



1995 SENATE BILL 151

April 26, 1995 - Introduced by Senators BUETTNER, HUELSMAN, DARLING, COWLES, ROSENZWEIG, A. LASEE and PETAK, cosponsored by Representatives GREEN, KRUSICK, LADWIG, WASSERMAN, OWENS, DUFF, BRANDEMUEHL, DOBYNS, UNDERHEIM, F. LASEE, GOETSCH, OLSEN, WIRCH, ALBERS, KELSO, OTT, SERATTI, KLUSMAN, GUNDERSON, GROTHMAN, ZIEGELBAUER, HAHN, LAZICH and AINSWORTH. Referred to Committee on Judiciary.

1 **AN ACT to renumber** 767.001 (1); **to amend** 343.15 (2) (a), 767.24 (6) (b), 767.45
2 (5) (b), 767.455 (5g) (intro.), 767.455 (5g) (c) 7., 767.455 (5r), 767.458 (1) (c),
3 767.458 (1) (d), 767.458 (1m), 767.458 (2), 767.46 (1), 767.46 (4), 767.465 (2) (a),
4 767.47 (1) (c), 767.47 (1) (d), 767.47 (3), 767.48 (title), 767.48 (1) (a), 767.48 (1)
5 (b), 767.48 (1m), 767.48 (2), 767.48 (4), 767.48 (5) (intro.), 767.48 (5) (a), 767.48
6 (5) (b), 767.48 (6), 767.48 (7), 767.51 (3), 767.52 (2m), 767.62 (3), 885.23 and
7 948.01 (1g); and **to create** 767.001 (1m) of the statutes; **relating to:** allowing
8 genetic testing for paternity determinations.

Analysis by the Legislative Reference Bureau

Under current law, a court or family court commissioner in a paternity action may order the parties and the child to submit to blood tests without the request of a party. Any party, however, may request blood tests, in which case the court or family court commissioner must order the tests. The tests can either exclude the person alleged to be the father as the father of the child or show the probability that the person alleged to be the father of the child is the father of the child. If the tests show that the alleged father is the father of the child with a statistical probability of 99.0% or higher, the alleged father is rebuttably presumed to be the father of the child. Additionally under current law, a court in any civil action in which it is relevant to determine the parentage or identity of any child, person or corpse may order blood tests for that purpose.

Testing to determine a child's paternity or a person's identity is testing for genetic sameness or similarity. Blood tests are genetic tests performed on blood cells. Genetic tests may also be performed on other types of cells, including skin cells.

There may be differences in the costs or the timing of the tests, depending on the body material used. This bill provides that in situations in which a court or family court commissioner could order blood tests, or in which a party could request blood tests, a court or family court commissioner may order, or a party may request, genetic tests. A genetic test is defined in the bill as a test that examines genetic markers present on the cells of the body material being used in the test for the purpose of determining the statistical probability of an alleged father's paternity.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 343.15 (2) (a) of the statutes is amended to read:

2 343.15 (2) (a) In this subsection, "custody" does not mean joint legal custody
3 as defined in s. 767.001 (1) (1s).

4 **SECTION 2.** 767.001 (1) of the statutes is renumbered 767.001 (1s).

5 **SECTION 3.** 767.001 (1m) of the statutes is created to read:

6 767.001 (1m) "Genetic test" means a test that examines genetic markers
7 present on blood cells, skin cells, tissue cells, bodily fluid cells or cells of another body
8 material for the purpose of determining the statistical probability of an alleged
9 father's paternity.

10 **SECTION 4.** 767.24 (6) (b) of the statutes is amended to read:

11 767.24 (6) (b) Notwithstanding s. 767.001 (1) (1s), in making an order of joint
12 legal custody, the court may give one party sole power to make specified decisions,
13 while both parties retain equal rights and responsibilities for other decisions.

14 **SECTION 5.** 767.45 (5) (b) of the statutes is amended to read:

15 767.45 (5) (b) An action under this section may be joined with any other action
16 for child support and shall be governed by the procedures specified in s. 767.05
17 relating to child support, except that the title of the action shall be "In re the

1 paternity of A.B.” The petition shall state the name and date of birth of the child if
2 born or that the mother is pregnant if the child is unborn, the name of any alleged
3 father, whether or not an action by any of the parties to determine the paternity of
4 the child or rebut the presumption of paternity to the child has at any time been
5 commenced, or is pending before any judge or court commissioner, in this state or
6 elsewhere. If a paternity judgment has been rendered, or if a paternity action has
7 been dismissed, the petition shall state the court which rendered the judgment or
8 dismissed the action, and the date and the place the judgment was granted if known.
9 The petition shall also give notice of a party’s right to request a ~~blood~~ genetic test
10 under s. 767.48.

11 **SECTION 6.** 767.455 (5g) (intro.) of the statutes is amended to read:

12 767.455 (5g) NOTICE. (intro.) The notice to respondent shall be attached to the
13 summons. The notice shall be in boldface type and substantially the following form:

14 **NOTICE TO RESPONDENT**

15 1. You have been named in a petition alleging paternity. A judgment of
16 paternity would legally designate the child as your child, grant parental rights to
17 you, create the right of inheritance for the child, obligate you to pay child support
18 until the child reaches the age of 18, or the age 19 if the child is enrolled full-time
19 in high school or its equivalent, and make your failure to pay child support
20 punishable by imprisonment as a contempt of court or as a criminal violation.

21 2. You have the right to be represented by an attorney. If you are unable to
22 afford an attorney, the court will appoint one for you subject to certain limitations.
23 One limitation is that representation by the appointed attorney will end if during the
24 proceedings all of the ~~blood~~ genetic tests show that you are excluded as the father or
25 that the statistical probability of your being the father is 99.0% or higher. In order

1 to determine whether you are entitled to have an attorney appointed for you, you may
2 call the following telephone number

3 3. You may request ~~blood~~ genetic tests which will indicate the probability that
4 you are or are not the father of the child. The court will order ~~blood~~ genetic tests on
5 request by you, the state or any other party. Any person who refuses to take
6 court-ordered ~~blood~~ genetic tests may be punished for contempt of court.

7 4. The petitioner has the burden of proving by a clear and satisfactory
8 preponderance of the evidence that you are the father. However, if ~~blood~~ genetic tests
9 show that you are not excluded as the father and that the statistical probability of
10 your being the father is 99.0% or higher, you are rebuttably presumed to be the
11 father.

12 5. The following defenses are available to you:

13 **SECTION 7.** 767.455 (5g) (c) 7. of the statutes is amended to read:

14 767.455 (5g) (c) 7. If you fail to appear at any stage of the proceeding, including
15 a scheduled ~~blood~~ genetic test, the court will enter a default judgment finding you
16 to be the father. A default judgment will take effect 30 days after it is served on or
17 mailed to you at your address on file with the court, unless within those 30 days you
18 present to the court evidence of good cause for your failure to appear or your failure
19 to have undergone a ~~blood~~ genetic test. You need not appear at the time and place
20 specified in the summons if you complete the attached waiver of first appearance
21 statement and deliver it to the court by the date specified in the waiver of first
22 appearance statement.

23 **SECTION 8.** 767.455 (5r) of the statutes is amended to read:

1 is the father is not in the best interest of the child, no blood genetic tests may be
2 ordered and the action shall be dismissed.

3 **SECTION 12.** 767.458 (2) of the statutes is amended to read:

4 767.458 (2) At the first appearance, if it appears from a sufficient petition or
5 affidavit of the child's mother that there is probable cause to believe that any of the
6 males named has had sexual intercourse with the mother during a possible time of
7 the child's conception, the court may, or upon the request of any party shall, order any
8 of the named persons to submit to blood genetic tests. The tests shall be conducted
9 in accordance with s. 767.48.

10 **SECTION 13.** 767.46 (1) of the statutes is amended to read:

11 767.46 (1) A pretrial hearing shall be held before the court or a court
12 commissioner under s. 757.69 (3) (g). A record or minutes of the proceeding shall be
13 kept. At the pretrial hearing the parties may present and cross-examine witnesses,
14 request blood genetic tests and present other evidence relevant to the determination
15 of paternity.

16 **SECTION 14.** 767.46 (4) of the statutes is amended to read:

17 767.46 (4) If a party or the guardian ad litem refuses to accept a
18 recommendation made under this section and blood genetic tests have not yet been
19 taken, the court shall require the appropriate parties to submit to blood genetic tests.
20 After the blood genetic tests have been taken the court shall make an appropriate
21 final recommendation.

22 **SECTION 15.** 767.465 (2) (a) of the statutes is amended to read:

23 767.465 (2) (a) Except as provided in sub. (2m), if a respondent is the alleged
24 father and fails to appear at the first appearance, unless the first appearance is not
25 required under s. 767.457 (2), scheduled blood genetic test, pretrial hearing or trial,

1 the court shall enter an order adjudicating the respondent to be the father and
2 appropriate orders for support, legal custody and physical placement. The orders
3 shall be either served on the respondent or mailed by regular, registered or certified
4 mail, to the last-known address of the respondent. The orders shall take effect 30
5 days after service or 30 days after the date on which the orders were mailed unless,
6 within that time, the respondent presents to the court or court commissioner under
7 s. 757.69 (3) (g) evidence of good cause for failure to appear or failure to have
8 undergone a ~~blood~~ genetic test.

9 **SECTION 16.** 767.47 (1) (c) of the statutes is amended to read:

10 767.47 (1) (c) ~~Blood~~ Genetic test results under ss. 767.48 and or 885.23.

11 **SECTION 17.** 767.47 (1) (d) of the statutes is amended to read:

12 767.47 (1) (d) The statistical probability of the alleged father's paternity based
13 upon the ~~blood~~ genetic tests.

14 **SECTION 18.** 767.47 (3) of the statutes is amended to read:

15 767.47 (3) In an action against an alleged father, evidence offered by him with
16 respect to an identified man who is not subject to the jurisdiction of the court
17 concerning that man's sexual intercourse with the mother at or about the
18 presumptive time of conception of the child is admissible in evidence only after the
19 alleged father has undergone and made available to the court ~~blood~~ genetic tests as
20 provided in s. 767.48.

21 **SECTION 19.** 767.48 (title) of the statutes is amended to read:

22 **767.48** (title) **Blood Genetic tests in paternity actions.**

23 **SECTION 20.** 767.48 (1) (a) of the statutes is amended to read:

24 767.48 (1) (a) The court may, and upon request of a party shall, require the
25 child, mother, any male for whom there is probable cause to believe that he had

1 sexual intercourse with the mother during a possible time of the child's conception,
2 or any male witness who testifies or will testify about his sexual relations with the
3 mother at a possible time of conception to submit to ~~blood~~ genetic tests. Probable
4 cause of sexual intercourse during a possible time of conception may be established
5 by a sufficient petition or affidavit of the child's mother filed with the court, or after
6 an examination under oath of a complainant or witness, when the court determines
7 such an examination is necessary.

8 **SECTION 21.** 767.48 (1) (b) of the statutes is amended to read:

9 767.48 (1) (b) The ~~blood~~ genetic tests shall be performed by an expert qualified
10 as an examiner of genetic markers present on ~~blood~~ the cells and components of the
11 specific body material to be used for the tests, appointed by the court. A report
12 completed and certified by the court-appointed expert stating ~~blood~~ genetic test
13 results and the statistical probability of the alleged father's paternity based upon the
14 ~~blood~~ genetic tests is admissible as evidence without expert testimony and may be
15 entered into the record at the trial or pretrial hearing if, at least 10 days before the
16 trial or pretrial hearing, the party offering the report files it with the court and
17 notifies all other parties of that filing.

18 **SECTION 22.** 767.48 (1m) of the statutes is amended to read:

19 767.48 (1m) Under sub. (1), if the ~~blood~~ genetic tests show that the alleged
20 father is not excluded and that the statistical probability of the alleged father's
21 parentage is 99.0% or higher, the alleged father shall be rebuttably presumed to be
22 the child's parent.

23 **SECTION 23.** 767.48 (2) of the statutes is amended to read:

24 767.48 (2) The court, upon request by a party, shall order that independent
25 tests be performed by other experts qualified as examiners of genetic markers

1 present on ~~blood~~ the cells and components of the specific body material to be used for
2 the tests. Additional tests performed by other experts of the same qualifications may
3 be ordered by the court at the request of any party.

4 **SECTION 24.** 767.48 (4) of the statutes is amended to read:

5 767.48 (4) Whenever the results of the ~~blood~~ genetic tests exclude the alleged
6 father as the father of the child, this evidence shall be conclusive evidence of
7 nonpaternity and the court shall dismiss the action. Whenever the results of the
8 tests exclude any male witness from possible paternity, the tests shall be conclusive
9 evidence of nonpaternity of the male witness. Testimony relating to sexual
10 intercourse or possible sexual intercourse of the mother with any person excluded as
11 a possible father, as a result of a ~~blood~~ genetic test, is inadmissible as evidence. If
12 any party refuses to submit to ~~the blood~~ a genetic test, this fact shall be disclosed to
13 the fact finder. This refusal is a contempt of the court for failure to produce evidence
14 under s. 767.47 (5). If the action was brought by the child's mother but she refuses
15 to submit herself or the child to ~~blood~~ genetic tests, the action shall be dismissed.

16 **SECTION 25.** 767.48 (5) (intro.) of the statutes is amended to read:

17 767.48 (5) (intro.) The fees and costs for ~~blood~~ genetic tests performed upon any
18 person listed under sub. (1) shall be paid for by the county except as follows:

19 **SECTION 26.** 767.48 (5) (a) of the statutes is amended to read:

20 767.48 (5) (a) At the close of the proceeding the court may order either or both
21 parties to reimburse the county if the court finds that they have sufficient resources
22 to pay the costs of the ~~blood~~ genetic tests.

23 **SECTION 27.** 767.48 (5) (b) of the statutes is amended to read:

1 767.48 (5) (b) If 2 or more identical series of blood genetic tests are performed
2 upon the same person, the court may require the person requesting the 2nd or
3 subsequent series of tests to pay for it in advance.

4 **SECTION 28.** 767.48 (6) of the statutes is amended to read:

5 767.48 (6) Any party calling a male witness for the purpose of testifying that
6 he had sexual intercourse with the mother at any possible time of conception shall
7 provide all other parties with the name and address of the witness 20 days before the
8 trial or pretrial hearing. If a male witness is produced at the hearing for the purpose
9 stated in this subsection but the party calling the witness failed to provide the
10 20-day notice, the court may adjourn the proceeding for the purpose of taking a blood
11 genetic test of the witness prior to hearing the testimony of the witness if the court
12 finds that the party calling the witness acted in good faith.

13 **SECTION 29.** 767.48 (7) of the statutes is amended to read:

14 767.48 (7) The court shall ensure that all parties are aware of their right to
15 request blood genetic tests under this section.

16 **SECTION 30.** 767.51 (3) of the statutes is amended to read:

17 767.51 (3) The judgment or order may contain any other provision directed
18 against the appropriate party to the proceeding, concerning the duty of support, the
19 legal custody and guardianship of the child, periods of physical placement, the
20 furnishing of bond or other security for the payment of the judgment, or any other
21 matter in the best interest of the child. Unless the court orders otherwise, if there
22 is no presumption of paternity under s. 891.41 the mother shall have sole legal
23 custody of the child. The court shall order either party or both to pay for the support
24 of any child of the parties who is less than 19 years old and is pursuing an accredited
25 course of instruction leading to the acquisition of a high school diploma or its

1 equivalent. The judgment or order may direct the father to pay or contribute to the
2 reasonable expenses of the mother's pregnancy and confinement during pregnancy
3 and may direct either party to pay or contribute to the costs of ~~blood~~ genetic tests,
4 attorney fees and other costs. Contributions to the costs of ~~blood~~ genetic tests shall
5 be paid to the county which paid for the ~~blood~~ genetic tests.

6 **SECTION 31.** 767.52 (2m) of the statutes is amended to read:

7 767.52 (2m) Representation by an attorney appointed under sub. (1) shall be
8 provided beginning at the pretrial hearing unless, as of the date of the hearing, the
9 results of any ~~blood~~ genetic tests that were ordered by the court show that the alleged
10 father is excluded or give rise to the rebuttable presumption under s. 767.48 (1m)
11 that the alleged father is the father of the child. Representation by an attorney
12 appointed under sub. (1) shall terminate during the paternity proceeding if the
13 results of all of the ~~blood~~ genetic tests ordered by the court show that the alleged
14 father is excluded or give rise to the rebuttable presumption under s. 767.48 (1m)
15 that the alleged father is the father of the child.

16 **SECTION 32.** 767.62 (3) of the statutes is amended to read:

17 767.62 (3) Within one year after signing the statement or one year after
18 attaining the age of 18, whichever is later, a person who has signed a statement
19 acknowledging paternity that is filed as specified in sub. (1) may request that the
20 court or family court commissioner order ~~blood~~ genetic tests. Upon such a request,
21 the court or family court commissioner shall require the appropriate parties to
22 submit to ~~blood~~ genetic tests. If the results of the ~~blood~~ genetic tests exclude as the
23 father of the child the man who signed the statement, the court shall dismiss any
24 action for child support under this section, or shall vacate any order for child support
25 entered under this section, with respect to the man. This subsection does not apply

1 if, before a request for blood genetic tests under this subsection, the man who signed
2 the statement acknowledging paternity is determined to be the father of the child
3 after the performance of blood genetic tests.

4 **SECTION 33.** 885.23 of the statutes is amended to read:

5 **885.23** (title) **Blood Genetic tests in civil actions.** Whenever it is relevant
6 in a civil action to determine the parentage or identity of any child, person or corpse,
7 the court, by order, shall direct any party to the action and any person involved in
8 the controversy to submit to one or more blood genetic tests as provided in s. 767.48.
9 The results of the tests shall be receivable as evidence in any case where exclusion
10 from parentage is established or where a probability of parentage is shown to exist.
11 Whenever the court orders the blood genetic tests and one of the parties refuses to
12 submit to the tests that fact shall be disclosed upon trial.

13 **SECTION 34.** 948.01 (1g) of the statutes is amended to read:

14 948.01 (1g) "Joint legal custody" has the meaning given in s. 767.001 (~~1~~) (1s).

15 (END)