



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

Appendix A ... segment III

LRB BILL HISTORY RESEARCH APPENDIX

 The drafting file for 2009 LRB-4430 (For: Rep. Seidel)

has been transferred to the drafting file for

2011 LRB-0235 (For: Rep. Seidel)



RESEARCH APPENDIX -
PLEASE KEEP WITH THE DRAFTING FILE

Date Transfer Requested: 10/07/2010 (Per: PJK)

 The attached 2009 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as an appendix, to the new 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-4430/B

PJK:jld:re

rum

P3

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

*by wad.
(11-3-22)
D-note*

renewed ↓

✓

1 AN ACT *to renumber* 49.22 (2m) (b); *to renumber and amend* 767.84 (1) (a);
 2 *to amend* 48.02 (13), 48.27 (5), 48.42 (4) (b) 2., 48.837 (4) (e), 48.91 (2), 49.22
 3 (2m) (am), 49.22 (2m) (bc), 49.225 (2) (a), 49.855 (3), 49.855 (4m) (b), 565.30 (5m)
 4 (a), 767.407 (1) (c) (intro.), 767.41 (1) (b), 767.41 (1m) (intro.), 767.44 (1), 767.511
 5 (1) (intro.), 767.511 (5), 767.513 (2), 767.55 (1), 767.55 (2) (am) (intro.), 767.55
 6 (3) (a) 1., 767.55 (3) (d), 767.55 (4) (b) (intro.), 767.59 (2s), 767.73 (1) (a), 767.75
 7 (1) (b), 767.77 (1), 767.78 (1), 767.80 (1) (c), 767.80 (5m), 767.82 (2m), 802.12 (3)
 8 (d) 1., 802.12 (3) (d) 3., 808.075 (4) (d) 9., 808.075 (4) (d) 10., 852.05 (2), 938.02
 9 (13) and 938.27 (5); and *to create* 49.22 (2m) (b) 2., 69.15 (1) (c), 767.804, 767.84
 10 (1) (a) 1. and 767.84 (1) (a) 2. of the statutes; **relating to:** conclusive
 11 determination of paternity on basis of genetic test results, orders that may be
 12 granted on the basis of genetic test results, and providing a penalty.

Presumption and

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

✓
Insert A →

For further information see the *state and 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. 48.02 (13) of the statutes, as affected by 2009 Wisconsin Act 94, is
2 amended to read:

3 48.02 (13) "Parent" means a biological parent, a husband who has consented
4 to the artificial insemination of his wife under s. 891.40, or a parent by adoption. If
5 the child is a nonmarital child who is not adopted or whose parents do not
6 subsequently intermarry under s. 767.803, "parent" includes a person conclusively
7 determined from genetic test results to be the father under s. 767.804 or a person
8 acknowledged under s. 767.805 or a substantially similar law of another state or
9 adjudicated to be the biological father. "Parent" does not include any person whose
10 parental rights have been terminated. For purposes of the application of s. 48.028
11 and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, "parent" means a
12 biological parent, an Indian husband who has consented to the artificial
13 insemination of his wife under s. 891.40, or an Indian person who has lawfully
14 adopted an Indian child, including an adoption under tribal law or custom, and
15 includes, in the case of a nonmarital child who is not adopted or whose parents do
16 not subsequently intermarry under s. 767.803, a person conclusively determined
17 from genetic test results to be the father under s. 767.804, a person acknowledged
18 under s. 767.805, a substantially similar law of another state, or tribal law or custom
19 to be the biological father, or a person adjudicated to be the biological father, but does
20 not include any person whose parental rights have been terminated.

21 SECTION 2. 48.27 (5) of the statutes is amended to read:

✓
Insert 3-7

1 48.27 (5) Subject to sub. (3) (b), the court shall make every reasonable effort
2 to identify and notify any person who has filed a declaration of paternal interest
3 under s. 48.025, any person conclusively determined from genetic test results to be
4 the father under s. 767.804 (1), any person who has acknowledged paternity of the
5 child under s. 767.805 (1), and any person who has been adjudged to be the father
6 of the child in a judicial proceeding unless the person's parental rights have been
7 terminated.

8 **SECTION 3.** 48.42 (4) (b) 2. of the statutes is amended to read:

9 48.42 (4) (b) 2. If the child is a nonmarital child who is not adopted or whose
10 parents do not subsequently intermarry under s. 767.803 and paternity has not been
11 conclusively determined from genetic test results under s. 767.804, acknowledged
12 under s. 767.805 or a substantially similar law of another state, or adjudicated, the
13 court may, as provided in s. 48.422 (6) (b), order publication of a notice under subd.
14 4.

15 **SECTION 4.** 48.837 (4) (e) of the statutes is amended to read:

16 48.837 (4) (e) Shall, before hearing the petitions under subs. (2) and (3),
17 ascertain whether the paternity of a nonmarital child who is not adopted or whose
18 parents do not subsequently intermarry under s. 767.803 has been conclusively
19 determined from genetic test results under s. 767.804, acknowledged under s.
20 767.805 or a substantially similar law of another state, or adjudicated in this state
21 or another jurisdiction. If the child's paternity has not been conclusively determined
22 from genetic test results, acknowledged, or adjudicated, the court shall attempt to
23 ascertain the paternity of the child and shall determine the rights of any person who
24 may be the father of the child as provided under s. 48.423. The court may not proceed

1 with the hearing on the petitions under this section unless the parental rights of the
2 nonpetitioning parent, whether known or unknown, have been terminated.

3 **SECTION 5.** 48.91 (2) of the statutes is amended to read:

4 48.91 (2) In an adoption proceeding for a nonmarital child who is not adopted
5 or whose parents do not subsequently intermarry under s. 767.803, the court shall
6 establish whether the child's paternity has been conclusively determined from
7 genetic test results under s. 767.804, acknowledged under s. 767.805 or a
8 substantially similar law of another state, or adjudicated in this state or in another
9 jurisdiction. If the child's paternity has not been conclusively determined from
10 genetic test results, acknowledged, or adjudicated, the court shall attempt to
11 ascertain the paternity of the child and shall determine the rights of any person who
12 may be the father of the child as provided under s. 48.423. The court may not proceed
13 with the hearing on the petition for adoption unless the parental rights of the
14 nonpetitioning parent, whether known or unknown, have been terminated.

15 **SECTION 6.** 49.22 (2m) (am) of the statutes is amended to read:

16 49.22 (2m) (am) In conjunction with any request for information under par. (a),
17 including a request made by subpoena under par. (b) 1., the department or county
18 child support agency under s. 59.53 (5) shall advise the person of the time by which
19 the information must be provided and of any consequences to the person under par.
20 (d) that may result from a failure to respond or comply with the request.

21 **SECTION 7.** 49.22 (2m) (b) of the statutes is renumbered 49.22 (2m) (b) 1.

22 **SECTION 8.** 49.22 (2m) (b) 2. of the statutes is created to read:

23 49.22 (2m) (b) 2. Any person who fails, without good cause, to comply with a
24 subpoena issued by the department or a county child support agency under subd. 1.

1 or s. 49.225 (2) requiring the person to submit to genetic testing may be required to
2 forfeit not more than \$300.

3 **SECTION 9.** 49.22 (2m) (bc) of the statutes is amended to read:

4 49.22 (2m) (bc) A person in this state shall comply with an administrative
5 subpoena that is issued from another state to compel the production of financial
6 information or other documentary evidence for purposes comparable to those
7 specified in par. (b) 1.

8 **SECTION 10.** 49.225 (2) (a) of the statutes is amended to read:

9 49.225 (2) (a) A county child support agency under s. 59.53 (5) may require, by
10 subpoena in substantially the form authorized under s. 885.02 or by other means, a
11 child, the child's mother, and a male alleged, or alleging himself, to be the child's
12 father to submit to genetic tests if there is probable cause to believe that the male
13 had sexual intercourse with the child's mother during a possible time of the child's
14 conception. Probable cause of sexual intercourse during a possible time of conception
15 may be established by a sufficient affidavit of the child's mother ~~or~~, the male alleged,
16 or alleging himself, to be the child's father, or the county child support agency under
17 s. 59.53 (5) based on information provided by the child's mother.

18 **SECTION 11.** 49.855 (3) of the statutes is amended to read:

19 49.855 (3) Receipt of a certification by the department of revenue shall
20 constitute a lien, equal to the amount certified, on any state tax refunds or credits
21 owed to the obligor. The lien shall be foreclosed by the department of revenue as a
22 setoff under s. 71.93 (3), (6), and (7). When the department of revenue determines
23 that the obligor is otherwise entitled to a state tax refund or credit, it shall notify the
24 obligor that the state intends to reduce any state tax refund or credit due the obligor
25 by the amount the obligor is delinquent under the support, maintenance, or receiving

1 and disbursing fee order or obligation, by the outstanding amount for past support,
2 medical expenses, or birth expenses under the court order, or by the amount due
3 under s. 46.10 (4), 49.345 (4), or 301.12 (4). The notice shall provide that within 20
4 days the obligor may request a hearing before the circuit court rendering the order
5 under which the obligation arose. Within 10 days after receiving a request for
6 hearing under this subsection, the court shall set the matter for hearing. Pending
7 further order by the court or a circuit court commissioner, the department of children
8 and families or its designee, whichever is appropriate, is prohibited from disbursing
9 the obligor's state tax refund or credit. A circuit court commissioner may conduct the
10 hearing. The sole issues at that hearing shall be whether the obligor owes the
11 amount certified and, if not and it is a support or maintenance order, whether the
12 money withheld from a tax refund or credit shall be paid to the obligor or held for
13 future support or maintenance, except that the obligor's ability to pay shall also be
14 an issue at the hearing if the obligation relates to an order under s. [✓] 767.804 (3) (d)
15 1., 767.805 (4) (d) 1., or 767.89 (3) (e) 1. and the order specifies that the court found
16 that the obligor's income was at or below the poverty line established under 42 USC
17 9902 (2).

18 **SECTION 12.** 49.855 (4m) (b) of the statutes, as affected by 2009 Wisconsin Act
19 113, is amended to read:

20 49.855 (**4m**) (b) The department of revenue may provide a certification that it
21 receives under sub. (1), (2m), (2p), or (2r) to the department of administration. Upon
22 receipt of the certification, the department of administration shall determine
23 whether the obligor is a vendor or is receiving any other payments from this state,
24 except for wages, retirement benefits, or assistance under s. 45.352, 1971 stats., s.
25 45.40 (1m), this chapter, or ch. 46, 108, or 301. If the department of administration

1 determines that the obligor is a vendor or is receiving payments from this state,
2 except for wages, retirement benefits, or assistance under s. 45.352, 1971 stats., s.
3 45.40 (1m), this chapter, or ch. 46, 108, or 301, it shall begin to withhold the amount
4 certified from those payments and shall notify the obligor that the state intends to
5 reduce any payments due the obligor by the amount the obligor is delinquent under
6 the support, maintenance, or receiving and disbursing fee order or obligation, by the
7 outstanding amount for past support, medical expenses, or birth expenses under the
8 court order, or by the amount due under s. 46.10 (4), 49.345 (4), or 301.12 (4). The
9 notice shall provide that within 20 days after receipt of the notice the obligor may
10 request a hearing before the circuit court rendering the order under which the
11 obligation arose. An obligor may, within 20 days after receiving notice, request a
12 hearing under this paragraph. Within 10 days after receiving a request for hearing
13 under this paragraph, the court shall set the matter for hearing. A circuit court
14 commissioner may conduct the hearing. Pending further order by the court or circuit
15 court commissioner, the department of children and families or its designee,
16 whichever is appropriate, may not disburse the payments withheld from the obligor.
17 The sole issues at the hearing are whether the obligor owes the amount certified and,
18 if not and it is a support or maintenance order, whether the money withheld shall be
19 paid to the obligor or held for future support or maintenance, except that the obligor's
20 ability to pay is also an issue at the hearing if the obligation relates to an order under
21 s. 767.804 (3) (d) 1. ✓ 767.805 (4) (d) 1., or 767.89 (3) (e) 1. and the order specifies that
22 the court found that the obligor's income was at or below the poverty line established
23 under 42 USC 9902 (2).

24 **SECTION 13.** 69.15 (1) (c) of the statutes is created to read:

8-2

69.15 (1) (c) A county child support agency under s. 59.53 (5) sends the state registrar a report under s. 767.804 (1) (b).

SECTION 14. 565.30 (5m) (a) of the statutes is amended to read:

565.30 (5m) (a) The administrator shall report to the department of children and families the name, address, and social security number of each winner of a lottery prize that is payable in installments and the name, address, and social security number or federal income tax number of the person who has been assigned a lottery prize that is payable in installments. Upon receipt of the report, the department of children and families shall certify to the administrator whether any payee or assignee named in the report is obligated to provide child support, spousal support, maintenance, or family support under s. 767.001 (1) (f) or (g), 767.225, 767.34, 767.511, 767.531, 767.56, 767.804 (3), 767.805 (4), 767.85, 767.863 (3), 767.89 (3), 767.893 (2m), or 948.22 (7) or ch. 769 and the amount required to be withheld from the lottery prize under s. 767.75. Subject to par. (b), the administrator shall withhold the certified amount from each payment made to the winner or assignee and remit the certified amount to the department of children and families.

SECTION 15. 767.407 (1) (c) (intro.) of the statutes is amended to read:

767.407 (1) (c) (intro.) The attorney responsible for support enforcement under s. 59.53 (6) (a) may request that the court appoint a guardian ad litem to bring an action or motion on behalf of a minor who is a nonmarital child whose paternity has not been conclusively determined from genetic test results under s. 767.804, acknowledged under s. 767.805 (1) or a substantially similar law of another state, or adjudicated for the purpose of determining the paternity of the child, and the court shall appoint a guardian ad litem, if any of the following applies:

SECTION 16. 767.41 (1) (b) of the statutes is amended to read:

1 767.41 (1) (b) In rendering a judgment of annulment, divorce, legal separation,
2 or paternity, or in rendering a judgment in an action under s. 767.001 (1) (e), 767.501,
3 767.804 (2),[✓] or 767.805 (3), the court shall make such provisions as it deems just and
4 reasonable concerning the legal custody and physical placement of any minor child
5 of the parties, as provided in this section.

6 **SECTION 17.** 767.41 (1m) (intro.) of the statutes is amended to read:

7 767.41 (1m) PARENTING PLAN. (intro.) Unless the court orders otherwise, in an
8 action for annulment, divorce, or legal separation, an action to determine paternity,
9 or an action under s. 767.001 (1) (e), 767.501,[✓] 767.804 (2), or 767.805 (3), in which
10 legal custody or physical placement is contested, a party seeking sole or joint legal
11 custody or periods of physical placement shall file a parenting plan with the court if
12 the court waives the requirement to attend mediation under s. 767.405 (8) (b) or if
13 the parties attend mediation and the mediator notifies the court under s. 767.405
14 (12) (b) that the parties have not reached an agreement. Unless the court orders
15 otherwise, the parenting plan shall be filed within 60 days after the court waives the
16 mediation requirement or the mediator notifies the court that no agreement has been
17 reached. Except for cause shown, a party required to file a parenting plan under this
18 subsection who does not timely file a parenting plan waives the right to object to the
19 other party's parenting plan. A parenting plan shall provide information about the
20 following questions:

21 **SECTION 18.** 767.44 (1) of the statutes is amended to read:

22 767.44 (1) WHEN PROHIBITED. Notwithstanding ss. 767.225 (1) (am), 767.41 (1),
23 (4), and (5), 767.804 (3) (a),[✓] 767.805 (4) (a), and 767.89 (3) and except as provided in
24 sub. (2), in an action under this chapter that affects a minor child, a court may not
25 grant to the child's parent visitation or physical placement rights with the child if the

1 parent has been convicted under s. 940.01 of the first-degree intentional homicide,
2 or under s. 940.05 of the 2nd-degree intentional homicide, of the child's other parent,
3 and the conviction has not been reversed, set aside, or vacated.

4 **SECTION 19.** 767.511 (1) (intro.) of the statutes is amended to read:

5 767.511 (1) WHEN ORDERED. (intro.) When the court approves a stipulation for
6 child support under s. 767.34, enters a judgment of annulment, divorce, or legal
7 separation, or enters an order or a judgment in a paternity action or in an action
8 under s. 767.001 (1) (f) or (j), 767.501, 767.804 (2),[✓] or 767.805 (3), the court shall do
9 all of the following:

10 **SECTION 20.** 767.511 (5) of the statutes is amended to read:

11 767.511 (5) LIABILITY FOR PAST SUPPORT. Subject to ss. 767.804 (4),[✓] 767.805 (4m),
12 and 767.89 (4), liability for past support is limited to the period after the birth of the
13 child.

14 **SECTION 21.** 767.513 (2) of the statutes is amended to read:

15 767.513 (2) RESPONSIBILITY AND PAYMENT. In addition to ordering child support
16 for a child under s. 767.511 (1), the court shall specifically assign responsibility for
17 and direct the manner of payment of the child's health care expenses. In assigning
18 responsibility for a child's health care expenses, the court shall consider whether a
19 child is covered under a parent's health insurance policy or plan at the time the court
20 approves a stipulation for child support under s. 767.34, enters a judgment of
21 annulment, divorce, or legal separation, or enters an order or a judgment in a
22 paternity action or in an action under s. 767.001 (1) (f) or (j), 767.501, 767.804 (2),[✓] or
23 767.805 (3), the availability of health insurance to each parent through an employer
24 or other organization, the extent of coverage available to a child, and the costs to the
25 parent for the coverage of the child. A parent may be required to initiate or continue

1 health care insurance coverage for a child under this section. If a parent is required
2 to do so, he or she shall provide copies of necessary program or policy identification
3 to the custodial parent and is liable for any health care costs for which he or she
4 receives direct payment from an insurer. This section shall not be construed to limit
5 the authority of the court to enter or modify support orders containing provisions for
6 payment of medical expenses, medical costs, or insurance premiums that are in
7 addition to and not inconsistent with this section.

8 **SECTION 22.** 767.55 (1) of the statutes is amended to read:

9 767.55 (1) **GENERALLY.** In an action for modification of a child support order
10 under s. 767.59 or an action in which an order for child support is required under s.
11 767.511 (1), 767.804 (3), 767.805 (4), or 767.89 (3), the court may order either or both
12 parents of the child to seek employment or participate in an employment or training
13 program.

14 **SECTION 23.** 767.55 (2) (am) (intro.) of the statutes is amended to read:

15 767.55 (2) (am) (intro.) In an action for modification of a child support order
16 under s. 767.59, an action in which an order for child support is required under s.
17 767.511 (1), 767.804 (3), 767.805 (4), or 767.89 (3), or a contempt of court proceeding
18 to enforce a child support or family support order in a county that contracts under
19 s. 49.36 (2), the court may order a parent who is not a custodial parent to register for
20 a work experience and job training program under s. 49.36 if all of the following
21 conditions are met:

22 **SECTION 24.** 767.55 (3) (a) 1. of the statutes is amended to read:

23 767.55 (3) (a) 1. Is an action for modification of a child support order under s.
24 767.59 or an action in which an order for child support is required under s. 767.511
25 (1), 767.804 (3), 767.805 (4), or 767.89 (3).

1 **SECTION 25.** 767.55 (3) (d) of the statutes is amended to read:

2 767.55 (3) (d) Paragraph (b) does not limit the authority of a court to issue an
3 order, other than an order under par. (b), regarding employment of a parent in an
4 action for modification of a child support order under s. 767.59 or an action in which
5 an order for child support is required under s. 767.511 (1), 767.804 (3), 767.805 (4),
6 or 767.89 (3).

7 **SECTION 26.** 767.55 (4) (b) (intro.) of the statutes is amended to read:

8 767.55 (4) (b) (intro.) In an action for revision of a judgment or order providing
9 for child support under s. 767.59 or an action in which an order for child support is
10 required under s. 767.511 (1), 767.804 (3), 767.805 (4), or 767.89 (3), the court shall
11 order an unemployed teenage parent to do one or more of the following:

12 **SECTION 27.** 767.59 (2s) of the statutes is amended to read:

13 767.59 (2s) STIPULATION FOR REVISION OF SUPPORT. In an action under sub. (1c),
14 the court may not approve a stipulation for the revision of a judgment or order with
15 respect to an amount of child support or family support unless the stipulation
16 provides for payment of an amount of child support or family support that is
17 determined in the manner required under s. 46.10 (14), 49.345 (14), 301.12 (14),
18 767.511, 767.804 (3), 767.805 (4), or 767.89, whichever is appropriate.

19 **SECTION 28.** 767.73 (1) (a) of the statutes is amended to read:

20 767.73 (1) (a) In this subsection, "support payment" means a payment ordered
21 for support under s. 767.521, support under s. 767.501, child support or family
22 support under s. 767.225, child support under s. 767.511, family support under s.
23 767.531, revised child or family support under s. 767.59, child support under s.
24 767.863 (3), child support under s. 767.85, child support under s. 767.89, child

1 support under s. 767.804 (3),[✓] child support under s. 767.805 (4), child support under
2 ch. 769, or child support under s. 948.22 (7).

3 **SECTION 29.** 767.75 (1) (b) of the statutes is amended to read:

4 767.75 (1) (b) "Payment order" means an order for child support under this
5 chapter, for maintenance payments under s. 767.225 or 767.56, for family support
6 under this chapter, for costs ordered under s. 767.804 (3), 767.805 (4), or 767.89 (3),
7 for support by a spouse under s. 767.001 (1) (f), or for maintenance payments under
8 s. 767.001 (1) (g); an order for or obligation to pay the annual receiving and
9 disbursing fee under s. 767.57 (1e) (a); an order for a revision in a judgment or order
10 with respect to child support, maintenance, or family support payments under s.
11 767.59; a stipulation approved by the court for child support under this chapter; and
12 an order for child or spousal support entered under s. 948.22 (7).

13 **SECTION 30.** 767.77 (1) of the statutes is amended to read:

14 767.77 (1) DEFINITION. In this section, "payment obligation" means an
15 obligation to pay support under s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2), 938.183
16 (4), 938.355 (2) (b) 4., 938.357 (5m) (a), or 938.363 (2), support or maintenance under
17 s. 767.501, child support, family support, or maintenance under s. 767.225, child
18 support under s. 767.511, maintenance under s. 767.56, family support under s.
19 767.531, attorney fees under s. 767.241, child support or a child's health care
20 expenses under s. 767.85, paternity obligations under s. 767.804 (3),[✓] 767.805 (4),
21 767.863 (3), or 767.89, support arrearages under s. 767.71, or child or spousal support
22 under s. 948.22 (7).

23 **SECTION 31.** 767.78 (1) of the statutes is amended to read:

24 767.78 (1) DEFINITION. In this section, "financial obligation" means an
25 obligation for payment incurred under s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2),

Insert 14-3

1 767.225, 767.241, 767.511, 767.531, 767.56, 767.61, 767.71, 767.804 (3), 767.805 (4),
2 767.85, 767.863 (3), 767.89, 938.183 (4), 938.355 (2) (b) 4., 938.357 (5m) (a), or
3 938.363 (2).

Insert 14-6

4 SECTION 32. 767.80 (1) (c) of the statutes is amended to read:

5 767.80 (1) (c) Unless s. 767.804 (1) or 767.805 (1) applies, a male presumed to
6 be the child's father under s. 891.405 or 891.41 (1). → 891.407

7 SECTION 33. 767.80 (5m) of the statutes is amended to read:

8 767.80 (5m) APPLICABLE PROCEDURE; EXCEPTIONS. Except as provided in ss.
9 767.804, 767.805, 767.863 (3), 767.85, 767.893 (2) and (2m), and 769.401, unless a
10 male is presumed the child's father under s. 891.41 (1), is adjudicated the child's
11 father either under s. 767.89 or by final order or judgment of a court of competent
12 jurisdiction in another state, is conclusively determined to be the child's father from
13 genetic test results under s. 767.804, or has acknowledged himself to be the child's
14 father under s. 767.805 (1) or a substantially similar law of another state, no order
15 or temporary order may be entered for child support, legal custody, or physical
16 placement until the male is adjudicated the father using the procedure set forth in
17 this subchapter, except s. 767.804 or 767.805. Except as provided in ss. 767.804,
18 767.805, 767.85, and 769.401, the exclusive procedure for establishment of child
19 support obligations, legal custody, or physical placement rights for a male who is not
20 presumed the child's father under s. 891.41 (1), adjudicated the father, conclusively
21 determined to be the child's father from genetic test results under s. 767.804, or
22 acknowledged under s. 767.805 (1) or a substantially similar law of another state to
23 be the father is by an action under this subchapter, except s. 767.804 or 767.805, or
24 under s. 769.701. No person may waive the use of this procedure. If a presumption

1 under s. 891.41 (1) exists, a party denying paternity has the burden of rebutting the
2 presumption.

3 SECTION 34. 767.804 of the statutes is created to read:

4 **767.804 Genetic test results. (1) CONCLUSIVE DETERMINATION OF PATERNITY.**

5 (a) If genetic tests have been performed with respect to a child, the child's mother,
6 and a male alleged, or alleging himself, to be the child's father and the test results
7 show that the male is not excluded as the father and that the statistical probability
8 of the male's parentage is 99.0 percent or higher, the test results constitute a
9 conclusive determination, which shall be of the same effect as a judgment, of
10 paternity.

11 (b) 1. After receiving genetic test results described in par. (a), the county child
12 support agency under s. 59.53 (5) shall file with the state registrar a report showing
13 the names, dates, and birth places of the child and the father, the social security
14 numbers of the mother, father, and child, and the maiden name of the mother on a
15 form designated by the state registrar, along with the fee set forth in s. 69.22 (5),
16 which the county child support agency shall collect.

17 2. The department shall pay, and may not require the county or county child
18 support agency to reimburse the department for the cost of, any of the following fees
19 that the county child support agency is unable to collect:

20 a. A fee for omitting the father's name on a birth certificate under s. 69.15 (3)

21 (a) 1.

22 b. A fee for changing the father's name on a birth certificate under s. 69.15 (3)

23 (a) 2.

24 c. A fee for inserting the father's name on a birth certificate under s. 69.15 (3)

25 (a) 3.

Sugart 15-16

1 (2) ACTIONS. (a) An action affecting the family concerning custody, child
2 support, or physical placement rights may be brought with respect to a child's mother
3 and a male who, along with the child, were the subjects of genetic tests with results
4 described in sub. (1).

5 (b) Within 10 business days after receiving a request for a hearing under this
6 ^{sub} section, the court shall set the matter for hearing. At least 10 days before the
7 hearing, the court or county child support agency under s. 59.53 (5) shall send notice
8 of the date, time, and location of the hearing to the parties by regular mail at their
9 last-known addresses. The notice shall advise the parties of the orders that may be
10 granted at the hearing and that the father may object to the test results or any order
11 that may be granted at the hearing by submitting an objection in writing to the court
12 no later than the day before the hearing.

13 ^{note} (c) Except as provided in s. 767.407, in an action ^{under this subsection} specified in par. (a) the court
14 may appoint a guardian ad litem for the child and shall appoint a guardian ad litem
15 for a party who is a minor, unless the minor party is represented by an attorney.

16 (3) ORDERS. In an action under sub. (2) (a), if the child's mother and the male
17 had notice of the hearing, the court shall make an order that contains all of the
18 following provisions:

19 (a) Orders for the legal custody of and periods of physical placement with the
20 child, determined in accordance with s. 767.41.

21 (b) An order requiring either or both of the parents to contribute to the support
22 of any child of the parties who is less than 18 years old, or any child of the parties who
23 is less than 19 years old if the child is pursuing an accredited course of instruction
24 leading to the acquisition of a high school diploma or its equivalent, determined in
25 accordance with s. 767.511.

Insert 16-15 ✓

1 (c) A determination as to which parent, if eligible, shall have the right to claim
2 the child as an exemption for federal tax purposes under 26 USC 151 (c) (1) (B), or
3 as an exemption for state tax purposes under s. 71.07 (8) (b).

4 (d) 1. An order establishing the amount of the father's obligation to pay or
5 contribute to the reasonable expenses of the mother's pregnancy and the child's
6 birth. The amount established may not exceed one-half of the total actual and
7 reasonable pregnancy and birth expenses. The order also shall specify the court's
8 findings as to whether the father's income is at or below the poverty line established
9 under 42 USC 9902 (2), and shall specify whether periodic payments are due on the
10 obligation, based on the father's ability to pay or contribute to those expenses.

11 2. If the order does not require periodic payments because the father has no
12 present ability to pay or contribute to the expenses, the court may modify the
13 judgment or order at a later date to require periodic payments if the father has the
14 ability to pay at that time.

15 (e) An order requiring either or both parties to pay or contribute to the costs
16 of ~~the~~ guardian ad litem fees and other costs. →, if any, ✓

17 (f) An order requiring either party to pay or contribute to the attorney fees of
18 the other party.

19 (4) LIABILITY FOR PAST SUPPORT. (a) Subject to par. (b), liability for past support
20 of the child shall be limited to support for the period after the day on which the
21 petition, motion, or order to show cause requesting support is filed in the action for
22 support under sub. (2) [✓](a) [✓], unless a party shows, to the satisfaction of the court, all
23 of the following:

24 1. That he or she was induced to delay commencing the action by any of the
25 following:

- 1 a. Duress or threats.
- 2 b. Actions, promises, or representations by the other party upon which the
- 3 party relied.
- 4 c. Actions taken by the other party to evade proceedings under sub. (2)(a).

5 2. That, after the inducement ceased to operate, he or she did not unreasonably
6 delay in commencing the action.

7 (b) In no event may liability for past support of the child be imposed for any
8 period before the birth of the child.

Insert 18-B

9 **SECTION 35.** 767.82 (2m) of the statutes is amended to read:

10 767.82 (2m) CUSTODY PENDING COURT ORDER. If there is no presumption of
11 paternity under s. 891.41 (1) or if paternity is conclusively determined from genetic
12 test results under s. 767.804 (1) or acknowledged under s. 767.805 (1), the mother
13 shall have sole legal custody of the child until the court orders otherwise.

14 **SECTION 36.** 767.84 (1) (a) of the statutes is renumbered 767.84 (1) (a) (intro.)
15 and amended to read:

16 767.84 (1) (a) (intro.) The Except in actions to which s. 767.893 applies, the
17 court may, and upon request of a party shall, require the child, mother, any male for
18 whom there is probable cause to believe that he had sexual intercourse with the
19 mother during a possible time of the child's conception, or any male witness who
20 testifies or will testify about his sexual relations with the mother at a possible time
21 of conception to submit to genetic tests. Probable cause of sexual intercourse during
22 a possible time of conception may be established by a sufficient petition or affidavit
23 of the child's mother or an alleged father, filed with the court, or after an examination
24 under oath of a party or witness, when the court determines that an examination is
25 necessary. The court is not required to order a person who has undergone a genetic

1 ~~test under s. 49.225 to submit to another genetic test under this paragraph unless~~
2 ~~a party requests additional tests under sub. (2). with respect to any of the following:~~

3 **SECTION 37.** 767.84 (1) (a) 1. of the statutes is created to read:

4 767.84 (1) (a) 1. A person who has undergone a genetic test under s. 49.225,
5 unless a party requests additional tests under sub. (2).

6 **SECTION 38.** 767.84 (1) (a) 2. of the statutes is created to read:

7 767.84 (1) (a) 2. A deceased respondent if genetic material is not available
8 without undue hardship as provided in s. 767.865 (2).

9 **SECTION 39.** 802.12 (3) (d) 1. of the statutes is amended to read:

10 802.12 (3) (d) 1. Custody and physical placement under s. 767.41, 767.804 (3),
11 767.805 (4), 767.863 (3), or 767.89 (3).

12 **SECTION 40.** 802.12 (3) (d) 3. of the statutes is amended to read:

13 802.12 (3) (d) 3. Child support under s. 767.511, 767.804 (3), 767.805 (4),
14 767.863 (3), or 767.89 (3).

15 **SECTION 41.** 808.075 (4) (d) 9. of the statutes is amended to read:

16 808.075 (4) (d) 9. Enforcement of payments under s. 767.77, 767.804 (3),
17 767.805 (4), or 767.89.

18 **SECTION 42.** 808.075 (4) (d) 10. of the statutes is amended to read:

19 808.075 (4) (d) 10. Enforcement of orders under s. s. 767.78, 767.804 (3),
20 767.805 (4), or 767.89.

21 **SECTION 43.** 852.05 (2) of the statutes is amended to read:

22 852.05 (2) Property of a child born to unmarried parents passes in accordance
23 with s. 852.01 except that the father or the father's kindred can inherit only if the
24 father has been adjudicated to be the father in a paternity proceeding under ch. 767
25 or by final order or judgment of a court of competent jurisdiction in another state or

Insert 19-8

1 has been determined to be the father under s. 767.804 or 767.805 or a substantially
2 similar law of another state.

3 **SECTION 44.** 938.02 (13) of the statutes, as affected by 2009 Wisconsin Act 94,
4 is amended to read:

5 938.02 (13) "Parent" means a biological parent, a husband who has consented
6 to the artificial insemination of his wife under s. 891.40, or a parent by adoption. If
7 the juvenile is a nonmarital child who is not adopted or whose parents do not
8 subsequently intermarry under s. 767.803, "parent" includes a person conclusively
9 determined from genetic test results to be the father under s. 767.804 or a person
10 acknowledged under s. 767.805 or a substantially similar law of another state or
11 adjudicated to be the biological father. "Parent" does not include any person whose
12 parental rights have been terminated. For purposes of the application of s. 938.028
13 and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, "parent" means a
14 biological parent, an Indian husband who has consented to the artificial
15 insemination of his wife under s. 891.40, or an Indian person who has lawfully
16 adopted an Indian juvenile, including an adoption under tribal law or custom, and
17 includes, in the case of a nonmarital child who is not adopted or whose parents do
18 not subsequently intermarry under s. 767.803, a person conclusively determined
19 from genetic test results to be the father under s. 767.804, a person acknowledged
20 under s. 767.805, a substantially similar law of another state, or tribal law or custom
21 to be the biological father, or a person adjudicated to be the biological father, but does
22 not include any person whose parental rights have been terminated.

23 **SECTION 45.** 938.27 (5) of the statutes is amended to read:

24 938.27 (5) NOTICE TO BIOLOGICAL FATHERS. Subject to sub. (3) (b), the court shall
25 make reasonable efforts to identify and notify any person who has filed a declaration

✓ Insert 20-2

1 of paternal interest under s. 48.025, any person conclusively determined from
2 genetic test results to be the father under s. 767.804 (1), any person who has
3 acknowledged paternity of the child under s. 767.805 (1), and any person who has
4 been adjudged to be the father of the juvenile in a judicial proceeding unless the
5 person's parental rights have been terminated.

6 **SECTION 46. Initial applicability.**

7 (1) SUBPOENAS. The treatment of section 49.22 (2m) (am) and (bc) of the
8 statutes, the renumbering of section 49.22 (2m) (b) of the statutes, and the creation
9 of section 49.22 (2m) (b) 2. of the statutes first apply to subpoenas issued on the
10 effective date of this subsection.

11 (2) PATERNITY DETERMINATION ^{CS} BASED ON GENETIC TEST RESULTS. The treatment of
12 section 767.804 of the statutes first applies to genetic tests that are taken on the
13 effective date of this subsection.

14 (3) GENETIC TESTS IN PATERNITY ACTIONS. The renumbering and amendment of
15 section 767.84 (1) (a) of the statutes and the creation of section 767.84 (1) (a) 1. and
16 2. and 3. of the statutes first apply to paternity actions commenced on the effective date of
17 this subsection.

18 **SECTION 47. Effective date.**

19 (1) This act takes effect on the first day of the 6th month beginning after
20 publication.

21 (END)

D-note

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4430/Ins
PJK:.....

PS
not run

INSERT 3-7

1 **SECTION 1.** 48.396 (2) (dm) [✓] of the statutes is amended to read:

2 48.396 (2) (dm) Upon request of a court having jurisdiction over actions
3 affecting the family, an attorney responsible for support enforcement under s. 59.53
4 (6) (a) or a party to a paternity proceeding under subch. IX of ch. 767, the party's
5 attorney or the guardian ad litem for the child who is the subject of that proceeding
6 to review or be provided with information from the records of the court assigned to
7 exercise jurisdiction under this chapter and ch. 938 relating to the paternity of a child
8 for the purpose of determining the paternity of the child or for the purpose of
9 rebutting the presumption of paternity under s. 891.405, 891.407,[✓] or 891.41 (1), the
10 court assigned to exercise jurisdiction under this chapter and ch. 938 shall open for
11 inspection by the requester its records relating to the paternity of the child or disclose
12 to the requester those records.

History: 1971 c. 278; 1977 c. 354 s. 47; 1977 c. 449; Stats. 1977 s. 48.396; 1979 c. 300; 1979 c. 333 s. 5; 1983 a. 74 s. 32; 1983 a. 487, 538; 1985 a. 311, 332; 1987 a. 27, 180, 403; 1989 a. 31, 107, 145; 1991 a. 39, 263; 1993 a. 98, 195, 228, 334, 479, 491; 1995 a. 27 ss. 2479 to 2480m, 9126 (19); 1995 a. 77, 173, 275, 352, 440, 448; 1997 a. 35, 80, 191, 205, 252, 292; 1999 a. 32, 89; 2003 a. 82; 2005 a. 344, 434; 2005 a. 443 s. 265; 2007 a. 20 s. 9121 (6) (a); 2007 a. 97.

(END OF INSERT 3-7)

INSERT 8-2

13 **SECTION 2.** 69.15 (3) (a) (intro.) [✓] of the statutes is amended to read:

14 69.15 (3) (a) (intro.) If the state registrar receives an order under sub. (1) ~~which~~
15 that [✓] establishes paternity or determines that the man whose name appears on a
16 registrant's birth certificate is not the father of the registrant, or a report under s.
17 767.804 (1) (c) that shows a conclusive determination of paternity or that the man
18 whose name appears on a registrant's birth certificate is not the father of the
19 registrant,[✓] the state registrar shall do the following, as appropriate:

History: 1985 a. 315; 1987 a. 413; 1989 a. 183; 1993 a. 481; 1995 a. 201, 404; 1997 a. 3, 27, 191; 2001 a. 16, 61; 2003 a. 52; 2005 a. 443 ss. 4, 5, 265; 2007 a. 20.

20 **SECTION 3.** 69.15 (3) (a) 1. of the statutes is amended to read:



Ins 8-2 cont'd

1 69.15 (3) (a) 1. Prepare under sub. (6) a new certificate omitting the father's
2 name if the order determines or report shows that the man whose name appears on
3 a registrant's birth certificate is not the father of the registrant and if there is no
4 adjudicated father.

History: 1985 a. 315; 1987 a. 413; 1989 a. 183; 1993 a. 481; 1995 a. 201, 404; 1997 a. 3, 27, 191; 2001 a. 16, 61; 2003 a. 52; 2005 a. 443 ss. 4, 5, 265; 2007 a. 20.

5 **SECTION 4.** 69.15 (3) (a) 3. of the statutes is amended to read:

6 69.15 (3) (a) 3. Except as provided under subd. 4., insert the name of the
7 adjudicated or conclusively determined father on the original birth certificate if the
8 name of the father was omitted on the original certificate.

History: 1985 a. 315; 1987 a. 413; 1989 a. 183; 1993 a. 481; 1995 a. 201, 404; 1997 a. 3, 27, 191; 2001 a. 16, 61; 2003 a. 52; 2005 a. 443 ss. 4, 5, 265; 2007 a. 20.

(END OF INSERT 8-2)

INSERT 14-3

9 **SECTION 5.** 767.80 (1) (intro.) of the statutes is amended to read:

10 767.80 (1) WHO MAY BRING ACTION OR FILE MOTION. (intro.) The following persons
11 may bring an action or file a motion, including an action or motion for declaratory
12 judgment, for the purpose of determining the paternity of a child, or for the purpose
13 of rebutting the presumption of paternity under s. 891.405, 891.407, or 891.41 (1):

History: 1979 c. 352; 1981 c. 20 s. 2202 (20) (m); 1983 a. 447; 1985 a. 29; 1987 a. 27, 355, 399, 413; 1989 a. 31, 212; 1993 a. 326, 481; 1995 a. 27 s. 9126 (19); 1995 a. 68, 100, 201, 275, 404; 1997 a. 191; 1999 a. 9; 2001 a. 61; 2005 a. 443 ss. 12, 184, 241; Stats. 2005 s. 767.80; 2007 a. 97.

(END OF INSERT 14-3)

INSERT 14-6

14 **SECTION 6.** 767.80 (1) (hm) of the statutes is created to read:

15 767.80 (1) (hm) The state as provided under s. 767.804 (1) (d).

(END OF INSERT 14-6)

INSERT 15-16

16 **767.804 Genetic test results.** (1) CONCLUSIVE DETERMINATION OF PATERNITY.

17 (a) If genetic tests have been performed with respect to a child, the child's mother,



Aug 15-16 cont'd 2003

1 and a male alleged, or alleging himself, to be the child's father, the test results
2 constitute a conclusive determination of paternity, which shall be of the same effect
3 as a judgment of paternity, if all of the following apply:

4 1. Both the child's mother and the male are over the age of 18 years.

5 2. The genetic tests were performed under s. 49.225.

6 3. The test results show that the male is not excluded as the father and that
7 the statistical probability of the male's parentage is 99.0 percent or higher.

8 4. No other male is presumed to be the father under s. 891.41 (1).

9 (b) If the county child support agency under s. 59.53 (5) receives genetic test
10 results described in par. (a) and the requirements under par. (a) are satisfied, at

11 least 10 days before filing the report under par. (c) the county child support agency
12 shall send notice to the parties by regular mail at their last-known addresses. The

13 notice shall advise the parties of the test results that the report under par. (c) will

14 be filed with the state registrar on a specified date that an action affecting the family
15 concerning custody, child support, or physical placement rights may be brought with

16 respect to the parties that the father may object to the test results or any order that
17 may be granted in the action affecting the family by submitting an objection in

18 writing to the county child support agency no later than the day before the report
19 under par. (c) is filed, and that, if the father submits an objection, the state will

20 commence a paternity action.

21 (c) 1. If the male does not timely submit an objection under par. (b), the county
22 child support agency shall file with the state registrar a report showing the names,

23 dates, and birth places of the child and the father, the social security numbers of the
24 mother, father, and child, and the maiden name of the mother on a form designated

all of the following:
#1.
#2.
#3.
#4.

prescribed

Ins 15-16 cont'd 303

1 by the state registrar, along with the fee set forth in s. 69.22 (5), which the county
2 child support agency shall collect.

(END OF INSERT 15-16)

INSERT 16-15

County child support agency

3 (d) If the male timely submits an objection under par. (b), the department shall
4 commence an action under s. 767.80 (1) on behalf of the state. The genetic test results
5 described in par. (a) are admissible in an action commenced under this subdivision.

4.

9 paragraph

6 (2) ACTIONS. Unless sub. (1) (d) applies, an action affecting the family
7 concerning custody, child support, or physical placement rights may be brought
8 under this subsection with respect to a child's mother and a male who, along with the
9 child, were the subjects of genetic tests, the results of which constitute a conclusive
10 determination of paternity under sub. (1). Except as provided in s. 767.407, in an
11 action under this subsection the court may appoint a guardian ad litem for the child.

(END OF INSERT 16-15)

INSERT 8-18

12 SECTION 7. 767.82 (2) of the statutes is amended to read:
13 767.82 (2) PRESUMPTION. Presumption of paternity shall be as provided in ss.
14 891.39, 891.405, 891.407, and 891.41 (1).

History: 1979 c. 352; 1981 c. 391; 1983 a. 447; 1989 a. 212; 1993 a. 481; 1995 a. 275; 1997 a. 191; 1999 a. 9; 2005 a. 443 ss. 208, 247; Stats. 2005 s. 767.82.

(END OF INSERT 8-18)

INSERT 19-8

15 SECTION 8. 767.84 (1) (a) 3. of the statutes is created to read:
16 767.84 (1) (a) 3. a. Except as provided in subd. 3. b., a respondent who fails to
17 appear, if genetic test results with respect to another male show that the other male

male



Ins 19-8 contd

1 is not excluded as the father and that the statistical probability of the other male's
2 parentage is 99.0 percent or higher creating a presumption of the other male's
3 paternity.

4 b. Subdivision[✓] 3. a. does not apply if the presumption of the other male's
5 paternity is rebutted.

6 **SECTION 9.** 767.87[✓] (8) of the statutes is amended to read:

7 **767.87 (8) BURDEN OF PROOF.** The party bringing an action for the purpose of
8 determining paternity or for the purpose of declaring the nonexistence of paternity
9 presumed under s. 891.405, 891.407[✓], or 891.41 (1) shall have the burden of proving
10 the issues involved by clear and satisfactory preponderance of the evidence.

History: 1979 c. 352; 1981 c. 20 s. 2202 (20) (m); 1981 c. 359 ss. 13, 17; 1983 a. 447; 1987 a. 413; 1989 a. 31, 122, 212; 1993 a. 395, 481; 1995 a. 27 s. 9126 (19); 1995 a. 77, 100, 275, 289, 404; 1997 a. 27, 105, 191, 252; 1999 a. 185; 2005 a. 443 ss. 207, 258; Stats. 2005 s. 767.87; 2007 a. 20.

(END OF INSERT 19-8)

INSERT 20-2

11 **SECTION 10.** 891.407[✓] of the statutes is created to read:

12 **891.407 Presumption of paternity based on genetic test results.**[✓] A man
13 is presumed to be the natural father of a child if the man has been conclusively
14 determined from genetic test results to be the father under s. 767.804[✓] and no other
15 man is presumed to be the father under s. 891.41 (1).[✓]

(END OF INSERT 20-2)

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4430/P3ins
PJK:.....

INSERT A

Under current law, a man may be adjudicated to be a child's father in a paternity action. In addition, a man and a child's mother may sign and file with the state registrar a form called a statement acknowledging paternity. Both cases result in a conclusive determination that the man is the child's father, and the state registrar may change the child's birth certificate to show the man as the child's father and a court may enter orders for child support, legal custody, and physical placement rights with respect to the man. Current law also contains presumptions of paternity. There is a presumption (marriage presumption) that a man is the father of a child if he and the child's mother were married when the child was conceived or born or if he and child's mother married after the child was born but had a relationship during the time within which the child was conceived and no other man has been adjudicated to be the father or is presumed to be the father because he was married to the child's mother when the child was conceived or born. There is also a presumption (statement acknowledging paternity presumption) that a man is a child's father if he and the child's mother signed and filed a statement acknowledging paternity with the state registrar and no other man is presumed to be the child's father under the marriage presumption.

This bill creates another way for a man to be conclusively determined to be a child's father, with the same effect as a paternity judgment. Under the bill, a man is conclusively determined to be a child's father if all of the following are satisfied: 1) genetic tests are performed with respect to the child, the child's mother, and the man and the test results show that the man is not excluded as the father and the statistical probability that he is the father is 99 percent or higher; 2) both the mother and the man are at least 18 years old; 3) there is no marriage presumption; and 4) the genetic tests were performed in response to a subpoena issued by a county child support agency (child support agency) requiring the parties to submit to the tests. If all of those requirements are satisfied, the child support agency must send notice to the parties advising of the test results, that an action may be commenced for orders related to child support, legal custody, and physical placment, and that the man may submit to the child support agency a written objection to the test results or any orders that may be granted in the action. If the man submits an objection, the child support agency must commence a paternity action on behalf of the state and the test results are admissible in the action. If the man does not submit an objection by the time specified in the notice, the child support agency must file with the state registrar a report of the test results, showing a conclusive determination of paternity. On the basis of the report, the state registrar must either insert the name of the father on the child's original birth certificate if the father's name was omitted or prepare a new birth certificate for the child if the father's name was not correct on the original birth certificate.

Under the bill, if genetic test results conclusively determine a man to be a child's father, an action may be brought for legal custody, physical placement, and child support. The court may also require the man to pay or contribute to the reasonable expenses of the mother's pregnancy and require either the man or mother to pay or

Ins A contd

contribute to the other party's attorney fees. ✓ In addition, the bill creates a presumption that a man is a child's father if all of the requirements under the bill are satisfied for conclusively determining a man to be a child's father on the basis of genetic test results and no other man is presumed to be the child's father under the marriage presumption. ✓

*

The bill also makes other modifications related to genetic testing. Under current law, both a child support agency and the department of children and families may issue subpoenas to require persons to submit to genetic tests under specified circumstances. The bill provides that a person who fails, without good cause, to comply with such a subpoena may be required to pay a forfeiture of not more than \$300. ✓ Also under current law, in a paternity action, the court may require, and upon request shall require, the child, the child's mother, and any male for whom there is probable cause to believe that he had sexual relations with the mother during the possible time of the child's conception to submit to genetic tests. ✓ Under the bill, the court in a paternity action must require the child, the child's mother, and any male for whom there is probable cause to believe that he had sexual relations with the mother during the possible time of the child's conception to submit to genetic tests with the following exceptions: 1) genetic tests are not required if the action will be dismissed or a default judgment will be entered because of the failure of a party to appear and 2) the court is not required to require any of the following persons to submit to genetic tests: a) a person who was required by a child support agency to submit to a genetic test and who has done so, b) the respondent in the action if he or she is deceased and genetic material is not available without undue hardship, and c) a male respondent who fails to appear if genetic test results with respect to another male show that the other male is not excluded as the father and that the statistical probability that he is the father is 99 percent or higher. ✓

*

*

*

*

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

(END OF INSERT A)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4430/P3dn

PJK:.....

date

JL

I did not change the language in any of the cross-references[✓] to a conclusive determination of paternity from genetic test results under s. 767.804[✓]. In other[✓] words, I did not add "or a similar law of another state." Let me know if you want any changes. *

Do you want a person who has been determined to be the father under s. 767.804[✓] to be added to s. 49.141 (1) (i)[✓] or (j) 5.[✓]?

Do you want something similar to any of the following sections added for a conclusive determination of paternity from genetic test results under s. 767.804?

- 767.80 (1) (k)[✓]
- 767.863 (3)[✓]
- 767.88 (2) (c)[✓]
- 769.201 (7)[✓]

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4430/P3dn
PJK:jld:ph

March 24, 2010

I did not change the language in any of the cross-references to a conclusive determination of paternity from genetic test results under s. 767.804. In other words, I did not add "or a similar law of another state." Let me know if you want any changes.

Do you want a person who has been determined to be the father under s. 767.804 to be added to s. 49.141 (1) (i) or (j) 5.?

Do you want something similar to any of the following sections added for a conclusive determination of paternity from genetic test results under s. 767.804?

767.80 (1) (k)

767.863 (3)

767.88 (2) (c)

769.201 (7)

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

Kahler, Pam

From: Nelson, Robert P.
Sent: Friday, March 26, 2010 1:55 PM
To: Chesnik, Connie - DCF
Cc: Kahler, Pam
Subject: RE: Draft review: LRB 09-4430/P3 Topic: Administrative paternity establishment

Pam asked me to respond to your questions because I do administrative law drafting and court drafting.

If a person failed to submit to the testing as requested by the subpoena, I am not sure that an administrative agency can access a forfeiture. Generally, the imposition of a penalty for the violation of a statutory requirement is done by the courts. If your agency did impose the penalty, the person affected probably would have the right to an administrative hearing to contest the forfeiture since that is an adverse action by your agency. The penalty can only be imposed after giving the violator the chance to present his or her position, either in court or before the agency.

However, it seems that the imposition of the penalty should be done by a court, so perhaps the proper way to do so is to have the attorney general bring a court action. There is a little-known chapter 778 that discusses how to enforce a forfeiture. Perhaps you could add this type of violation to the list in s. 778.25. I do not know if the attorneys in your agency do that type of legal work, so I am assuming the attorney general would act on your behalf.

Bob N.

-----Original Message-----

From: Kahler, Pam
Sent: Friday, March 26, 2010 11:39 AM
To: Nelson, Robert P.
Subject: FW: Draft review: LRB 09-4430/P3 Topic: Administrative paternity establishment

-----Original Message-----

From: Chesnik, Connie - DCF [mailto:Connie.Chesnik@wisconsin.gov]
Sent: Friday, March 26, 2010 9:43 AM
To: Kahler, Pam
Subject: RE: Draft review: LRB 09-4430/P3 Topic: Administrative paternity establishment

I don't want to get into rulemaking on this. "as determined by the dept or csa" would be fine. What right would the individual have to challenge it if we assessed the forfeiture and they felt they had good cause? And how would we enforce it?

Connie M. Chesnik
Attorney
608-267-7295 (office)
608-692-7379 (cell)
connie.chesnik@wisconsin.gov

From: Kahler, Pam [Pam.Kahler@legis.wisconsin.gov]
Sent: Friday, March 26, 2010 9:28 AM
To: Chesnik, Connie - DCF
Subject: RE: Draft review: LRB 09-4430/P3 Topic: Administrative paternity establishment

Adding to that last one, it could say "as defined by the department by rule," or "as determined by the department or child support agency" if you want the determination to be more ad hoc and specifically based on the immediate situation.

From: Chesnik, Connie - DCF [mailto:Connie.Chesnik@wisconsin.gov]
Sent: Thursday, March 25, 2010 5:22 PM
To: Chesnik, Connie - DCF; Kahler, Pam
Subject: RE: Draft review: LRB 09-4430/P3 Topic: Administrative paternity establishment

Hi Pam,

One of my county colleagues pointed out something I missed and I've added it below.

Also, you refer to 'good cause' for not complying with an administrative subpoena in s.49.22(2m)(b)2 (Section 9) but good cause isn't defined. Do we need to define it or are there other references in the statutes? Could we remove it? The forfeiture provision is not mandatory.

Thanks,

Connie

Connie M. Chesnik
Attorney
Department of Children and Families
ph: 608-267-7295
cell: 608-692-7379
fax: 608-261-6972
email: connie.chesnik@wisconsin.gov

From: Chesnik, Connie - DCF
Sent: Thursday, March 25, 2010 4:25 PM
To: Kahler, Pam - LEGIS
Subject: FW: Draft review: LRB 09-4430/P3 Topic: Administrative paternity establishment

Hi Pam,

The draft looks great. I found only one small thing and I've heard back from most of our workgroup. I may hear from one other person tomorrow, but so far. looks great.

On page 19 of the draft, first line (767.804(4)), would you please remove "or any order that may be granted in the action affecting the family". The right to object should only be to the test results. They'll have additional due process in any subsequently commenced action for support.

On page 10 of the draft, please remove "or that thae man whose name appears on a registrant's birth cerificate is not the father of the registrant" from s.69.15(3)(a)(intro) beginning on line 11 on page 10. Along with that, please add a reference to s.891.405, the presumption based on VPA's to 767.804(1)(a)4 so that the conclusive determination of paternity provisions are not available in cases where there is already a VPA. Consistent with that, these new provisions should never be used to remove a name from the birth certificate. Someone wishing to do that would need to file a motion under 806.07.

You also asked some questions. We would like a reference to 767.804 added to s.49.141(1)(i) and (j)5 and to 769.201(7) but not to the other sections you cited.

Then I think we're good to go. Thank you! I'll let Natalie know.

Connie

Connie M. Chesnik
Attorney
Department of Children and Families
ph: 608-267-7295
cell: 608-692-7379
fax: 608-261-6972
email: connie.chesnik@wisconsin.gov

From: Verette, Natalie [mailto:Natalie.Verette@legis.wisconsin.gov]
Sent: Wednesday, March 24, 2010 4:09 PM
To: Chesnik, Connie - DCF
Subject: FW: Draft review: LRB 09-4430/P3 Topic: Administrative paternity establishment

Hi Connie,

Here is the latest draft.

Natalie

From: Basford, Sarah
Sent: Wednesday, March 24, 2010 12:32 PM
To: Rep.Seidel
Subject: Draft review: LRB 09-4430/P3 Topic: Administrative paternity establishment

Following is the PDF version of draft LRB 09-4430/P3 and drafter's note.