

Factors in Deciding Physical Placement of Children

When a judge decides where a child or children will live while a divorce is pending or after a divorce or paternity judgment, he/she must consider all the factors listed in the law. Wisconsin Statute Section 767.41(4) states that the court shall set placement periods for each parent that are regular, meaningful, and that “maximizes” the amount of time the child may spend with each parent.

The law says that the child is entitled to placement with both parents unless the judge finds that placement with that parent would endanger the child’s physical, mental or emotional health.

Judges are required to consider at all times the best interests of the child. To do this, courts appoint a lawyer to act as the guardian ad litem (“guardian for the litigation” or GAL) for the child. The GAL investigates the facts and educates themselves about the parents, the children and the reasons they cannot reach an agreement. The GAL makes recommendations to the judge. In a hearing to decide placement, the judge is required to consider all the following factors:

- The wishes of each parent.
- The wishes of the child (communicated to the judge by the child or the child’s guardian ad litem or other appropriate professional).
- The cooperation and communication between the parents and whether a parent unreasonably refuses to communicate or cooperate with the other parent.
- Whether each parent can support the relationship between the child and the other parent.
- The relationship of the child with his or her siblings and any other person who may affect the child’s best interest.
- The relationship of the child with each parent and the amount and quality of time they have spent in the past.
- Whether a parent or a person in the parent’s household has a significant problem with drug or alcohol abuse.

- The child's adjustment to home, school, religion, and community.
- The age of the child and the child's development and educational needs.
- Whether the mental or physical health of a party, minor child or other person living in a proposed custodial household is potentially harmful to the child in any way.
- Whether anyone in the household has a criminal record or if there is evidence that that person committed child abuse, domestic battery, or domestic abuse.
- Whether there is evidence of domestic abuse or interspousal battery.
- The reports of appropriate professionals if admitted into evidence.
- Any other factors the court decides are important.

Last updated on February 13, 2025.

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