

State of Wisconsin



1995 Senate Bill 151

Date of enactment: **December 1, 1995**
Date of publication*: **December 15, 1995**

1995 WISCONSIN ACT 100

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

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

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

343.15 (2) (a) In this subsection, "custody" does not mean joint legal custody as defined in s. 767.001 (4) (1s).

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

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

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

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

767.24 (6) (b) Notwithstanding s. 767.001 (4) (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.

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

767.45 (5) (b) An action under this section may be joined with any other action for child support and shall be governed by the procedures specified in s. 767.05 relating to child support, except that the title of the action shall be "In re the paternity of A.B." The petition shall state the name and date of birth of the child if born or that the mother is pregnant if the child is unborn, the name of any alleged father, whether or not an action by any of the parties to determine the paternity of the child or rebut the presumption of paternity to the child has at any time been commenced, or is pending before any judge or court commissioner, in this state or elsewhere. If a paternity judgment has been rendered, or if a paternity action has been dismissed, the petition shall state the court which rendered the judgment or dismissed the action, and the date and the place the judgment was granted if known. The petition shall also give notice of a party's right to request a ~~blood~~ genetic test under s. 767.48.

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

* Section 991.11, WISCONSIN STATUTES 1993-94: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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

NOTICE TO RESPONDENT

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

2. You have the right to be represented by an attorney. If you are unable to afford an attorney, the court will appoint one for you subject to certain limitations. One limitation is that representation by the appointed attorney will end if during the proceedings all of the blood genetic tests show that you are excluded as the father or that the statistical probability of your being the father is 99.0% or higher. In order to determine whether you are entitled to have an attorney appointed for you, you may call the following telephone number

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

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

5. The following defenses are available to you:

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

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

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

767.455 (5r) WAIVER OF FIRST APPEARANCE. The waiver of first appearance statement shall be attached to the summons. The waiver of first appearance statement

shall be in boldface type and substantially the following form:

WAIVER OF FIRST APPEARANCE

1. I understand that by signing this waiver and agreeing to its terms I am not required to appear at the time and place specified in the summons. If I do not sign this statement, I am required to appear at the time and place specified in the summons.

2. I understand that I will be notified by the court of all future stages in the proceeding and agree to appear at those stages. If I fail to appear at any stage, including a scheduled blood genetic test, the court will enter a default judgment finding me to be the father. A default judgment will take effect 30 days after it is served on or mailed to me, unless within those 30 days I present to the court evidence of good cause for my failure to appear or my failure to have undergone a blood genetic test.

3. I enter the following plea (check only one):

.... I agree that I am the child's father.

.... I deny that I am the child's father.

.... I agree that I am the child's father, subject to confirmation by a blood genetic test.

If I enter a plea agreeing that I am the child's father, a judgment of paternity will be entered against me. If I enter a plea denying that I am the child's father or a plea agreeing that I am the child's father, subject to a blood genetic test, I agree to undergo a blood genetic test.

4. I have read the summons and the notice or have had them read to me.

5. This waiver of first appearance statement is valid only if it is delivered to the court on or before

6. I will keep the clerk of court informed of my address at all times. The following is my current address:

.....

Street address and apartment number

.....

City State Zip Code

.....

Date Signature of Respondent

SECTION 9. 767.458 (1) (c) of the statutes is amended to read:

767.458 (1) (c) Except as provided under sub. (1m), the respondent may request the administration of blood genetic tests which either demonstrate that he is not the father of the child or which demonstrate the probability that he is or is not the father of the child;

SECTION 10. 767.458 (1) (d) of the statutes is amended to read:

767.458 (1) (d) Except as provided under sub. (1m), the court will order blood genetic tests upon the request of any party; and

SECTION 11. 767.458 (1m) of the statutes is amended to read:

767.458 (1m) In an action to establish the paternity of a child who was born to a woman while she was married, where a man other than the woman's husband

alleges that he, not the husband, is the child's father, a party may allege that a judicial determination that a man other than the husband is the father is not in the best interest of the child. If the court or court commissioner under s. 757.69 (3) (g) determines that a judicial determination of whether a man other than the husband is the father is not in the best interest of the child, no blood genetic tests may be ordered and the action shall be dismissed.

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

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

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

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

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

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

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

767.465 (2) (a) Except as provided in sub. (2m), if a respondent is the alleged father and fails to appear at the first appearance, unless the first appearance is not required under s. 767.457 (2), scheduled blood genetic test, pretrial hearing or trial, the court shall enter an order adjudicating the respondent to be the father and appropriate orders for support, legal custody and physical placement. The orders shall be either served on the respondent or mailed by regular, registered or certified mail, to the last-known address of the respondent. The orders shall take effect 30 days after service or 30 days after the date on which the orders were mailed unless, within that time, the respondent presents to the court or court commissioner under s. 757.69 (3) (g) evidence of good cause for failure to appear or failure to have undergone a blood genetic test.

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

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

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

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

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

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

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

767.48 (title) Blood Genetic tests in paternity actions.

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

767.48 (1) (a) The court may, and upon request of a party shall, require the child, mother, any male for whom there is probable cause to believe that he had sexual intercourse with the mother during a possible time of the child's conception, or any male witness who testifies or will testify about his sexual relations with the mother at a possible time of conception to submit to blood genetic tests. Probable cause of sexual intercourse during a possible time of conception may be established by a sufficient petition or affidavit of the child's mother filed with the court, or after an examination under oath of a complainant or witness, when the court determines such an examination is necessary.

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

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

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

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

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

767.48 (2) The court, upon request by a party, shall order that independent tests be performed by other experts qualified as examiners of genetic markers present on ~~blood~~ the cells and components of the specific body material to be used for the tests. Additional tests performed by other experts of the same qualifications may be ordered by the court at the request of any party.

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

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

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

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

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

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

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

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

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

767.48 (6) Any party calling a male witness for the purpose of testifying that he had sexual intercourse with the mother at any possible time of conception shall provide all other parties with the name and address of the witness 20 days before the trial or pretrial hearing. If a male witness is produced at the hearing for the purpose stated in this subsection but the party calling the witness failed to provide the 20-day notice, the court may adjourn the proceeding for the purpose of taking a ~~blood~~ ge-

netic test of the witness prior to hearing the testimony of the witness if the court finds that the party calling the witness acted in good faith.

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

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

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

767.51 (3) The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the legal custody and guardianship of the child, periods of physical placement, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. Unless the court orders otherwise, if there is no presumption of paternity under s. 891.41 the mother shall have sole legal custody of the child. The court shall order either party or both to pay for the support of any child of the parties who is less than 19 years old and is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent. The judgment or order may direct the father to pay or contribute to the reasonable expenses of the mother's pregnancy and confinement during pregnancy and may direct either party to pay or contribute to the costs of ~~blood~~ genetic tests, attorney fees and other costs. Contributions to the costs of ~~blood~~ genetic tests shall be paid to the county which paid for the ~~blood~~ genetic tests.

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

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

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

767.62 (3) Within one year after signing the statement or one year after attaining the age of 18, whichever is later, a person who has signed a statement acknowledging paternity that is filed as specified in sub. (1) may request that the court or family court commissioner order ~~blood~~ genetic tests. Upon such a request, the court or family court commissioner shall require the appropriate parties to submit to ~~blood~~ genetic tests. If the results of

1995 Senate Bill 151

– 5 –

the ~~blood genetic~~ tests exclude as the father of the child the man who signed the statement, the court shall dismiss any action for child support under this section, or shall vacate any order for child support entered under this section, with respect to the man. This subsection does not apply if, before a request for ~~blood genetic~~ tests under this subsection, the man who signed the statement acknowledging paternity is determined to be the father of the child after the performance of ~~blood genetic~~ tests.

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

885.23 (title) Blood Genetic tests in civil actions. Whenever it is relevant in a civil action to determine the parentage or identity of any child, person or corpse, the

court, by order, shall direct any party to the action and any person involved in the controversy to submit to one or more ~~blood genetic~~ tests as provided in s. 767.48. The results of the tests shall be receivable as evidence in any case where exclusion from parentage is established or where a probability of parentage is shown to exist. Whenever the court orders the ~~blood genetic~~ tests and one of the parties refuses to submit to the tests that fact shall be disclosed upon trial.

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

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