of the following, at his or her discretion:

(a) Include the counsel of any party or any appointed guardian ad litem in the mediation.

(b) Interview any child of the parties, with or without a party present.

(c) Require a party to provide written disclosure of facts relating to any legal custody or physical placement issue addressed in mediation, including any financial issue permitted to be considered.

(d) Suspend mediation when necessary to enable a party to obtain an appropriate court order or appropriate therapy.

(e) Terminate mediation if a party does not cooperate or if mediation is not appropriate or if any of the following facts exist:

1. There is evidence that a party engaged in abuse, as defined in s. 813.122 (1) (a), of the child, as defined in s. 48.02 (2).

2. There is evidence of interspousal battery as described under s. 940.19 or 940.20 (1m) or domestic abuse as defined in s. 813.12 (1) (am).

3. Either party has a significant problem with alcohol or drug abuse.

4. Other evidence which indicates one of the parties' health or safety will be endangered if mediation is not terminated.

(12) Mediation agreement.

(a) Any agreement which resolves issues of legal custody or periods of physical placement between the parties reached as a result of mediation under this section shall be prepared in writing, reviewed by the attorney, if any, for each party

and by any appointed guardian ad litem, and submitted to the court to be included in the court order as a stipulation. Any reviewing attorney or guardian ad litem shall certify on the mediation agreement that he or she reviewed it and the guardian ad litem, if any, shall comment on the agreement based on the best interest of the child. The mediator shall certify that the written mediation agreement is in the best interest of the child based on the information presented to the mediator and accurately reflects the agreement made between the parties. The court may approve or reject the agreement, based on the best interest of the child. The court shall state in writing its reasons for rejecting an agreement.

(b) If after mediation under this section the parties do not reach agreement on legal custody or periods of physical placement, the parties or the mediator shall so notify the court. Except as provided in s. 767.045 (1) (am), the court shall promptly appoint a guardian ad litem under s. 767.045. Regardless of whether the court appoints a guardian ad litem, the court shall, if appropriate, refer the matter for a legal custody or physical placement study under sub. (14). If the parties come to agreement on legal custody or physical placement after the matter has been referred for a study, the study shall be terminated. The parties may return to mediation at any time before any trial of or final hearing on legal custody or periods of physical placement. If the parties return to mediation, the county shall collect any applicable fee under s. 814.615.

(13) Powers of court or circuit court commissioner.

Except as provided in sub. (8), referring parties to mediation under this section does not affect the power of the court or a circuit court commissioner to make any necessary order relating to the parties during the course of the mediation.

(14) Legal custody and physical placement study.

(a) A county or 2 or more contiguous counties shall provide legal custody and physical placement study services. The county or counties may elect to provide these services by any of the means set forth in sub. (3) with respect to mediation. Regardless of whether a county so elects, whenever legal custody or physical placement of a minor child is contested and mediation under this section is not used or does not result in agreement between the parties, or at any other time the court considers it appropriate, the court may order a person or entity designated by the county to investigate the following matters relating to the parties:

1. The conditions of the child's home.

2. Each party's performance of parental duties and responsibilities relating to the child.

2m. Whether either party has engaged in interspousal battery, as described in s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am).

3. Any other matter relevant to the best interest of the child.

(b) The person or entity investigating the parties under par. (a) shall complete the investigation and submit the results to the court. The court shall make the results available to both parties. The report shall be a part of the record in the action unless the court orders otherwise.

(c) No person who provided mediation to the parties under this section may investigate the parties under this subsection unless each party personally so consents by written stipulation after mediation has ended and after receiving notice from the person who provided mediation that consent waives the inadmissibility of communications in mediation under s. 904.085.

(15) Applicability. This section applies to each county on the date established by that county, or on June 1, 1989, whichever is earlier.

767.115 Educational programs and classes in actions affecting the family.

(1)

(a) At any time during the pendency of an action affecting the family in which a minor child is involved and in which the court or circuit court commissioner determines that it is appropriate and in the best interest of the child, the court or circuit court commissioner, on its own motion, may order the parties to attend a program specified by the court or circuit court commissioner concerning the effects on a child of a dissolution of the marriage. If the court or circuit court commissioner orders the parties to attend a program under this paragraph and there is evidence that one or both of the parties have engaged in interspousal battery, as described in s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), the court or circuit court commissioner may not require the parties to attend the program together or at the same time.

(b) At any time during the pendency of an action to determine the paternity of a child, or an action affecting the family for which the underlying action was an action to determine the paternity of a child, if the court or circuit court commissioner determines that it is appropriate and in the best interest of the child, the court or circuit court commissioner, on its own motion, may order either or both of the parties to attend a program specified by the court or circuit court commissioner providing training in parenting or coparenting skills, or both.

(1m) A program under sub. (1) shall be educational rather than therapeutic in nature and may not exceed a total of 4 hours in length. The parties shall be responsible for the cost, if any, of attendance at the program. The court or circuit court commissioner may specifically assign responsibility for payment of any cost. No facts or information obtained in the course of the program, and no report resulting from the program, is admissible in any action or proceeding.

(2) Notwithstanding s. 767.07, the court or circuit court commissioner may require the parties to attend a program under sub. (1) as a condition to the granting of a final judgment or order in the action affecting the family that is pending before the court or circuit court commissioner.

(3) A party who fails to attend a program ordered under sub. (1) or pay costs specifically ordered under sub. (1m) may be proceeded against under ch. 785 for contempt of court.

(4)

(a) At any time during the pendency of a divorce or paternity action, the court or circuit court commissioner may order the parties to attend a class that is approved by the court or circuit court commissioner and that addresses such issues as child development, family dynamics, how parental separation affects a child's development and what parents can do to make raising a child in a separated situation less stressful for the child.

(b) The court or circuit court commissioner may not require the parties to attend a class under this subsection as a condition to the granting of the final judgment or order in the divorce or paternity action, however, the court or circuit court commissioner may refuse to hear a custody or physical placement motion of a party who refuses to attend a class ordered under this subsection.

(c)

1. Except as provided in subd. 2., the parties shall be responsible for any cost of attending the class.

2. If the court or circuit court commissioner finds that a party is indigent, any costs that would be the responsibility of that party shall be paid by the county.

767.12 Trial procedure.

(1) Proceedings. In actions affecting the family, all hearings and trials to determine whether judgment shall be granted, except hearings under s. 757.69 (1) (p) 3., shall be before the court. The testimony shall be taken by the reporter and shall be written out and filed with the record if so ordered by the court. Custody proceedings shall receive priority in being set for hearing.

(2) Irretrievable breakdown.

(a) If both of the parties 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.

(b) If the parties 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.

1. If the court finds no reasonable prospect of reconciliation, it shall make a finding that the marriage is irretrievably broken; or

2. If the court finds that there is a reasonable prospect of reconciliation, it shall continue the matter for further hearing not 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.

(3) Breakdown of marital relationship. If both of the parties 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.

767.125 Order for appearance of litigants.

Unless nonresidence in the state is shown by competent evidence, service is by publication, or the court shall for other good cause otherwise order, both parties in actions affecting the family shall be required to appear upon the trial. An order of the court or a circuit court commissioner to that effect shall accordingly be procured by the moving party, and shall be served upon the nonmoving party before the trial. In the case of a joint petition the order is not required.

767.23 Temporary orders for support of spouse and children; suit money; attorney fees.

(1) Except as provided in ch. 822, in every action affecting the family, the court or circuit court commissioner may, during the pendency thereof, make just and reasonable temporary orders concerning the following matters:

(a) Upon request of one party, granting legal custody of the minor children to the parties jointly, to one party solely or to a relative or agency specified under s. 767.24 (3), in a manner consistent with s. 767.24, except that the court or circuit

court commissioner may order sole legal custody without the agreement of the other party and without the findings required under s. 767.24 (2) (b) 2.

This order may not have a binding effect on a final custody determination.

(am) Upon the request of a party, granting periods of physical placement to a party in a manner consistent with s. 767.24. The court or circuit court commissioner shall make a determination under this paragraph within 30 days after the request for a temporary order regarding periods of physical placement is filed.

(b) Notwithstanding ss. 767.085 (1) (j) and 767.087 (1) (c), prohibiting the removal of minor children from the jurisdiction of the court.

(bm) Allowing a party to move with or remove a child after a notice of objection has been filed under s. 767.327 (2) (a).

(c) Subject to s. 767.477, requiring either party or both parties to make payments for the support of minor children, which payment amounts must be expressed as a fixed sum unless the parties have stipulated to expressing the amount as a percentage of the payer's income and the requirements under s. 767.10 (2) (am) 1. to 3. are satisfied.

(d) Requiring either party to pay for the maintenance of the other party. This maintenance may include the expenses and attorney fees incurred by the other party in bringing or responding to the action affecting the family.

(e) Requiring either party to pay family support under s. 767.261.

(f) Requiring either party to execute an assignment of income under s. 767.265 or an authorization for transfer under s. 767.267.

(g) Requiring either party or both parties to pay debts or perform other actions in relation to the persons or property of the parties.

(h) Notwithstanding ss. 767.085 (1) (i) and 767.087 (1) (b), prohibiting either party from disposing of assets within the jurisdiction of the court.

(i) Requiring counseling of either party or both parties.

(k) Subject to s. 767.477, requiring either party or both parties to maintain minor children as beneficiaries on a health insurance policy or plan.

(L) Requiring either party or both parties to execute an assignment of income for payment of health care expenses of minor children.

(1g) Notwithstanding 1987 Wisconsin Act 355, section 73, as affected by 1987 Wisconsin Act 364, the parties may agree to the adjudication of a temporary order under this section in an action affecting the family that is pending on May 3, 1988.

(1m) If a circuit court commissioner believes that a temporary restraining order or injunction under s. 813.12 is appropriate in an action, the circuit court commissioner shall inform the parties of their right to seek the order or injunction and the procedure to follow. On a motion for such a restraining order or injunction, the circuit court commissioner shall submit the motion to the court within 5 working days.

(1n)

(a) Before making any temporary order under sub. (1), the court or circuit court commissioner shall consider those factors that the court is required by this chapter to consider before entering a final judgment on the same subject matter. In making a determination under sub. (1) (a) or (am), the court or circuit court commissioner shall consider the factors under s. 767.24 (5) (am), subject to s. 767.24 (5) (bm).

(b)

1. If the court or circuit court commissioner makes a temporary child support order that deviates from the amount of support that would be required by using the percentage standard established by the department under s. 49.22 (9), the court or circuit court commissioner shall comply with the requirements of s. 767.25 (1n).

2. If the court or circuit court commissioner finds by a preponderance of the evidence that a party 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), and makes a temporary order awarding joint or sole legal custody or periods of physical placement to the party, the court or circuit court commissioner shall comply with the requirements of s. 767.24 (6) (f) and, if appropriate, s. 767.24 (6) (g).

(c) A temporary order under sub. (1) may be based upon the written stipulation of the parties, subject to the approval of the court or the circuit court commissioner. Temporary orders made by a circuit court commissioner may be reviewed by the court.

(2) Notice of motion for an order or order to show cause under sub. (1) may be served at the time the action is commenced or at any time thereafter and shall be accompanied by an affidavit stating the basis for the request for relief.

(3)

(a) Upon making any order for dismissal of an action affecting the family or for substitution of attorneys in an action affecting the family or for vacation of a judgment theretofore granted in any such action, the court shall prior to or in its order render and grant separate judgment in favor of any attorney who has appeared for a party to the action and in favor of any guardian ad litem for a party or a child for the amount of fees and disbursements to which the attorney or guardian ad litem is, in the court's judgment, entitled and against the party responsible therefor.

(b) Upon making any order for dismissal of an action affecting the family or for vacation of a judgment granted in any such order, the court shall, prior to or in its order of dismissal or vacation, also preserve the right of the state or a political subdivision of the state to collect any arrearages, by an action under this chapter or under ch. 785, owed to the state if either party in the case was a recipient of aid under ch. 49.

767.24 Custody and physical placement.

(1) General provisions. In rendering a judgment of annulment, divorce, legal separation or paternity, or in rendering a judgment in an action under s. 767.02 (1) (e) or 767.62 (3), the court shall make such provisions as it deems just and reasonable concerning the legal custody and physical placement of any minor child of the parties, as provided in this section.

(1m) Parenting plan. In an action for annulment, divorce or legal separation, an action to determine paternity or an action under s. 767.02 (1) (e) or 767.62 (3) in which legal custody or physical placement is contested, a party seeking sole or joint legal custody or periods of physical placement shall file a parenting plan with the court before any pretrial conference. Except for cause shown, a party required to file a parenting plan under this subsection who does not timely

file a parenting plan waives the right to object to the other party's parenting plan. A parenting plan shall provide information about the following questions:

- (a) What legal custody or physical placement the parent is seeking.
 - (b) Where the parent lives currently and where the parent intends to live during the next 2 years. If there is evidence that the other parent engaged in interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), with respect to the parent providing the parenting plan, the parent providing the parenting plan is not required to disclose the specific address but only a general description of where he or she currently lives and intends to live during the next 2 years.
 - (c) Where the parent works and the hours of employment. If there is evidence that the other parent engaged in interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), with respect to the parent providing the parenting plan, the parent providing the parenting plan is not required to disclose the specific address but only a general description of where he or she works.
 - (d) Who will provide any necessary child care when the parent cannot and who will pay for the child care.
 - (e) Where the child will go to school.
 - (f) What doctor or health care facility will provide medical care for the child.
 - (g) How the child's medical expenses will be paid.
 - (h) What the child's religious commitment will be, if any.
 - (i) Who will make decisions about the child's education, medical care, choice of child care providers and extracurricular activities.
 - (j) How the holidays will be divided.
 - (k) What the child's summer schedule will be.
 - (L) Whether and how the child will be able to contact the other parent when the child has physical placement with the parent providing the parenting plan.
 - (m) How the parent proposes to resolve disagreements related to matters over which the court orders joint decision making.
 - (n) What child support, family support, maintenance or other income transfer there will be.
 - (o) If there is evidence that either party engaged in interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), with respect to the other party, how the child will be transferred between the parties for the exercise of physical placement to ensure the safety of the child and the parties.
- (2) Custody to party; joint or sole.
- (a) Subject to pars. (am), (b), (c), and (d), based on the best interest of the child and after considering the factors under sub. (5) (am), subject to sub. (5) (bm), the court may give joint legal custody or sole legal custody of a minor child.

(am) Except as provided in par. (d), the court shall presume that joint legal custody is in the best interest of the child.

(b) Except as provided in par. (d), the court may give sole legal custody only if it finds that doing so is in the child's best interest and that either of the following applies:

1. Both parties agree to sole legal custody with the same party.

2. The parties do not agree to sole legal custody with the same party, but at least one party requests sole legal custody and the court specifically finds any of the following:

a. One party is not capable of performing parental duties and responsibilities or does not wish to have an active role in raising the child.

b. One or more conditions exist at that time that would substantially interfere with the exercise of joint legal custody.

c. The parties will not be able to cooperate in the future decision making required under an award of joint legal custody. In making this finding the court shall consider, along with any other pertinent items, any reasons offered by a party objecting to joint legal custody. Evidence that either party engaged in abuse, as defined in s. 813.122 (1) (a), of the child, as defined in s. 48.02 (2), or evidence of interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), creates a rebuttable presumption that the parties will not be able to cooperate in the future decision making required.

(c) Except as provided in par. (d), the court may not give sole legal custody to a parent who refuses to cooperate with the other parent if the court finds that the refusal to cooperate is unreasonable.

(d)

1. Except as provided in subd. 4., if the court finds by a preponderance of the evidence that a party 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), pars. (am), (b), and (c) do not apply and 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. The presumption under this subdivision may be rebutted only by a preponderance of evidence of all of the following:

a. The party who committed the battery or abuse has successfully completed treatment for batterers provided through a certified treatment program or by a certified treatment provider and is not abusing alcohol or any other drug.

b. It is in the best interest of the child for the party who committed the battery or abuse to be awarded joint or sole legal custody based on a consideration of the factors under sub. (5) (am).

2. If the court finds under subd. 1. that both parties 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 party who engaged in the battery or abuse for purposes of the presumption under subd. 1. is the party that the court determines was the primary physical aggressor. Except as provided in subd. 3., in determining which party was the primary physical aggressor, the court shall consider all of the following:

a. Prior acts of domestic violence between the parties.

b. The relative severity of the injuries, if any, inflicted upon a party by the other party in any of the prior acts of domestic violence under subd. 2. a.

- c. The likelihood of future injury to either of the parties resulting from acts of domestic violence.
 - d. Whether either of the parties acted in self-defense in any of the prior acts of domestic violence under subd. 2. a.
 - e. Whether there is or has been a pattern of coercive and abusive behavior between the parties.
 - f. Any other factor that the court considers relevant to the determination under this subdivision.
3. If the court must determine under subd. 2. which party was the primary physical aggressor and one, but not both, of the parties has been convicted of a crime that was an act of domestic abuse, as defined in s. 813.12 (1) (am), with respect to the other party, the court shall find the party who was convicted of the crime to be the primary physical aggressor.
4. The presumption under subd. 1. does not apply if the court finds that both parties engaged in a pattern or serious incident of interspousal battery or domestic abuse but the court determines that neither party was the primary physical aggressor.
- (3) Custody to agency or relative.
- (a) If the interest of any child demands it, and if the court finds that neither parent is able to care for the child adequately or that neither parent is fit and proper to have the care and custody of the child, the court may declare the child to be in need of protection or services and transfer legal custody of the child to a relative of the child, as defined in s. 48.02 (15), to a county department, as defined under s. 48.02 (2g), or to a licensed child welfare agency. If the court transfers legal custody of a child under this subsection, in its order the court shall notify the parents of any applicable grounds for termination of parental rights under s. 48.415.
 - (b) If the legal custodian appointed under par. (a) is an agency, the agency shall report to the court on the status of the child at least once each year until the child reaches 18 years of age, is returned to the custody of a parent or is placed under the guardianship of an agency. The agency shall file an annual report no less than 30 days before the anniversary of the date of the order. An agency may file an additional report at any time if it determines that more frequent reporting is appropriate. A report shall summarize the child's permanency plan and the recommendations of the review panel under s. 48.38 (5), if any.
 - (c) The court shall hold a hearing to review the permanency plan within 30 days after receiving a report under par. (b). At least 10 days before the date of the hearing, the court shall provide notice of the time, date and purpose of the hearing to the agency that prepared the report, the child's parents, the child, if he or she is 12 years of age or over, and the child's foster parent, treatment foster parent or the operator of the facility in which the child is living.
 - (d) Following the hearing, the court shall make all of the determinations specified under s. 48.38 (5) (c) and, if it determines that an alternative placement is in the child's best interest, may amend the order to transfer legal custody of the child to another relative, other than a parent, or to another agency specified under par. (a).
 - (e) The charges for care furnished to a child whose custody is transferred under this subsection shall be pursuant to the procedure under s. 48.36 (1) or 938.36 (1) except as provided in s. 767.29 (3).
- (4) Allocation of physical placement.
- (a)

1. Except as provided under par. (b), if the court orders sole or joint legal custody under sub. (2), the court shall allocate periods of physical placement between the parties in accordance with this subsection.

2. In determining the allocation of periods of physical placement, the court shall consider each case on the basis of the factors in sub. (5) (am), subject to sub. (5) (bm). The court shall set a placement schedule that allows the child to have regularly occurring, meaningful periods of physical placement with each parent and that maximizes the amount of time the child may spend with each parent, taking into account geographic separation and accommodations for different households.

(b) A child is entitled to periods of physical placement with both parents unless, after a hearing, the court finds that physical placement with a parent would endanger the child's physical, mental or emotional health.

(c) No court may deny periods of physical placement for failure to meet, or grant periods of physical placement for meeting, any financial obligation to the child or, if the parties were married, to the former spouse.

(cm) If a court denies periods of physical placement under this section, the court shall give the parent that was denied periods of physical placement the warning provided under s. 48.356.

(d) If the court grants periods of physical placement to more than one parent, it shall order a parent with legal custody and physical placement rights to provide the notice required under s. 767.327 (1).

(5) Factors in custody and physical placement determinations.

(am) Subject to par. (bm), in determining legal custody and periods of physical placement, the court shall consider all facts relevant to the best interest of the child. The court may not prefer one parent or potential custodian over the other on the basis of the sex or race of the parent or potential custodian. Subject to par. (bm), the court shall consider the following factors in making its determination:

1. The wishes of the child's parent or parents, as shown by any stipulation between the parties, any proposed parenting plan or any legal custody or physical placement proposal submitted to the court at trial.

2. The wishes of the child, which may be communicated by the child or through the child's guardian ad litem or other appropriate professional.

3. The interaction and interrelationship of the child with his or her parent or parents, 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, any necessary changes to the parents' custodial roles and any reasonable life-style changes that a parent proposes to make to be able to spend time with the child in the future.

5. The child's adjustment to the home, school, religion and community.

6. The age of the child and the child's developmental and educational needs at different ages.

7. Whether the mental or physical health of a party, minor child, or other person living in a proposed custodial household negatively affects the child's intellectual, physical, or emotional well-being.

8. The need for regularly occurring and meaningful periods of physical placement to provide predictability and stability for the child.
 9. The availability of public or private child care services.
 10. The cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party.
 11. Whether each party can support the other party's relationship with the child, including encouraging and facilitating frequent and continuing contact with the child, or whether one party is likely to unreasonably interfere with the child's continuing relationship with the other party.
 12. Whether there is evidence that a party engaged in abuse, as defined in s. 813.122 (1) (a), of the child, as defined in s. 48.02 (2).
 13. Whether there is evidence of interspousal battery as described under s. 940.19 or 940.20 (1m) or domestic abuse as defined in s. 813.12 (1) (am).
 14. Whether either party has or had a significant problem with alcohol or drug abuse.
 15. The reports of appropriate professionals if admitted into evidence.
 16. Such other factors as the court may in each individual case determine to be relevant.
- (bm) If the court finds under sub. (2) (d) 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 the paramount concerns in determining legal custody and periods of physical placement.
- (6) Final order.
- (a) If legal custody or physical placement is contested, the court shall state in writing why its findings relating to legal custody or physical placement are in the best interest of the child.
- (am) In making an order of joint legal custody, upon the request of one parent the court shall specify major decisions in addition to those specified under s. 767.001 (2m).
- (b) Notwithstanding s. 767.001 (1s), in making an order of joint legal custody, the court may give one party sole power to make specified decisions, while both parties retain equal rights and responsibilities for other decisions.
- (c) In making an order of joint legal custody and periods of physical placement, the court may specify one parent as the primary caretaker of the child and one home as the primary home of the child, for the purpose of determining eligibility for aid under s. 49.19 or benefits under ss. 49.141 to 49.161 or for any other purpose the court considers appropriate.
- (d) No party awarded joint legal custody may take any action inconsistent with any applicable physical placement order, unless the court expressly authorizes that action.
- (e) In an order of physical placement, the court shall specify the right of each party to the physical control of the child in sufficient detail to enable a party deprived of that control to implement any law providing relief for interference with custody or parental rights.

(f) If the court finds under sub. (2) (d) that a party 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 court shall state in writing whether the presumption against awarding joint or sole legal custody to that party is rebutted and, if so, what evidence rebutted the presumption, and why its findings relating to legal custody and physical placement are in the best interest of the child.

(g) If the court finds under sub. (2) (d) that a party 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), and the court awards periods of physical placement to both parties, the court shall provide for the safety and well-being of the child and for the safety of the party who was the victim of the battery or abuse. For that purpose the court, giving consideration to the availability of services or programs and to the ability of the party who committed the battery or abuse to pay for those services or programs, shall impose one or more of the following, as appropriate:

1. Requiring the exchange of the child to occur in a protected setting or in the presence of an appropriate 3rd party who agrees by affidavit or other supporting evidence to assume the responsibility assigned by the court and to be accountable to the court for his or her actions with respect to the responsibility.
2. Requiring the child's periods of physical placement with the party who committed the battery or abuse to be supervised by an appropriate 3rd party who agrees by affidavit or other supporting evidence to assume the responsibility assigned by the court and to be accountable to the court for his or her actions with respect to the responsibility.
3. Requiring the party who committed the battery or abuse to pay the costs of supervised physical placement.
4. Requiring the party who committed the battery or abuse to attend and complete, to the satisfaction of the court, treatment for batterers provided through a certified treatment program or by a certified treatment provider as a condition of exercising his or her periods of physical placement.
5. If the party who committed the battery or abuse has a significant problem with alcohol or drug abuse, prohibiting that party from being under the influence of alcohol or any controlled substance when the parties exchange the child for periods of physical placement and from possessing or consuming alcohol or any controlled substance during his or her periods of physical placement.
6. Prohibiting the party who committed the battery or abuse from having overnight physical placement with the child.
7. Requiring the party who committed the battery or abuse to post a bond for the return and safety of the child.
8. Imposing any condition not specified in subds. 1. to 7. that the court determines is necessary for the safety and well-being of the child or the safety of the party who was the victim of the battery or abuse.

(7) Access to records.

(a) Except under par. (b) or unless otherwise ordered by the court, access to a child's medical, dental and school records is available to a parent regardless of whether the parent has legal custody of the child.

(b) A parent who has been denied periods of physical placement with a child under this section is subject to s. 118.125 (2) (m) with respect to that child's school records, s. 51.30 (5) (bm) with respect to the child's court or treatment records, s. 55.07 with respect to the child's records relating to protective services and s. 146.835 with respect to the child's patient health care records.

(7m) Medical and medical history information.

(a) In making an order of legal custody, the court shall order a parent who is not granted legal custody of a child to provide to the court medical and medical history information that is known to the parent. The court shall send the information to the physician or other health care provider with primary responsibility for the treatment and care of the child, as designated by the parent who is granted legal custody of the child, and advise the physician or other health care provider of the identity of the child to whom the information relates. The information provided shall include all of the following:

1. The known medical history of the parent providing the information, including specific information about stillbirths or congenital anomalies in the parent's family, and the medical histories, if known, of the parents and siblings of the parent and any sibling of the child who is a child of the parent, except that medical history information need not be provided for a sibling of the child if the parent or other person who is granted legal custody of the child also has legal custody, including joint legal custody, of that sibling.
2. A report of any medical examination that the parent providing the information had within one year before the date of the order.

(am) The physician or other health care provider designated under par. (a) shall keep the information separate from other records kept by the physician or other health care provider. The information shall be assigned an identification number and maintained under the name of the parent who provided the information to the court. The patient health care records of the child that are kept by the physician or other health care provider shall include a reference to that name and identification number. If the child's patient health care records are transferred to another physician or other health care provider or another health care facility, the records containing the information provided under par. (a) shall be transferred along with the child's patient health care records. Notwithstanding s. 146.819, the information provided under par. (a) need not be maintained by a physician or other health care provider after the child reaches age 18.

(b) Notwithstanding ss. 146.81 to 146.835, the information shall be kept confidential, except only as follows:

1. The physician or other health care provider with custody of the information, or any other record custodian at the request of the physician or other health care provider, shall have access to the information if, in the professional judgment of the physician or other health care provider, the information may be relevant to the child's medical condition.
2. The physician or other health care provider may release only that portion of the information, and only to a person, that the physician or other health care provider determines is relevant to the child's medical condition.

(8) Notice in judgment. A judgment which determines the legal custody or physical placement rights of any person to a minor child shall include notification of the contents of s. 948.31.

(9) Applicability. Notwithstanding 1987 Wisconsin Act 355, section 73, as affected by 1987 Wisconsin Act 364, the parties may agree to the adjudication of a custody or physical placement order under this section in an action affecting the family that is pending on May 3, 1988.

767.242 Enforcement of physical placement orders.

(1) Definitions. In this section:

(a) "Petitioner" means the parent filing a petition under this section, regardless of whether that parent was the petitioner in the action in which periods of physical placement were awarded under s. 767.24.

(b) "Respondent" means the parent upon whom a petition under this section is served, regardless of whether that parent was the respondent in the action in which periods of physical placement were awarded under s. 767.24.

(2) Who may file. A parent who has been awarded periods of physical placement under s. 767.24 may file a petition under sub. (3) if any of the following applies:

(a) The parent has had one or more periods of physical placement denied by the other parent.

(b) The parent has had one or more periods of physical placement substantially interfered with by the other parent.

(c) The parent has incurred a financial loss or expenses as a result of the other parent's intentional failure to exercise one or more periods of physical placement under an order allocating specific times for the exercise of periods of physical placement.

(3) Petition.

(a) The petition shall allege facts sufficient to show the following:

1. The name of the petitioner and that the petitioner has been awarded periods of physical placement.

2. The name of the respondent.

3. That the criteria in sub. (2) apply.

(b) The petition shall request the imposition of a remedy or any combination of remedies under sub. (5) (b) and (c). This paragraph does not prohibit a judge or circuit court commissioner from imposing a remedy under sub. (5) (b) or (c) if the remedy was not requested in the petition.

(c) A judge or circuit court commissioner shall accept any legible petition for an order under this section.

(d) The petition shall be filed under the principal action under which the periods of physical placement were awarded.

(e) A petition under this section is a motion for remedial sanction for purposes of s. 785.03 (1) (a).

(4) Service on respondent; response. Upon the filing of a petition under sub. (3), the petitioner shall serve a copy of the petition upon the respondent by personal service in the same manner as a summons is served under s. 801.11. The respondent may respond to the petition either in writing before or at the hearing under sub. (5) (a) or orally at that hearing.

(5) Hearing; remedies.

(a) A judge or circuit court commissioner shall hold a hearing on the petition no later than 30 days after the petition has been served, unless the time is extended by mutual agreement of the parties or upon the motion of a guardian ad litem and the approval of the judge or circuit court commissioner. The judge or circuit court commissioner may, on his or her own motion or the motion of any party, order that a guardian ad litem be appointed for the child prior to the hearing.

(b) If, at the conclusion of the hearing, the judge or circuit court commissioner finds that the respondent has intentionally and unreasonably denied the petitioner one or more periods of physical placement or that the respondent has intentionally and unreasonably interfered with one or more of the petitioner's periods of physical placement, the court or circuit court commissioner:

1. Shall do all of the following:

- a. Issue an order granting additional periods of physical placement to replace those denied or interfered with.
- b. Award the petitioner a reasonable amount for the cost of maintaining an action under this section and for attorney fees.

2. May do one or more of the following:

a. If the underlying order or judgment relating to periods of physical placement does not provide for specific times for the exercise of periods of physical placement, issue an order specifying the times for the exercise of periods of physical placement.

b. Find the respondent in contempt of court under ch. 785.

c. Grant an injunction ordering the respondent to strictly comply with the judgment or order relating to the award of physical placement. In determining whether to issue an injunction, the judge or circuit court commissioner shall consider whether alternative remedies requested by the petitioner would be as effective in obtaining compliance with the order or judgment relating to physical placement.

(c) If, at the conclusion of the hearing, the judge or circuit court commissioner finds that the petitioner has incurred a financial loss or expenses as a result of the respondent's failure, intentionally and unreasonably and without adequate notice to the petitioner, to exercise one or more periods of physical placement under an order allocating specific times for the exercise of periods of physical placement, the judge or circuit court commissioner may issue an order requiring the respondent to pay to the petitioner a sum of money sufficient to compensate the petitioner for the financial loss or expenses.

(d) Except as provided in par. (b) 1. a. and 2. a., the judge or circuit court commissioner may not modify an order of legal custody or physical placement in an action under this section.

(e) An injunction issued under par. (b) 2. c. is effective according to its terms, for the period of time that the petitioner requests, but not more than 2 years.

(6) Enforcement assistance.

(a) If an injunction is issued under sub. (5) (b) 2. c., upon request by the petitioner the judge or circuit court commissioner shall order the sheriff to assist the petitioner in executing or serving the injunction.

(b) Within 24 hours after a request by the petitioner, the clerk of the circuit court shall send a copy of an injunction issued under sub. (5) (b) 2. c. to the sheriff or to any other local law enforcement agency that is the central repository for orders and that has jurisdiction over the respondent's residence. If the respondent does not reside in this state, the clerk shall send a copy of the injunction to the sheriff of the county in which the circuit court is located.

(c) The sheriff or other appropriate local law enforcement agency under par. (b) shall make available to other law enforcement agencies, through a verification system, information on the existence and status of any injunction issued under sub. (5) (b) 2. c. The information need not be maintained after the injunction is no longer in effect.

(8) Penalty. Whoever intentionally violates an injunction issued under sub. (5) (b) 2. c. is guilty of a Class I felony.

767.245 Visitation rights of certain persons.

(1) Except as provided in subs. (1m) and (2m), upon petition by a grandparent, greatgrandparent, stepparent or person who has maintained a relationship similar to a parent-child relationship with the child, the court may grant reasonable visitation rights to that person if the parents have notice of the hearing and if the court determines that visitation is in the best interest of the child.

(1m)

(a) Except as provided in par. (b), the court may not grant visitation rights under sub. (1) to a person who has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated.

(b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child. The court shall consider the wishes of the child in making the determination.

(2) Whenever possible, in making a determination under sub. (1), the court shall consider the wishes of the child.

(2m) Subsection (3), rather than sub. (1), applies to a grandparent requesting visitation rights under this section if sub.

(3) (a) to (c) applies to the child.

(3) The court may grant reasonable visitation rights, with respect to a child, to a grandparent of the child if the child's parents have notice of the hearing and the court determines all of the following:

(a) The child is a nonmarital child whose parents have not subsequently married each other.

(b) Except as provided in sub. (4), the paternity of the child has been determined under the laws of this state or another jurisdiction if the grandparent filing the petition is a parent of the child's father.

(c) The child has not been adopted.

(d) The grandparent has maintained a relationship with the child or has attempted to maintain a relationship with the child but has been prevented from doing so by a parent who has legal custody of the child.

(e) The grandparent is not likely to act in a manner that is contrary to decisions that are made by a parent who has legal custody of the child and that are related to the child's physical, emotional, educational or spiritual welfare.

(f) The visitation is in the best interest of the child.

(3c) A grandparent requesting visitation under sub. (3) may file a petition to commence an independent action for visitation under this chapter or may file a petition for visitation in an underlying action affecting the family under this chapter that affects the child.

(3m)

(a) A pretrial hearing shall be held before the court in an action under sub. (3). At the pretrial hearing the parties may present and cross-examine witnesses and present other evidence relevant to the determination of visitation rights. A record or minutes of the proceeding shall be kept.

(b) On the basis of the information produced at the pretrial hearing, the court shall evaluate the probability of granting visitation rights to a grandparent in a trial and shall so advise the parties. On the basis of the evaluation, the court may make an appropriate recommendation for settlement to the parties.

(c) If a party or the guardian ad litem refuses to accept a recommendation under this subsection, the action shall be set for trial.

(d) The informal hearing under this subsection may be terminated and the action set for trial if the court finds it unlikely that all parties will accept a recommendation under this subsection.

(4) If the paternity of the child has not yet been determined in an action under sub. (3) that is commenced by a person other than a parent of the child's mother but the person filing the petition under sub. (3) has, in conjunction with that petition, filed a petition or motion under s. 767.45 (1) (k), the court shall make a determination as to paternity before determining visitation rights under sub. (3).

(5) Any person who interferes with visitation rights granted under sub. (1) or (3) may be proceeded against for contempt of court under ch. 785, except that a court may impose only the remedial sanctions specified in s. 785.04 (1) (a) and (c) against that person.

(6)

(a) If a person granted visitation rights with a child under this section is convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, the court shall modify the visitation order by denying visitation with the child upon petition, motion or order to show cause by a parent or guardian of the child, or upon the court's own motion, and upon notice to the person granted visitation rights.

(b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child. The court shall consider the wishes of the child in making that determination.

767.247 Prohibiting visitation or physical placement if a parent kills other parent.

(1) Notwithstanding ss. 767.23 (1) (am), 767.24 (1), (4) and (5), 767.51 (3) and 767.62 (4) (a) and except as provided in sub. (2), in an action under this chapter that affects a minor child, a court or circuit court commissioner may not grant to the child's parent visitation or physical placement rights with the child if the parent has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of the child's other parent, and the conviction has not been reversed, set aside or vacated.

(2) Subsection (1) does not apply if the court or circuit court commissioner determines by clear and convincing evidence that the visitation or periods of physical placement would be in the best interests of the child. The court or circuit court commissioner shall consider the wishes of the child in making the determination.

767.25 Child support.

(1) Whenever the court approves a stipulation for child support under s. 767.10, enters a judgment of annulment, divorce or legal separation, or enters an order or a judgment in a paternity action or in an action under s. 767.02 (1) (f) or (j), 767.08 or 767.62 (3), the court shall do all of the following:

(a) Order either or both parents to pay an amount reasonable or necessary to fulfill a duty to support a child. The support amount must be expressed as a fixed sum unless the parties have stipulated to expressing the amount as a percentage of the payer's income and the requirements under s. 767.10 (2) (am) 1. to 3. are satisfied.

(b) Ensure that the parties have stipulated which party, if either is eligible, will claim each child as an exemption for federal income tax purposes under 26 USC 151 (c) (1) (B), or as an exemption for state income tax purposes under s. 71.07 (8) (b) or under the laws of another state. If the parties are unable to reach an agreement about the tax exemption for each child, the court shall make the decision in accordance with state and federal tax laws. In making its decision, the court shall consider whether the parent who is assigned responsibility for the child's health care expenses under sub. (4m) is covered under a health insurance policy or plan, including a self-insured plan, that is not subject to s. 632.897 (10) and that conditions coverage of a dependent child on whether the child is claimed by the insured parent as an exemption for purposes of federal or state income taxes.

(1g) In determining child support payments, the court may consider all relevant financial information or other information relevant to the parent's earning capacity, including information reported under s. 49.22 (2m) to the department or the county child support agency under s. 59.53 (5).

(1j) Except as provided in sub. (1m), the court shall determine child support payments by using the percentage standard established by the department under s. 49.22 (9).

(1m) Upon request by a party, the court may modify the amount of child support payments determined under sub. (1j) if, after considering the following factors, the court finds by the greater weight of the credible evidence that use of the percentage standard is unfair to the child or to any of the parties:

(a) The financial resources of the child.

(b) The financial resources of both parents.

(bj) Maintenance received by either party.

(bp) The needs of each party in order to support himself or herself at a level equal to or greater than that established under 42 USC 9902 (2).

(bz) The needs of any person, other than the child, whom either party is legally obligated to support.

(c) If the parties were married, the standard of living the child would have enjoyed had the marriage not ended in annulment, divorce or legal separation.

(d) The desirability that the custodian remain in the home as a full-time parent.

(e) The cost of day care if the custodian works outside the home, or the value of custodial services performed by the custodian if the custodian remains in the home.

(ej) The award of substantial periods of physical placement to both parents.

(em) Extraordinary travel expenses incurred in exercising the right to periods of physical placement under s. 767.24.

(f) The physical, mental and emotional health needs of the child, including any costs for health insurance as provided for under sub. (4m).

- (g) The child's educational needs.
- (h) The tax consequences to each party.
- (hm) The best interests of the child.
- (hs) The earning capacity of each parent, based on each parent's education, training and work experience and the availability of work in or near the parent's community.
- (i) Any other factors which the court in each case determines are relevant.
- (1n) If the court finds under sub. (1m) that use of the percentage standard is unfair to the child or the requesting party, the court shall state in writing or on the record the amount of support that would be required by using the percentage standard, the amount by which the court's order deviates from that amount, its reasons for finding that use of the percentage standard is unfair to the child or the party, its reasons for the amount of the modification and the basis for the modification.
- (2) The court may protect and promote the best interests of the minor children by setting aside a portion of the child support which either party is ordered to pay in a separate fund or trust for the support, education and welfare of such children.
- (3) Violation of physical placement rights by the custodial parent does not constitute reason for failure to meet child support obligations.
- (4) The court shall order either party or both to pay for the support of any child of the parties who is less than 18 years old, or any child of the parties who is less than 19 years old if the child is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent.
- (4m)
 - (a) In this subsection, "health insurance" does not include medical assistance provided under subch. IV of ch. 49.
 - (b) In addition to ordering child support for a child under sub. (1), the court shall specifically assign responsibility for and direct the manner of payment of the child's health care expenses. In assigning responsibility for a child's health care expenses, the court shall consider whether a child is covered under a parent's health insurance policy or plan at the time the court approves a stipulation for child support under s. 767.10, enters a judgment of annulment, divorce or legal separation, or enters an order or a judgment in a paternity action or in an action under s. 767.02 (1) (f) or (j), 767.08 or 767.62 (3), the availability of health insurance to each parent through an employer or other organization, the extent of coverage available to a child and the costs to the parent for the coverage of the child. A parent may be required to initiate or continue health care insurance coverage for a child under this subsection. If a parent is required to do so, he or she shall provide copies of necessary program or policy identification to the custodial parent and is liable for any health care costs for which he or she receives direct payment from an insurer. This subsection shall not be construed to limit the authority of the court to enter or modify support orders containing provisions for payment of medical expenses, medical costs, or insurance premiums which are in addition to and not inconsistent with this subsection.
 - (c)
 1. In directing the manner of payment of a child's health care expenses, the court may order that payment, including payment for health insurance premiums, be withheld from income and sent to the appropriate health care insurer,

provider or plan, as provided in s. 767.265 (3h), or sent to the department or its designee, whichever is appropriate, for disbursement to the person for whom the payment has been awarded if that person is not a health care insurer, provider or plan. If the court orders income withholding and assignment for the payment of health care expenses, the court shall send notice of assignment in the manner provided under s. 767.265 (2r) and may include the notice of assignment under this subdivision with a notice of assignment under s. 767.265. The department or its designee, whichever is appropriate, shall keep a record of all moneys received and disbursed by the department or its designee for health care expenses that are directed to be paid to the department or its designee.

2. If the court orders a parent to initiate or continue health insurance coverage for a child under a health insurance policy that is available to the parent through an employer or other organization but the court does not specify the manner in which payment of the health insurance premiums shall be made, the clerk of court may provide notice of assignment in the manner provided under s. 767.265 (2r) for the withholding from income of the amount necessary to pay the health insurance premiums. The notice of assignment under this subdivision may be sent with or included as part of any other notice of assignment under s. 767.265, if appropriate. A person who receives notice of assignment under this subdivision shall send the withheld health insurance premiums to the appropriate health care insurer, provider or plan, as provided in s. 767.265 (3h).

(d) If the court orders a parent to provide coverage of the health care expenses of the parent's child and the parent is eligible for family coverage of health care expenses under a health benefit plan that is provided by an employer on an insured or on a self-insured basis, the employer shall do all of the following:

1. Permit the parent to obtain family coverage of health care expenses for the child, if eligible for coverage, without regard to any enrollment period or waiting period restrictions that may apply.
2. Provide family coverage of health care expenses for the child, if eligible for coverage, upon application by the parent, the child's other parent, the department or the county child support agency under s. 59.53 (5), or upon receiving a notice under par. (f) 1.

2m. Notify the county child support agency under s. 59.53 (5) when coverage of the child under the health benefit plan is in effect and, upon request, provide copies of necessary program or policy identification to the child's other parent.

3. After the child has coverage under the employer's health benefit plan, and as long as the parent is eligible for family coverage under the employer's health benefit plan, continue to provide coverage for the child unless the employer receives satisfactory written evidence that the court order is no longer in effect or that the child has coverage of health care expenses under another health insurance policy or health benefit plan that provides comparable coverage of health care expenses.

(e)

1. If a parent who has been ordered by a court to provide coverage of the health care expenses of a child who is eligible for medical assistance under subch. IV of ch. 49 receives payment from a 3rd party for the cost of services provided to the child but does not pay the health care provider for the services or reimburse the department 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.

2. Section 767.265 (4) applies to a garnishment based on a judgment obtained under subd. 1.

(f)

1. If a parent who provides coverage of the health care expenses of a child under an order under this subsection 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.

2. 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 subdivision may be heard by a circuit court commissioner. If the parent requests a hearing and the court or circuit court commissioner 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.

(5) Subject to ss. 767.51 (4) and 767.62 (4m), liability for past support shall be limited to the period after the birth of the child.

(6) A party ordered to pay child support under this section shall pay simple interest at the rate of 1% per month on any amount in arrears that is equal to or greater than the amount of child support due in one month. If the party no longer has a current obligation to pay child support, interest at the rate of 1% per month shall accrue on the total amount of child support in arrears, if any. Interest under this subsection 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. 767.29. Except as provided in s. 767.29 (1m), the department or its designee, whichever is appropriate, shall apply all payments received for child support as follows:

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

(b) Second, to payment of unpaid child support due before the payment is received.

(c) Third, to payment of interest accruing on unpaid child support.

(7) An order of joint legal custody under s. 767.24 does not affect the amount of child support ordered.

767.253 Seek-work orders.

In an action for modification of a child support order under s. 767.32 or an action in which an order for child support is required under s. 767.25 (1), 767.51 (3) or 767.62 (4), the court may order either or both parents of the child to seek employment or participate in an employment or training program.

767.255 Property division.

(1) Upon every judgment of annulment, divorce or legal separation, or in rendering a judgment in an action under s. 767.02 (1) (h), the court shall divide the property of the parties and divest and transfer the title of any such property accordingly. A certified copy of the portion of the judgment that affects title to real estate shall be recorded in the office of the register of deeds of the county in which the lands so affected are situated. The court may protect and promote the best interests of the children by setting aside a portion of the property of the parties in a separate fund or trust for the support, maintenance, education and general welfare of any minor children of the parties.

(2)

(a) Except as provided in par. (b), any property shown to have been acquired by either party prior to or during the course of the marriage in any of the following ways shall remain the property of that party and is not subject to a property division under this section:

1. As a gift from a person other than the other party.

2. By reason of the death of another, including, but not limited to, life insurance proceeds; payments made under a deferred employment benefit plan, as defined in s. 766.01 (4) (a), or an individual retirement account; and property acquired by right of survivorship, by a trust distribution, by bequest or inheritance or by a payable on death or a transfer on death arrangement under ch. 705.

3. With funds acquired in a manner provided in subd. 1. or 2.

(b) Paragraph (a) does not apply if the court finds that refusal to divide the property will create a hardship on the other party or on the children of the marriage. If the court makes such a finding, the court may divest the party of the property in a fair and equitable manner.

(3) The court shall presume that all property not described in sub. (2) (a) is to be divided equally between the parties, but may alter this distribution without regard to marital misconduct after considering all of the following:

(a) The length of the marriage.

(b) The property brought to the marriage by each party.

(c) Whether one of the parties has substantial assets not subject to division by the court.

(d) The contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services.

(e) The age and physical and emotional health of the parties.

(f) The contribution by one party to the education, training or increased earning power of the other.

(g) The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.

(h) The desirability of awarding the family home or the right to live therein for a reasonable period to the party having physical placement for the greater period of time.

(i) The amount and duration of an order under s. 767.26 granting maintenance payments to either party, any order for periodic family support payments under s. 767.261 and whether the property division is in lieu of such payments.

(j) Other economic circumstances of each party, including pension benefits, vested or unvested, and future interests.

(k) The tax consequences to each party.

(L) Any written agreement made by the parties before or during the marriage concerning any arrangement for property distribution; such agreements shall be binding upon the court except that no such agreement shall be binding where the

terms of the agreement are inequitable as to either party. The court shall presume any such agreement to be equitable as to both parties.

(m) Such other factors as the court may in each individual case determine to be relevant.

767.26 Maintenance payments.

Upon every judgment of annulment, divorce or legal separation, or in rendering a judgment in an action under s. 767.02 (1) (g) or (j), the court may grant an order requiring maintenance payments to either party for a limited or indefinite length of time after considering:

- (1) The length of the marriage.
- (2) The age and physical and emotional health of the parties.
- (3) The division of property made under s. 767.255.
- (4) The educational level of each party at the time of marriage and at the time the action is commenced.
- (5) The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.
- (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, and, if so, the length of time necessary to achieve this goal.
- (7) The tax consequences to each party.
- (8) Any mutual agreement made by the parties before or during the marriage, according to the terms of which one party has made financial or service contributions to the other with the expectation of reciprocation or other compensation in the future, where such repayment has not been made, or any mutual agreement made by the parties before or during the marriage concerning any arrangement for the financial support of the parties.
- (9) The contribution by one party to the education, training or increased earning power of the other.
- (10) Such other factors as the court may in each individual case determine to be relevant.

767.261 Family support.

The court may make a financial order designated "family support" as a substitute for child support orders under s. 767.25 and maintenance payment orders under s. 767.26. A party ordered to pay family support under this section shall pay simple interest at the rate of 1% per month on any amount in arrears that is equal to or greater than the amount of child support due in one month. If the party no longer has a current obligation to pay child support, interest at the rate of 1% 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. 767.29. Except as provided in s. 767.29 (1m), the department or its designee, whichever is appropriate, shall apply all payments received for family support 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.

767.262 Award of attorney fees.

(1) The court, after considering the financial resources of both parties, may do the following:

(a) Order either party to pay a reasonable amount for the cost to the other party of maintaining or responding to an action affecting the family and for attorney fees to either party.

(b) If one party receives services under s. 49.22 or services provided by the state or county as a result of an assignment of income under s. 49.19, order the other party to pay any fee chargeable under s. 49.22 (6) or the cost of services rendered by the state or county under s. 49.19.

(2) Any amount ordered under sub. (1) may include sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment.

(3) The court may order that the amount be paid directly to the attorney or to the state or the county providing services under s. 49.22 or 49.19, who may enforce the order in its name.

(4)

(a) Except as provided in par. (b), no court may order payment of costs under this section by the state or any county which may be a party to the action.

(b) The court may order payment of costs under this section by the department or its designee, whichever is appropriate, in an action in which the court finds that the record of payments and arrearages kept by the department or its designee is substantially incorrect and that the department or its designee has failed to correct the record within 30 days after having received information that the court determines is sufficient for making the correction.

767.263 Notice of change of employer, change of address and change in ability to pay; other information.

(1) Each order for child support, family support, or maintenance payments shall include an order that the payer and payee notify the county child support agency under s. 59.53 (5) of any change of address within 10 business days of such change. Each order for child support, family support, or maintenance payments shall also include an order that the payer notify the county child support agency under s. 59.53 (5) and the payee, within 10 business days, of any change of employer and of any substantial change in the amount of his or her income, including receipt of bonus compensation, such that his or her ability to pay child support, family support, or maintenance is affected. The order shall also include a statement that clarifies that notification of any substantial change in the amount of the payer's income will not result in a change of the order unless a revision of the order under s. 767.32 or an annual adjustment of the child or family support amount under s. 767.33 is sought.

(2) When an order is entered under sub. (1), each party shall provide to the county child support agency under s. 59.53 (5) his or her social security number, residential and mailing addresses, telephone number, operator's license number and the name, address and telephone number of his or her employer. A party shall advise the county child support agency under s. 59.53 (5) of any change in the information provided under this subsection within 10 business days after the change.

767.265 Income withholding.

(1) Each order for child support under this chapter, for maintenance payments under s. 767.23 or 767.26, for family support under this chapter, for costs ordered under s. 767.51 (3) or 767.62 (4), for support by a spouse under s. 767.02 (1) (f), or for maintenance payments under s. 767.02 (1) (g), each order for or obligation to pay the annual receiving and disbursing fee under s. 767.29 (1) (d), each order for a revision in a judgment or order with respect to child support, maintenance, or family support payments under s. 767.32, each stipulation approved by the court or a circuit court commissioner for child support under this chapter, and each order for child or spousal support entered under s. 948.22 (7) constitutes an assignment of all commissions, earnings, salaries, wages, pension benefits, benefits under ch. 102 or 108, lottery prizes that are payable in installments, and other money due or to be due in the future to the department or its designee. The assignment shall be for an amount sufficient to ensure payment under the order, obligation, or stipulation and to pay any arrearages due at a periodic rate not to exceed 50% of the amount of support due under the order, obligation, or stipulation so long as the addition of the amount toward arrearages does not leave the party at an income below the poverty line established under 42 USC 9902 (2).

(1m) If a party's current obligation to pay maintenance, child support, spousal support, or family support terminates but the party has an arrearage in the payment of one or more of those payments or in the payment of the annual receiving and disbursing fee, any assignment under sub. (1) shall continue in effect, in an amount up to the amount of the assignment before the party's current obligation terminated, until the arrearage is paid in full.

(2h) If a court-ordered assignment, including the assignment specified under sub. (1) for the payment of any arrearages due, does not require immediately effective withholding and a payer fails to make a required maintenance, child support, spousal support, family support or annual receiving and disbursing fee payment within 10 days after its due date, within 20 days after the payment's due date the court, circuit court commissioner or county child support agency under s. 59.53 (5) shall cause the assignment to go into effect by providing notice of the assignment in the manner provided under sub. (2r) and shall send a notice by regular mail to the last-known address of the payer. The notice sent to the payer shall inform the payer that an assignment is in effect and that the payer may, within a 10-day period, by motion request a hearing on the issue of whether the assignment should remain in effect. The court or circuit court commissioner shall hold a hearing requested under this subsection within 10 working days after the date of the request. If at the hearing the payer establishes that the assignment is not proper because of a mistake of fact, the court or circuit court commissioner may direct that the assignment be withdrawn. Either party may, within 15 working days after the date of a decision by a circuit court commissioner under this subsection, seek review of the decision by the court with jurisdiction over the action.

(2m)

(a)

1. An obligation to pay unpaid fees under s. 767.29 (1) (dm) 1m. constitutes an assignment of all commissions, earnings, salaries, wages, pension benefits, benefits under ch. 102 or 108, lottery prizes that are payable in installments and other money due or to be due in the future to the department or its designee.

2. An obligation to pay unpaid fees under s. 767.29 (1) (dm) 2m. constitutes an assignment of all commissions, earnings, salaries, wages, pension benefits, benefits under ch. 102 or 108, lottery prizes that are payable in installments and other money due or to be due in the future to the clerk of court to whom the fees are owed, or to his or her successor.

(b) The county child support agency under s. 59.53 (5) may cause an assignment under par. (a) to go into effect by providing notice of the assignment in the manner provided under sub. (2r) and sending a notice by regular mail to the

last-known address of the payer. The notice sent to the payer shall inform the payer that an assignment is in effect and that the payer may, within a 10-day period, by motion request a hearing on the issue of whether the assignment should remain in effect. The court or circuit court commissioner shall hold a hearing requested under this paragraph within 10 working days after the date of the request. If at the hearing the payer establishes that the assignment is not proper because of a mistake of fact, the court or circuit court commissioner may direct that the assignment be withdrawn. The payer or the county child support agency may, within 15 working days after the date of a decision by a circuit court commissioner under this paragraph, seek review of the decision by the court with jurisdiction over the action.

(2r) Upon entry of each order for child support, maintenance, family support, support by a spouse or the annual receiving and disbursing fee, and upon approval of each stipulation for child support, unless the court finds that income withholding is likely to cause the payer irreparable harm or unless s. 767.267 applies, the court, circuit court commissioner or county child support agency under s. 59.53 (5) shall provide notice of the assignment by regular mail or by facsimile machine, as defined in s. 134.72 (1) (a), or other electronic means to the last-known address of the person from whom the payer receives or will receive money. The notice shall provide that the amount withheld may not exceed the maximum amount that is subject to garnishment under 15 USC 1673 (b) (2). If the department or its designee, whichever is appropriate, does not receive the money from the person notified, the court, circuit court commissioner or county child support agency under s. 59.53 (5) shall provide notice of the assignment to any other person from whom the payer receives or will receive money. Notice under this subsection may be a notice of the court, a copy of the executed assignment or a copy of that part of the court order directing payment.

(3h) A person who receives notice of assignment under this section or s. 767.23 (1) (L) or 767.25 (4m) (c) or similar laws of another state shall withhold the amount specified in the notice from any money that person pays to the payer later than one week after receipt of notice of assignment. Within 5 days after the day the person pays money to the payer, the person shall send the amount withheld to the department or its designee, whichever is appropriate, or, in the case of an amount ordered withheld for health care expenses, to the appropriate health care insurer, provider or plan. With each payment sent to the department or its designee, the person from whom the payer receives money shall report to the department or its designee the payer's gross income or other gross amount from which the payment was withheld. Except as provided in sub. (3m), for each payment sent to the department or its designee, the person from whom the payer receives money shall receive an amount equal to the person's necessary disbursements, not to exceed \$3, which shall be deducted from the money to be paid to the payer. Section 241.09 does not apply to assignments under this section.

(3m) Benefits under ch. 108 may be assigned and withheld only in the manner provided in s. 108.13 (4). Any order to withhold benefits under ch. 108 shall be for a fixed sum unless the court-ordered obligation on which the withholding order is based is expressed in the court order as a percentage of the payer's income, in which case an order to withhold benefits under ch. 108 shall be for a percentage of benefits payable. When money is to be withheld from these benefits, no fee may be deducted from the amount withheld and no fine may be levied for failure to withhold the money.

(4) A withholding assignment or order under this section or s. 767.23 (1) (L) or 767.25 (4m) (c) has priority over any other assignment, garnishment or similar legal process under state law.

(6)

(a) Except as provided in sub. (3m), if after receipt of notice of assignment the person from whom the payer receives money fails to withhold the money or send the money to the department or its designee or the appropriate health care insurer, provider or plan as provided in this section or s. 767.23 (1) (L) or 767.25 (4m) (c), the person may be proceeded against under the principal action under ch. 785 for contempt of court or may be proceeded against under ch. 778 and be

required to forfeit not less than \$50 nor more than an amount, if the amount exceeds \$50, that is equal to 1% of the amount not withheld or sent.

(b) If an employer who receives an assignment under this section or s. 767.23 (1) (L) or 767.25 (4m) (c) fails to notify the department or its designee, whichever is appropriate, within 10 days after an employee is terminated or otherwise temporarily or permanently leaves employment, the employer may be proceeded against under the principal action under ch. 785 for contempt of court.

(c) No employer may use an assignment under this section or s. 767.23 (1) (L) or 767.25 (4m) (c) as a basis for the denial of employment to a person, the discharge of an employee or any disciplinary action against an employee. An employer who denies employment or discharges or disciplines an employee in violation of this paragraph may be fined not more than \$500 and may be required to make full restitution to the aggrieved person, including reinstatement and back pay. Except as provided in this paragraph, restitution shall be in accordance with s. 973.20. An aggrieved person may apply to the district attorney or to the department for enforcement of this paragraph.

(d) Compliance by the person from whom the payer receives money with the order operates as a discharge of the person's liability to the payer as to that portion of the payer's commission, earnings, salaries, wages, benefits or other money so affected.

(6m) A county child support agency under s. 59.53 (5) may convert a support amount in an order for income withholding under this section that is expressed as a percentage of income to the equivalent sum certain amount for purposes of enforcing a child support order in another state under subch. V or VI of ch. 769. Nothing in this subsection authorizes a change, or may be construed to change, the support obligation specified in the underlying child support order.

(7) A person who receives more than one notice of assignment under sub. (3h) may send all money withheld to the department or its designee, whichever is appropriate, in a combined payment, accompanied by any information the department or its designee requires.

(7m)

(a) In this subsection, "payroll period" has the meaning given in s. 71.63 (5).

(b) If after an assignment is in effect the payer's employer changes its payroll period, or the payer changes employers and the new employer's payroll period is different from the former employer's payroll period, the clerk of court may, unless otherwise ordered by a judge, amend the withholding assignment or order so that all of the following apply:

1. The withholding frequency corresponds to the new payroll period.
2. The amounts to be withheld reflect the adjustment to the withholding frequency.

(c) The clerk of court shall provide notice of the amended withholding assignment or order by regular mail to the payer's employer and to the payer.

(8) In this section, "employer" includes the state and its political subdivisions.

767.266 Effect on transfers at death.

(1) Revocation of death provisions in marital property agreement. Unless the judgment provides otherwise, a judgment of annulment, divorce or legal separation revokes a provision in a marital property agreement under s. 766.58 that provides for any of the following:

(a) That, upon the death of either spouse, any of either or both spouses' property, including after-acquired property, passes without probate to a designated person, trust or other entity by nontestamentary disposition.

(b) That one or both spouses will make a particular disposition in a will or other governing instrument, as defined in s. 854.01.

(2) Revocation of revocable transfers at death. Unless sub. (1) applies, revocation of revocable transfers at death by a former spouse to the other former spouse, or to relatives of the other former spouse, under an instrument executed before the judgment of annulment, divorce or legal separation is governed by s. 854.15.

767.27 Disclosure of assets required.

(1) In any action affecting the family, except an action to affirm marriage under s. 767.02 (1) (a), the court shall require each party to furnish, on such standard forms as the court may require, full disclosure of all assets owned in full or in part by either party separately or by the parties jointly. Such disclosure may be made by each party individually or by the parties jointly. Assets required to be disclosed shall include, but shall not be limited to, real estate, savings accounts, stocks and bonds, mortgages and notes, life insurance, interest in a partnership, limited liability company or corporation, tangible personal property, income from employment, future interests whether vested or nonvested, and any other financial interest or source. The court shall also require each party to furnish, on the same standard form, information pertaining to all debts and liabilities of the parties. The form used shall contain a statement in conspicuous print that complete disclosure of assets and debts is required by law and deliberate failure to provide complete disclosure constitutes perjury. The court may on its own initiative and shall at the request of either party require the parties to furnish copies of all state and federal income tax returns filed by them for the past 2 years, and may require copies of such returns for prior years.

(1m) In any action affecting the family which involves a minor child, the court shall require, in addition to the disclosure under sub. (1), that each party furnish the court with information regarding the types and costs of any health insurance policies or plans which are offered through each party's employer or other organization. This disclosure shall include a copy of any health care policy or plan which names the child as a beneficiary at the time that the disclosure is filed under sub. (2).

(2) 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 such other time as ordered by the court or circuit court commissioner. Information contained on such forms shall be updated on the record to the date of hearing.

(2m) In every action in which the court has ordered a party to pay child or family support under this chapter, including an action to revise a judgment or order under s. 767.32, the court shall require the parties annually to 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. 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 s. 814.04 (1), reasonable attorney fees.

(3)

(a) Except as provided in par. (b), information disclosed under this section shall be 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 by either party timely to file a complete disclosure statement as required by this section shall authorize the court to 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) If any party deliberately or negligently fails to disclose information required by sub. (1) and in consequence thereof any asset or assets with a fair market value of \$500 or more is omitted from the final distribution of property, the party aggrieved by such 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, said trust to include such terms and conditions as the court may determine. The court shall grant the petition upon a finding of a failure to disclose such assets as required under sub. (1).

767.275 Disposition of assets prior to action.

In any action affecting the family, except an action to affirm marriage under s. 767.02 (1) (a), any asset with a fair market value of \$500 or more which would be considered part of the estate of either or both of the parties if owned by either or both of them at the time of the action, but which was transferred for inadequate consideration, wasted, given away or otherwise unaccounted for by one of the parties within one year prior to the filing of the petition or the length of the marriage, whichever is shorter, shall be rebuttably presumed to be part of the estate for the purposes of s. 767.255 and shall be subject to the disclosure requirement of s. 767.27. Transfers which resulted in an exchange of assets of substantially equivalent value need not be specifically disclosed where such assets are otherwise identified in the statement of net worth.

767.28 Maintenance, legal custody and support when divorce or separation denied.

In a judgment in an action for divorce or legal separation, although such divorce or legal separation is denied, the court may make such order for the legal custody of and periods of physical placement with any of the minor children and for the maintenance of either spouse and support of such children by either spouse out of property or income, as the nature of the case may render just and reasonable. If the court orders child support under this section, the court shall determine the child support payments in a manner consistent with s. 767.25, regardless of the fact that the court has not entered a judgment of divorce or legal separation.

767.29 Maintenance, child support and family support payments, receipt and disbursement; circuit court commissioner, fees and compensation.

(1)

(a) All orders or judgments providing for temporary or permanent maintenance, child support or family support payments shall direct the payment of all such sums to the department or its designee for the use of the person for whom the same has been awarded. A party securing an order for temporary maintenance, child support or family support payments shall forthwith file the order, together with all pleadings in the action, with the clerk of court.

(b) Upon request, after the filing of an order or judgment or the receipt of an interim disbursement order, the clerk of court shall advise the county child support agency under s. 59.53 (5) of the terms of the order or judgment within 2 business days after the filing or receipt. The county child support agency shall, within the time required by federal law, enter the terms of the order or judgment into the statewide support data system, as required by s. 59.53 (5) (b).

(c) Except as provided in sub. (1m), the department or its designee shall disburse the money received under the judgment or order in the manner required by federal regulations and take receipts therefor, unless the department or its designee is unable to disburse the moneys because they were paid by check or other draft drawn upon an account containing insufficient funds. All moneys received or disbursed under this section shall be entered in a record kept by the department or its designee, whichever is appropriate, which shall be open to inspection by the parties to the action, their attorneys and the circuit court commissioner.

(d) For receiving and disbursing maintenance, child support, or family support payments, including arrears in any of those payments, and for maintaining the records required under par. (c), the department or its designee shall collect an annual fee of \$35. The court or circuit court commissioner shall order each party ordered to make payments to pay the annual fee under this paragraph in each year for which payments are ordered or in which an arrearage in any of those payments is owed. In directing the manner of payment of the annual fee, the court or circuit court commissioner shall order that the annual fee be withheld from income and sent to the department or its designee, as provided under s. 767.265. All fees collected under this paragraph shall be deposited in the appropriation account under s. 20.445 (3) (ja). At the time of ordering the payment of an annual fee under this paragraph, the court or circuit court commissioner shall notify each party ordered to make payments of the requirement to pay the annual fee and of the amount of the annual fee. If the annual fee under this paragraph is not paid when due, the department or its designee may not deduct the annual fee from any maintenance, child or family support, or arrearage payment, but may move the court for a remedial sanction under ch. 785.

(dm)

1m. The department or its designee may collect any unpaid fees under s. 814.61 (12) (b), 1997 stats., that are shown on the department's automated payment and collection system on December 31, 1998, and shall deposit all fees collected under this subdivision in the appropriation account under s. 20.445 (3) (ja). The department or its designee may collect unpaid fees under this subdivision through income withholding under s. 767.265 (2m). If the department or its designee determines that income withholding is inapplicable, ineffective, or insufficient for the collection of any unpaid fees under this subdivision, the department or its designee may move the court for a remedial sanction under ch. 785. The department or its designee may contract with or employ a collection agency or other person for the collection of any unpaid fees under this subdivision and, notwithstanding s. 20.930, may contract with or employ an attorney to appear in any action in state or federal court to enforce the payment obligation. The department or its designee may not deduct the amount of unpaid fees from any maintenance, child or family support, or arrearage payment.

2m. A clerk of court may collect any unpaid fees under s. 814.61 (12) (b), 1997 stats., that are owed to the clerk of court, or to his or her predecessor, and that were not shown on the department's automated payment and collection system on December 31, 1998, through income withholding under s. 767.265 (2m). If the clerk of court determines that income withholding is inapplicable, ineffective or insufficient for the collection of any unpaid fees under this subdivision, the clerk of court may move the court for a remedial sanction under ch. 785.

(e) If the maintenance, child support or family support payments adjudged or ordered to be paid 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 such proceedings as he or she considers advisable 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 counsel who represented each party when the maintenance, child support or family support payments were awarded. In case 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.

(f) If the department determines that the statewide automated support and maintenance receipt and disbursement system will be operational before October 1, 1999, the department shall publish a notice in the Wisconsin Administrative Register that states the date on which the system will begin operating. Before that date or October 1, 1999, whichever is earlier, the circuit courts, county child support agencies under s. 59.53 (5), clerks of court and employers shall cooperate with the department in any measures taken to ensure an efficient and orderly transition from the countywide system of support receipt and disbursement to the statewide system.

(1m) Notwithstanding ss. 767.25 (6) and 767.261, if the department or its designee receives support or maintenance money that exceeds the amount due in the month in which it is received and that the department or its designee determines is for support or maintenance due in a succeeding month, the department or its designee may hold the amount of overpayment that does not exceed the amount due in the next month for disbursement in the next month if any of the following applies:

(a) The payee or the payer requests that the overpayment be held until the month when it is due.

(b) The court or circuit court commissioner has ordered that overpayments of child support, family support or maintenance that do not exceed the amount of support or maintenance due in the next month may be held for disbursement in the next month.

(c) The party entitled to the support or maintenance money has applied for or is receiving aid to families with dependent children and there is an assignment to the state under s. 49.19 (4) (h) 1. b.

of the party's right to the support or maintenance money.

(cm) A kinship care relative or a long-term kinship care relative of the child who is entitled to the support money has applied for or is receiving kinship care payments or long-term kinship care payments for that child and there is an assignment to the state under s. 48.57 (3m) (b) 2. or (3n) (b) 2. of the child's right to the support money.

(d) The department or its designee determines that the overpayment should be held until the month when it is due.

(2) If any party entitled to maintenance payments or support money, or both, is receiving public assistance under ch. 49, the party may assign the party's right thereto to the county department under s. 46.215, 46.22 or 46.23 granting such assistance. Such assignment shall be approved by order of the court granting the maintenance payments or support money, and may be terminated in like manner; except that it shall not be terminated in cases where there is any delinquency in the amount of maintenance payments and support money previously ordered or adjudged to be paid to the assignee without the written consent of the assignee or upon notice to the assignee and hearing. When an assignment of maintenance payments or support money, or both, has been approved by the order, the assignee shall be deemed a real party in interest within s. 803.01 but solely for the purpose of securing payment of unpaid maintenance payments or support money adjudged or ordered to be paid, by participating in proceedings to secure the payment thereof. Notwithstanding assignment under this subsection, and without further order of the court, the department or its designee, upon receiving notice that a party or a minor child of the parties is receiving public assistance under ch. 49 or

that a kinship care relative or long-term kinship care relative of the minor child is receiving kinship care payments or long-term kinship care payments for the minor child, shall forward all support assigned under s. 48.57 (3m) (b) 2. or (3n) (b) 2., 49.19 (4) (h) 1. or 49.45 (19) to the assignee under s. 48.57 (3m) (b) 2. or (3n) (b) 2., 49.19 (4) (h) 1. or 49.45 (19).

(3)

(a) If maintenance payments or support money, or both, is ordered to be paid for the benefit of any person, who is committed by court order to an institution or is in confinement, or whose legal custody is vested by court order under ch. 48 or 938 in an agency, department or relative, the court or a circuit court commissioner may order such maintenance payments or support money to be paid to the relative or agency, institution, welfare department or other entity having the legal or actual custody of said person, and to be used for the latter's care and maintenance, without the appointment of a guardian under ch. 880.

(b) If a child who is the beneficiary of support under a judgment or order is placed by court order in a residential care center for children and youth, juvenile correctional institution, or state mental institution, the right of the child to support during the period of the child's confinement, including any right to unpaid support accruing during that period, is assigned to the state. If the judgment or order providing for the support of a child who is placed in a residential care center for children and youth, juvenile correctional institution, or state mental institution includes support for one or more other children, the support that is assigned to the state shall be the proportionate share of the child placed in the center or institution, except as otherwise ordered by the court or circuit court commissioner on the motion of a party.

(4) If an order or judgment providing for the support of one or more children not receiving aid under s. 48.57 (3m) or (3n) or 49.19 includes support for a minor who is the beneficiary of aid under s. 48.57 (3m) or (3n) or 49.19, any support payment made under the order or judgment is assigned to the state under s. 48.57 (3m) (b) 2. or (3n) (b) 2. or 49.19 (4) (h) 1. b. in the amount that is the proportionate share of the minor receiving aid under s. 48.57 (3m) or (3n) or 49.19, except as otherwise ordered by the court on the motion of a party.

767.293 Affidavit for certain arrearages.

(1) If an order for child support under this chapter or s. 948.22 (7), an order for family support under this chapter or a stipulation approved by the court or circuit court commissioner for child support under this chapter requires a payer to pay child or family support in an amount that is expressed as a percentage of parental income, the payee, including the state or a county child support agency under s. 59.53 (5) if the state is a real party in interest under s. 767.075 (1), may establish an arrearage by filing an affidavit in the action in which the order for the payment of support was entered or the stipulation for support was approved. The affidavit shall state the amount of the arrearage and the facts supporting a reasonable basis on which the arrearage was determined and may state the payer's current income and the facts supporting a reasonable basis on which the payer's current income was determined. Not later than 60 days after filing the affidavit, the payee shall serve the affidavit on the payer in the manner provided in s. 801.11 (1) (a) or (b) or by sending the affidavit by registered or certified mail to the last-known address of the payer. After the payee files a proof of service on the payer, the court shall send a notice to the payer by regular, registered or certified mail to the payer's last-known address. The notice shall provide that, unless the payer requests a hearing to dispute the arrearage or the amount of the arrearage not later than 20 days after the date of the notice, the court or circuit court commissioner may enter an order against the payer in the amount stated in the affidavit and may provide notice of assignment under s. 767.265. The notice shall include the mailing address to which the request for hearing must be mailed or delivered in order to schedule a hearing under sub. (2).

(2) If the payer makes a timely request for a hearing, the court or circuit court commissioner shall hold a hearing on the issue of the amount of the arrearage, if any. If the court or circuit court commissioner determines after hearing that an arrearage exists, the court or circuit court commissioner shall enter an order establishing an arrearage in the amount determined by the court or circuit court commissioner and may send notice of assignment under s. 767.265.

(3) If the court or circuit court commissioner sends the notice under sub. (1) and the payer fails to make a timely request for a hearing, the court or circuit court commissioner, if the affidavit demonstrates to the satisfaction of the court or circuit court commissioner that an arrearage exists, shall enter an order establishing an arrearage in the amount determined by the court or circuit court commissioner and may send notice of assignment under s. 767.265. The court or circuit court commissioner shall send the order to the payer's last-known address and shall inform the payer whether an assignment is in effect and that the payer may, within a 10-day period, by motion request a hearing on the issue of whether the order should be vacated or the assignment should be withdrawn.

(4) An assignment under sub. (2) or (3) shall replace any assignment in effect for the order or stipulation on which the arrearage is based. An assignment under sub. (2) or (3) shall be for an amount sufficient to ensure payment under the order or stipulation on which the arrearage is based and to pay the arrearage determined under sub. (2) or (3), together with any arrearages due before the proceeding under this section, at a periodic rate not to exceed 50% of the amount of support due under the order or stipulation on which the arrearage determined under sub. (2) or (3) is based, except that the total amount withheld under the assignment may not leave the payer at an income below the poverty line established under 42 USC 9902 (2).

(5) The determination of an arrearage under this section may be enforced under s. 767.30 or 767.305.

(6) Section 814.025 applies to the filing of an affidavit under this section.

767.295 Work experience and job training orders and child support orders in certain cases.

(1) In this section, "custodial parent" means a parent who lives with his or her child for substantial periods of time.

(2)

(a) In an action for modification of a child support order under s. 767.32, an action in which an order for child support is required under s. 767.25 (1), 767.51 (3) or 767.62 (4) or a contempt of court proceeding to enforce a child support or family support order in a county that contracts under s. 49.36 (2), the court may order a parent who is not a custodial parent to register for a work experience and job training program under s. 49.36 if all of the following conditions are met:

1. The parent is able to work full time.

1m. If the parent resides in a county other than the county in which the court action or proceeding takes place, the parent resides in a county with a work experience and job training program under s. 49.36 and that county agrees to enroll the parent in the program.

2. The parent works, on average, less than 32 hours per week, and is not participating in an employment or training program which meets guidelines established by the department.

3. The parent's actual weekly gross income averages less than 40 times the federal minimum hourly wage under 29 USC 206 (a) (1) or the parent is earning less than the parent has the ability to earn, as determined by the court.

(b) Under this subsection, the parent is presumed to be able to work full time. The parent has the burden of proving that he or she is not able to work full time.

(c) If the court enters an order under par. (a), it shall order the parent to pay child support equal to the amount determined by applying the percentage standard established under s. 49.22 (9) to the income a person would earn by working 40 hours per week for the federal minimum hourly wage under 29 USC 206 (a) (1) or equal to the amount of child support that the parent was ordered to pay in the most recent determination of support under this chapter. The child support obligation ordered under this paragraph continues until the parent makes timely payment in full for 3 consecutive months or until the person participates in the program under s. 49.36 for 16 weeks, whichever comes first. The court shall provide in its order that the parent must make child support payments calculated under s. 767.25 (1j) or (1m) after the obligation to make payments ordered under this paragraph ceases.

767.30 Enforcement of payments ordered.

(1) If the court orders any payment for support under s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2), 938.183 (4), 938.355 (2) (b) 4., 938.357 (5m) (a) or 938.363 (2), support or maintenance under s. 767.08, child support, family support or maintenance under s. 767.23, child support under s. 767.25, maintenance under s. 767.26, family support under s. 767.261, attorney fees under s. 767.262, child support or a child's health care expenses under s. 767.477, paternity obligations under s. 767.458 (3), 767.51 or 767.62 (4), support arrearages under s. 767.293 or child or spousal support under s. 948.22 (7), the court may provide that any payment be paid in the amounts and at the times that it considers expedient.

(2) The court may impose liability for any payment listed under sub. (1) as a charge upon any specific real estate of the party liable or may require that party to give sufficient security for payment. However, no such charge upon real estate may become effectual until the order or judgment imposing liability or a certified copy of it is recorded in the office of the register of deeds in the county in which the real estate is situated.

(3) If the party fails to pay a payment ordered under sub. (1) or to give security under sub. (2), the court may by any appropriate remedy enforce the judgment, or the order as if it were a final judgment, including any past due payment and interest. Appropriate remedies include but are not limited to:

(a) Execution of the order or judgment.

(b) Contempt of court under ch. 785.

(c) Money judgment for past due payments.

(d) Satisfaction under s. 811.23 of any property attached under ch. 811.

(e) Garnishment under ch. 812.

(f) For failure to pay child support or family support, satisfaction under s. 780.10 out of the proceeds of the sale of any ship, boat or vessel attached and sold under ch. 780.

(4) Upon the request of a county, the department of natural resources shall provide the county with a list of the names and addresses of all of the owners of boats that have a valid certificate of number or registration that has been issued by the department under s. 30.52. The department shall prepare the list annually before May 31 of each year.

767.303 Enforcement of child support; suspension of operating privilege.

(1) If a person fails to pay a payment ordered for support under s. 767.077, support under s. 767.08, child support or family support under s. 767.23, child support under s. 767.25, family support under s. 767.261, revised child or family support under s. 767.32, child support under s. 767.458 (3), child support under s. 767.477, child support under s. 767.51, child support under s. 767.62 (4), child support under ch. 769 or child support under s. 948.22 (7), the payment is 90 or more days past due and the court finds that the person has the ability to pay the amount ordered, the court may suspend the person's operating privilege, as defined in s. 340.01 (40), until the person pays all arrearages in full or makes payment arrangements that are satisfactory to the court, except that the suspension period may not exceed 2 years. If otherwise eligible, the person is eligible for an occupational license under s. 343.10 at any time.

(2) Whenever the court orders suspension of a person's operating privilege under sub. (1), the court shall notify the department of transportation, in the form and manner prescribed by the department. The notice to the department shall include the name and last-known address of the person against whom the support order was entered, certification by the court that the person has been notified of the entry of the support order and that there are arrearages in support payments that are 90 or more days past due, the place where the arrearages may be paid and that the person's operating privilege shall remain suspended until the person pays all arrearages in full or makes payment arrangements that are satisfactory to the court, except that the suspension period may not exceed 2 years.

(3) If the person subsequently pays the full amount of the arrearages or makes payment arrangements that are satisfactory to the court, the court shall immediately notify the department of transportation of the payment, in the form and manner prescribed by the department.

(4) This section applies to support arrearages existing on or after October 1, 1996, regardless of when the arrearages accrued or when the order or judgment requiring the payment of support was entered.

(5) The remedy permitted under this section is in addition to any other remedies authorized by law.

767.305 Enforcement; contempt proceedings.

In all cases where a party has incurred a financial obligation under s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2), 767.23, 767.25, 767.255, 767.26, 767.261, 767.262, 767.293, 767.458 (3), 767.477, 767.51, 767.62 (4), 938.183 (4), 938.355 (2) (b) 4., 938.357 (5m) (a) or 938.363 (2) and has failed within a reasonable time or as ordered by the court to satisfy such obligation, and where the wage assignment proceeding under s. 767.265 and the account transfer under s. 767.267 are inapplicable, impractical or unfeasible, the court may on its own initiative, and shall on the application of the receiving party, issue an order requiring the payer to show cause at some reasonable time therein specified why he or she should not be punished for such misconduct as provided in ch. 785.

767.32 Revision of certain judgments.

(1)

(a) After a judgment or order providing for child support under this chapter or s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2), 938.183 (4), 938.355 (2) (b) 4., 938.357 (5m) (a), 938.363 (2), or 948.22 (7), maintenance payments under s. 767.26, or family support payments under this chapter, or for the appointment of trustees under s. 767.31, the court may, from time to time, on the petition, motion, or order to show cause of either of the parties, or upon the petition, motion, or order to show cause of the department, a county department under s. 46.215, 46.22, or 46.23, or a county child support agency under s. 59.53 (5) if an assignment has been made under s. 46.261, 48.57 (3m) (b) 2. or (3n) (b) 2., 49.19 (4) (h), or 49.45 (19) or if either party or their minor children receive aid under s. 48.57 (3m) or (3n) or ch. 49, and upon notice to the office of family court commissioner, revise and alter such judgment or order respecting the

amount of such maintenance or child support and the payment thereof, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any judgment or order respecting any of the matters that such court might have made in the original action, except that a judgment or order that waives maintenance payments for either party shall not thereafter be revised or altered in that respect nor shall the provisions of a judgment or order with respect to final division of property be subject to revision or modification. Except as provided in par. (d), a revision under this section of a judgment or order with respect to an amount of child or family support may be made only upon a finding of a substantial change in circumstances. In any action under this section to revise a judgment or order with respect to maintenance payments, a substantial change in the cost of living by either party or as measured by the federal bureau of labor statistics may be sufficient to justify a revision of judgment or order with respect to the amount of maintenance, except that a change in an obligor's cost of living is not in itself sufficient if payments are expressed as a percentage of income.

(b) In any action under this section to revise a judgment or order with respect to an amount of child support, any of the following shall constitute a rebuttable presumption of a substantial change in circumstances sufficient to justify a revision of the judgment or order:

1. Commencement of receipt of aid to families with dependent children under s. 49.19 or participation in Wisconsin works under ss. 49.141 to 49.161 by either parent since the entry of the last child support order, including a revision of a child support order under this section.
2. Unless the amount of child support is expressed in the judgment or order as a percentage of parental income, the expiration of 33 months after the date of the entry of the last child support order, including a revision of a child support order under this section.
3. Failure of the payer to furnish a timely disclosure under s. 767.27 (2m).
4. A difference between the amount of child support ordered by the court to be paid by the payer and the amount that the payer would have been required to pay based on the percentage standard established by the department under s. 49.22 (9) if the court did not use the percentage standard in determining the child support payments and did not provide the information required under s. 46.10 (14) (d), 301.12 (14) (d) or 767.25 (1n), whichever is appropriate.

(c) In any action under this section to revise a judgment or order with respect to an amount of child support, any of the following may constitute a substantial change of circumstances sufficient to justify revision of the judgment or order:

1. Unless the amount of child support is expressed in the judgment or order as a percentage of parental income, a change in the payer's income, evidenced by information received under s. 49.22 (2m) by the department or the county child support agency under s. 59.53 (5) or by other information, from the payer's income determined by the court in its most recent judgment or order for child support, including a revision of a child support order under this section.
2. A change in the needs of the child.
3. A change in the payer's earning capacity.
4. Any other factor that the court determines is relevant.

(d) In an action under this section to revise a judgment or order with respect to child or family support, the court is not required to make a finding of a substantial change in circumstances to change to a fixed sum the manner in which the amount of child or family support is expressed in the judgment or order.

(1m) In an action under sub. (1) to revise a judgment or order with respect to child support, maintenance payments or family support payments, the court may not revise the amount of child support, maintenance payments or family support payments due, or an amount of arrearages in child support, maintenance payments or family support payments that has accrued, prior to the date that notice of the action is given to the respondent, except to correct previous errors in calculations.

(1r) In an action under sub. (1) to revise a judgment or order with respect to child support or family support, the court may grant credit to the payer against support due prior to the date on which the petition, motion or order to show cause is served for payments made by the payer other than payments made as provided in s. 767.265 or 767.29, in any of the following circumstances:

(b) The payer shows by documentary evidence that the payments were made directly to the payee by check or money order, and shows by a preponderance of the evidence that the payments were intended for support and not intended as a gift to or on behalf of the child, or as some other voluntary expenditure, or for the payment of some other obligation to the payee.

(c) The payer proves by clear and convincing evidence, with evidence of a written agreement, that the payee expressly agreed to accept the payments in lieu of child or family support paid as provided in s. 767.265 or 767.29, not including gifts or contributions for entertainment.

(d) The payer proves by documentary evidence that, for a period during which unpaid support accrued, the child received benefits under 42 USC 402 (d) based on the payer's entitlement to federal disability insurance benefits under 42 USC 401 to 433. Any credit granted under this paragraph shall be limited to the amount of unpaid support that accrued during the period for which the benefits under 42 USC 402 (d) were paid.

(e) The payer proves by a preponderance of the evidence that the child lived with the payer, with the agreement of the payee, for more than 60 days beyond a court-ordered period of physical placement. Credit may not be granted under this paragraph if, with respect to the time that the child lived with the payer beyond the court-ordered period of physical placement, the payee sought to enforce the physical placement order through civil or criminal process or if the payee shows that the child's relocation to the payer's home was not mutually agreed to by both parents.

(f) The payer proves by a preponderance of the evidence that the payer and payee resumed living together with the child and that, during the period for which a credit is sought, the payer directly supported the family by paying amounts at least equal to the amount of unpaid court-ordered support that accrued during that period.

(2) Except as provided in sub. (2m) or (2r), if the court revises a judgment or order with respect to child support payments, it shall do so by using the percentage standard established by the department under s. 49.22 (9).

(2m) Upon request by a party, the court may modify the amount of revised child support payments determined under sub. (2) if, after considering the factors listed in s. 767.25 (1m), the court finds, by the greater weight of the credible evidence, that the use of the percentage standard is unfair to the child or to any of the parties.

(2r) If the court revises a judgment or order providing for child support that was entered under s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2), 938.183 (4), 938.355 (2) (b) 4., 938.357 (5m) (a)

or 938.363 (2), the court shall determine child support in the manner provided in s. 46.10 (14) or 301.12 (14), whichever is applicable.

(2s) In an action under sub. (1), the court may not approve a stipulation for the revision of a judgment or order with respect to an amount of child support or family support unless the stipulation provides for payment of an amount of child support or family support that is determined in the manner required under s. 46.10 (14), 301.12 (14), 767.25, 767.51 or 767.62 (4), whichever is appropriate.

(2w) A revision of a judgment or order with respect to child support, family support or maintenance payments has the effect of modifying the original judgment or order with respect to such payments to the extent of the revision from the date on which the order revising such payments is effective. The child support, family support or maintenance payments modified by the order for revision shall cease to accrue under the original judgment or order from the date on which the order revising such payments is effective.

(3) After a final judgment requiring maintenance payments has been rendered and the payee has remarried, the court shall, on application of the payer with notice to the payee and upon proof of remarriage, vacate the order requiring such payments.

(4) In any case in which the state is a real party in interest under s. 767.075, the department shall review the support obligation periodically and whenever circumstances so warrant, petition the court for revision of the judgment or order with respect to the support obligation.

(5) A summons or petition, motion or order to show cause under this section shall include notification of the availability of information under s. 767.081 (2).

767.325 Revision of legal custody and physical placement orders.

Except for matters under s. 767.327 or 767.329, the following provisions are applicable to modifications of legal custody and physical placement orders:

(1) Substantial modifications.

(a) Within 2 years after initial order. Except as provided under sub. (2), a court may not modify any of the following orders before 2 years after the initial order is entered under s. 767.24, unless a party seeking the modification, upon petition, motion, or order to show cause shows by substantial evidence that the modification is necessary because the current custodial conditions are physically or emotionally harmful to the best interest of the child:

1. An order of legal custody.

2. An order of physical placement if the modification would substantially alter the time a parent may spend with his or her child.

(b) After 2-year period.

1. Except as provided under par. (a) and sub. (2), upon petition, motion or order to show cause by a party, a court may modify an order of legal custody or an order of physical placement where the modification would substantially alter the time a parent may spend with his or her child if the court finds all of the following:

a. The modification is in the best interest of the child.

b. There has been a substantial change of circumstances since the entry of the last order affecting legal custody or the last order substantially affecting physical placement.

2. With respect to subd. 1., there is a rebuttable presumption that:

- a. Continuing the current allocation of decision making under a legal custody order is in the best interest of the child.
- b. Continuing the child's physical placement with the parent with whom the child resides for the greater period of time is in the best interest of the child.

3. A change in the economic circumstances or marital status of either party is not sufficient to meet the standards for modification under subd. 1.

(2) Modification of substantially equal physical placement orders. Notwithstanding sub. (1):

(a) If the parties have substantially equal periods of physical placement pursuant to a court order and circumstances make it impractical for the parties to continue to have substantially equal physical placement, a court, upon petition, motion or order to show cause by a party, may modify such an order if it is in the best interest of the child.

(b) In any case in which par. (a) does not apply and in which the parties have substantially equal periods of physical placement pursuant to a court order, a court, upon petition, motion or order to show cause of a party, may modify such an order based on the appropriate standard under sub. (1). However, under sub. (1) (b) 2., there is a rebuttable presumption that having substantially equal periods of physical placement is in the best interest of the child.

(2m) Modification of periods of physical placement for failure to exercise physical placement. Notwithstanding subs. (1) and (2), upon petition, motion or order to show cause by a party, a court may modify an order of physical placement at any time with respect to periods of physical placement if it finds that a parent has repeatedly and unreasonably failed to exercise periods of physical placement awarded under an order of physical placement that allocates specific times for the exercise of periods of physical placement.

(3) Modification of other physical placement orders.

Except as provided under subs. (1) and (2), upon petition, motion or order to show cause by a party, a court may modify an order of physical placement which does not substantially alter the amount of time a parent may spend with his or her child if the court finds that the modification is in the best interest of the child.

(4) Denial of physical placement. Upon petition, motion or order to show cause by a party or on its own motion, a court may deny a parent's physical placement rights at any time if it finds that the physical placement rights would endanger the child's physical, mental or emotional health.

(4m) Denial of physical placement for killing other parent.

(a) Notwithstanding subs. (1) to (4), upon petition, motion or order to show cause by a party or on its own motion, a court shall modify a physical placement order by denying a parent physical placement with a child if the parent has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of the child's other parent, and the conviction has not been reversed, set aside or vacated.

(b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that physical placement with the parent would be in the best interests of the child. The court shall consider the wishes of the child in making the determination.

(5) Reasons for modification. If either party opposes modification or termination of a legal custody or physical placement order under this section the court shall state, in writing, its reasons for the modification or termination.

(5m) Factors to consider. In all actions to modify legal custody or physical placement orders, the court shall consider the factors under s. 767.24 (5) (am), subject to s. 767.24 (5) (bm), and shall make its determination in a manner consistent with s. 767.24.

(6) Notice. No court may enter an order for modification under this section until notice of the petition, motion or order to show cause requesting modification has been given to the child's parents, if they can be found, and to any relative or agency having custody of the child.

(6m) Parenting plan. In any action to modify a legal custody or physical placement order under sub. (1), the court may require the party seeking the modification to file with the court a parenting plan under s. 767.24 (1m) before any hearing is held.

(7) Transfer to department. The court may order custody transferred to the department of health and family services only if that department agrees to accept custody.

(8) Petition, motion or order to show cause. A petition, motion or order to show cause under this section shall include notification of the availability of information under s. 767.081 (2).

(9) Applicability. Notwithstanding 1987 Wisconsin Act 355, section 73, as affected by 1987 Wisconsin Act 364, the parties may agree to the adjudication of a modification of a legal custody or physical placement order under this section in an action affecting the family that is pending on May 3, 1988.

767.327 Moving the child's residence within or outside the state.

(1) Notice to other parent.

(a) If the court grants periods of physical placement to more than one parent, it shall order a parent with legal custody of and physical placement rights to a child to provide not less than 60 days written notice to the other parent, with a copy to the court, of his or her intent to:

1. Establish his or her legal residence with the child at any location outside the state.
2. Establish his or her legal residence with the child at any location within this state that is at a distance of 150 miles or more from the other parent.
3. Remove the child from this state for more than 90 consecutive days.

(b) The parent shall send the notice under par. (a) by certified mail. The notice shall state the parent's proposed action, including the specific date and location of the move or specific beginning and ending dates and location of the removal, and that the other parent may object within the time specified in sub. (2) (a).

(2) Objection; prohibition; mediation.

(a) Within 15 days after receiving the notice under sub. (1), the other parent may send to the parent proposing the move or removal, with a copy to the court, a written notice of objection to the proposed action.

(b) If the parent who is proposing the move or removal receives a notice of objection under par. (a) within 20 days after sending a notice under sub. (1) (a), the parent may not move with or remove the child pending resolution of the dispute, or final order of the court under sub. (3), unless the parent obtains a temporary order to do so under s. 767.23 (1) (bm).

(c) Upon receipt of a copy of a notice of objection under par. (a), the court or circuit court commissioner shall promptly refer the parents for mediation or other family court counseling services under s. 767.11 and may appoint a guardian ad litem. Unless the parents agree to extend the time period, if mediation or counseling services do not resolve the dispute within 30 days after referral, the matter shall proceed under subs. (3) to (5).

(3) Standards for modification or prohibition if move or removal contested.

(a)

1. Except as provided under par. (b), if the parent proposing the move or removal has sole legal or joint legal custody of the child and the child resides with that parent for the greater period of time, the parent objecting to the move or removal may file a petition, motion or order to show cause for modification of the legal custody or physical placement order affecting the child. The court may modify the legal custody or physical placement order if, after considering the factors under sub. (5), the court finds all of the following:

a. The modification is in the best interest of the child.

b. The move or removal will result in a substantial change of circumstances since the entry of the last order affecting legal custody or the last order substantially affecting physical placement.

2. With respect to subd. 1.:

a. There is a rebuttable presumption that continuing the current allocation of decision making under a legal custody order or continuing the child's physical placement with the parent with whom the child resides for the greater period of time is in the best interest of the child. This presumption may be overcome by a showing that the move or removal is unreasonable and not in the best interest of the child.

b. A change in the economic circumstances or marital status of either party is not sufficient to meet the standards for modification under that subdivision.

3. Under this paragraph, the burden of proof is on the parent objecting to the move or removal.

(b)

1. If the parents have joint legal custody and substantially equal periods of physical placement with the child, either parent may file a petition, motion or order to show cause for modification of the legal custody or physical placement order. The court may modify an order of legal custody or physical placement if, after considering the factors under sub. (5), the court finds all of the following:

a. Circumstances make it impractical for the parties to continue to have substantially equal periods of physical placement.

b. The modification is in the best interest of the child.

2. Under this paragraph, the burden of proof is on the parent filing the petition, motion or order to show cause.

(c)

1. If the parent proposing the move or removal has sole legal or joint legal custody of the child and the child resides with that parent for the greater period of time or the parents have substantially equal periods of physical placement with the child, as an alternative to the petition, motion or order to show cause under par. (a) or (b), the parent objecting to the move or removal may file a petition, motion or order to show cause for an order prohibiting the move or removal. The court may prohibit the move or removal if, after considering the factors under sub. (5), the court finds that the prohibition is in the best interest of the child.

2. Under this paragraph, the burden of proof is on the parent objecting to the move or removal.

(4) Guardian ad litem; prompt hearing. After a petition, motion or order to show cause is filed under sub. (3), the court shall appoint a guardian ad litem, unless s. 767.045 (1) (am)

applies, and shall hold a hearing as soon as possible.

(5) Factors in court's determination. In making its determination under sub. (3), the court shall consider all of the following factors:

(a) Whether the purpose of the proposed action is reasonable.

(b) The nature and extent of the child's relationship with the other parent and the disruption to that relationship which the proposed action may cause.

(c) The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent.

(5m) Discretionary factors to consider. In making a determination under sub. (3), the court may consider the child's adjustment to the home, school, religion and community.

(6) Notice required for other removals.

(a) Unless the parents agree otherwise, a parent with legal custody and physical placement rights shall notify the other parent before removing the child from his or her primary residence for a period of not less than 14 days.

(b) Notwithstanding par. (a), if notice is required under sub. (1), a parent shall comply with sub. (1).

(c) Except as provided in par. (b), subs. (1) to (5) do not apply to a notice provided under par. (a).

(7) Applicability. Notwithstanding 1987 Wisconsin Act 355, section 73, as affected by 1987 Wisconsin Act 364, the parties may agree to the adjudication of a modification of a legal custody or physical placement order under this section in an action affecting the family that is pending on May 3, 1988.

767.329 Revisions agreed to by stipulation.

If after an initial order is entered under s. 767.24, the parties agree to a modification in an order of physical placement or legal custody and file a stipulation with the court that specifies the agreed upon modification, the court shall incorporate the terms of the stipulation into a revised order of physical placement or legal custody.

767.33 Annual adjustments in support orders.

(1)

(a) An order for child or family support under this chapter may provide for an annual adjustment in the amount to be paid based on a change in the payer's income if the amount of child or family support is expressed in the order as a fixed sum and based on the percentage standard established by the department under s. 49.22 (9). No adjustment may be made under this section unless the order provides for the adjustment.

(b) An adjustment under this section may not be made more than once in a year and shall be determined on the basis of the percentage standard established by the department under s. 49.22 (9).

(c) In the order the court or circuit court commissioner shall specify what information the parties must exchange to determine whether the payer's income has changed, and shall specify the manner and timing of the information exchange.

(2) If the court or circuit court commissioner provides for an annual adjustment, the court or circuit court commissioner shall make available to the parties, including the state if the state is a real party in interest under s. 767.075 (1), a form approved by the court or circuit court commissioner for the parties to use in stipulating to an adjustment of the amount of child or family support and to modification of any applicable income-withholding order. The form shall include an order, to be signed by a judge or circuit court commissioner, for approval of the stipulation of the parties.

(3)

(a) If the payer's income changes from the amount found by the court or circuit court commissioner or stipulated to by the parties for the current child or family support order, the parties may implement an adjustment under this section by stipulating, on the form under sub. (2), to the changed income amount and the adjusted child or family support amount, subject to sub. (1) (b).

(b) The stipulation form must be signed by all parties, including the state if the state is a real party in interest under s. 767.075 (1), and filed with the court. If the stipulation is approved, the order shall be signed by a judge or circuit court commissioner and implemented in the same manner as an order for a revision under s. 767.32. An adjustment under this subsection shall be effective as of the date on which the order is signed by the judge or circuit court commissioner.

(4)

(a) Any party, including the state if the state is a real party in interest under s. 767.075 (1), may file a motion, petition, or order to show cause for implementation of an annual adjustment under this section if any of the following applies:

1. A party refuses to provide the information required by the court under sub. (1) (c).

2. The payer's income changes, but a party refuses to sign the stipulation for an adjustment in the amount of child or family support.

(b) If the court or circuit court commissioner determines after a hearing that an adjustment should be made, the court or circuit court commissioner shall enter an order adjusting the child or family support payments by the amount determined by the court or circuit court commissioner, subject to sub. (1) (b). An adjustment under this subsection may not take effect before the date on which the party responding to the motion, petition, or order to show cause received notice of the action under this subsection.

(c) Notwithstanding par. (b), the court or circuit court commissioner may direct that all or part of the adjustment not take effect until such time as the court or circuit court commissioner directs, if any of the following applies:

1. The payee was seeking an adjustment and the payer establishes that extraordinary circumstances beyond his or her control prevent fulfillment of the adjusted child or family support obligation.

2. The payer was seeking an adjustment and the payee establishes that the payer voluntarily and unreasonably reduced his or her income below his or her earning capacity.

3. The payer was seeking an adjustment and the payee establishes that the adjustment would be unfair to the child.

(d) If in an action under this subsection the court or circuit court commissioner determines that a party has unreasonably failed to provide the information required under sub. (1) (c) or to provide the information on a timely basis, or unreasonably failed or refused to sign a stipulation for an annual adjustment, the court or circuit court commissioner may award to the aggrieved party actual costs, including service costs, any costs attributable to time missed from employment, the cost of travel to and from court, and reasonable attorney fees.

(5)

(a) Nothing in this section affects a party's right to file at any time a motion, petition, or order to show cause under s. 767.32 for revision of a judgment or order with respect to an amount of child or family support.

(b) Nothing in this section affects a party's right to move the court for a finding of contempt of court or for remedial sanctions under ch. 785 if the other party unreasonably fails to provide or disclose information required under this section or unreasonably fails or refuses to sign a stipulation for an annual adjustment.

767.37 Effect of judgment.

(1)

(a) In any action affecting the family, if the court orders maintenance payments or other allowances for a party or children or retains jurisdiction in such matters, the written judgment shall include a provision that disobedience of the court order with respect to the same is punishable under ch. 785 by commitment to the county jail or house of correction until such judgment is complied with and the costs and expenses of the proceedings are paid or until the party committed is otherwise discharged, according to law. The written judgment in any action affecting the family shall include the social security numbers of the parties and of any child of the parties. The findings of fact and conclusions of law and the written judgment shall be drafted by the attorney for the moving party, and shall be submitted to the court and filed with the clerk of the court within 30 days after judgment is granted; but if the respondent has been represented by counsel, the findings, conclusions and judgment shall first be submitted to respondent's counsel for approval and if the circuit court commissioner has appeared at the trial of the action, such papers shall also be sent to the circuit court commissioner for approval. After any necessary approvals are obtained, the findings of fact, conclusions of law and judgment shall be submitted to the court. Final stipulations of the parties may be appended to the judgment and incorporated by reference therein.

(c) At the time of filing any judgment for an annulment, divorce or legal separation, the attorney for the moving party shall present to the clerk of court 2 true copies thereof in addition to the original judgment, and until such copies are presented the clerk may refuse to accept such judgment for filing. After the judgment is filed, the clerk shall mail a copy forthwith to each party to the action at the last-known address, and the court record shall show such mailing.

(2) So far as a judgment of divorce affects the marital status of the parties the court has the power to vacate or modify the judgment for sufficient cause shown, upon its own motion, or upon the application of both parties to the action, at

any time within 6 months from the granting of such judgment. No such judgment shall be vacated or modified without service of notice of motion on the office of family court commissioner. The court may direct a circuit court commissioner or appoint some other attorney, to bring appropriate proceedings for the vacation of the judgment. The compensation of the circuit court commissioner when not on a salaried basis or other attorney for performing such services shall be at the rate of \$50 per day, which shall be paid out of the county treasury upon order of the presiding judge and the certificate of the clerk of the court. If the judgment is vacated it shall restore the parties to the marital relation that existed before the granting of such judgment. If after vacation of the judgment either of the parties brings an action in this state for divorce against the other the court may order the petitioner in such action to reimburse the county the amount paid by it to the circuit court commissioner or other attorney in connection with such vacation proceedings. Whenever a judgment of divorce is set aside under this subsection, the court shall order the record in the action impounded without regard to s. 767.19; and thereafter neither the record nor any part of the record shall be offered or admitted into evidence in any action or proceeding except by special order of the court of jurisdiction upon good cause shown in any paternity proceedings under this chapter or by special order of any court of record upon a showing of necessity to clear title to real estate.

(3) When a judgment of divorce is granted it shall be effective immediately except as provided in s. 765.03 (2). Every judge who grants a judgment of divorce shall inform the parties appearing in court that the judgment is effective immediately except as provided in s. 765.03 (2).

767.38 Judgment revoked on remarriage.

When a judgment of divorce has been granted and the parties shall afterwards intermarry, the court, upon their joint application and upon satisfactory proof of such marriage, shall revoke all judgments and any orders which will not affect the right of 3rd persons and order the record impounded without regard to s. 767.19 and neither the record nor any part of the record shall be offered or admitted into evidence in any action or proceeding except by special order of the court of jurisdiction upon good cause shown in any paternity proceedings under this chapter or by special order of any court of record upon a showing of necessity to clear title to real estate.

767.39 Maintenance payments or other allowances pending appeal.

(1) In actions affecting the family pending in an appellate court, no allowance for suit money, counsel fees or disbursements in the court, nor for temporary maintenance payments to the spouse or the children during the pendency of the appeal will be made in the court.

(2) Allowances specified in sub. (1), if made at all, shall be made by the proper trial court upon motion made and decided after the entry of the order or judgment appealed from and prior to the return of the record to an appellate court, provided, that if the allowance is ordered before the appeal is taken the order shall be conditioned upon the taking of the appeal and shall be without effect unless and until the record is transmitted to the court of appeals.

767.42 Abandonment; seizure of property.

(1) If a person absconds or is about to abscond from his or her children or spouse, or is about to remove permanently from the municipality in which he or she resides leaving a spouse or children, or both, chargeable or likely to become chargeable upon the public for support or neglects or refuses to support or provide for the spouse or children, the county where the spouse or children may be, by the official or agency designated to administer public assistance, may apply to the circuit court for any county in which any real or personal property of the parent or spouse is situated for a warrant to seize the property.

(2) Upon due proof of the facts the court shall issue a warrant authorizing the county to seize the property of that person wherever found in the county; and they shall, respectively, be vested with all the rights and title, as limited in this section, to that property which the person had at the time of his or her departure. They shall immediately make an inventory of the property and return it with the warrant and their proceedings thereon to the circuit court. All sales and transfers of any real or personal property left in that county made by the person after the issuing of the warrant is void.

(3) Upon the return the circuit court may inquire into the facts and circumstances and may confirm the seizure or discharge the same. If the seizure is confirmed, the court shall from time to time direct what part of the personal property shall be sold and how much of the proceeds of the sales and the rents and profits of the real estate shall be applied toward the maintenance of the spouse or children of the person. All such sales shall be at public auction in accordance with the laws relating to execution sales of personalty and realty as provided in ss. 815.29 and 815.31.

(4) The county shall receive the proceeds of all property so sold and the rents and profits of the real estate of such person and apply the same to the maintenance and support of the spouse or children of such person; and it shall account to the court for the moneys so received and for the application thereof from time to time.

(5) If the person whose property has been seized under this section returns and supports the abandoned spouse or children or gives security to the county, with its approval, that the spouse or children shall not thereafter be chargeable to the county, the court shall discharge the warrant and order the restoration of the property seized and remaining unappropriated, or the unappropriated proceeds, after deducting the expenses of the proceedings.

Note: Laws may have changed since our last update. For the latest information on these divorce laws, speak to a local divorce lawyer in the state.