

CR 88-72

CERTIFICATE

RECEIVED

STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

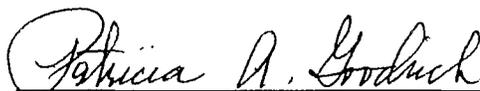
JUL 7 1989  
11:15 am  
Revisor of Statutes  
Bureau

I, Patricia A. Goodrich, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to establishment of the paternity of nonmarital children for purposes of child support enforcement were duly approved and adopted by this Department on July 7, 1989.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 7th day of July, 1989.

SEAL:



Patricia A. Goodrich, Secretary  
Department of Health and Social Services

9-1-89

ORDER OF THE  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
CREATING RULES

To create HSS 81, relating to establishment of the paternity of a nonmarital child.

Analysis Prepared by the Department of Health and Social Services

Section 767.45(6m), Stats., authorizes the Department to promulgate rules describing situations in which the district attorney or corporation counsel is not required to begin an action to establish the paternity of a nonmarital child for purposes of child support enforcement.

These rules describe the administrative steps to be taken when the birth of a nonmarital child is reported and specify cases in which no legal action to establish paternity may be undertaken.

The Department's authority to create these rules is found in s.767.45(6m), Stats. The rules interpret ss.46.25 and 767.45(6m), Stats.

SECTION 1. HSS 81 is created to read:

CHAPTER HSS 81  
ESTABLISHMENT OF PATERNITY OF A NONMARITAL CHILD

HSS 81.01 Introduction  
HSS 81.02 Definitions  
HSS 81.03 Timely Action

HSS 81.04 Excluded Cases  
HSS 81.05 Disputed Cases

HSS 81.01 INTRODUCTION. (1) AUTHORITY AND PURPOSE. This chapter is promulgated under authority set out in s.767.45(6m), Stats., for the purpose of establishing the paternity of nonmarital children for purposes of child support enforcement.

(2) APPLICABILITY. This chapter applies to all cases in which a birth certificate filed under s.69.07, Stats., on or after September 1, 1988, does not contain the name of a father. Procedures under this chapter shall be followed by county officials charged with duties under ss.59.07(97) and 767.45(6m), Stats. This chapter does not apply to cases in which an assignment of rights to support has been made to the state under s.49.19(4)(h)1 or 49.45(19), Stats., nor to cases in which the mother applies for paternity establishment services under s.46.25, Stats.

HSS 81.02 DEFINITIONS. In this chapter:

(1) "Attorney" means the district attorney or corporation counsel designated under s.767.45(6)(a), Stats.

(2) "Best interests of the child" means whatever protects a child from harm and promotes the child's well-being.

(3) "Birth certificate" means the record made under s.69.14, Stats.

(4) "County child support agency" means the office, officer, board, department or agency designated by a county board under s.59.07(97), Stats.

(5) "Caretaker relative" means the blood relative or blood relative's spouse with whom the child resides at the time the attorney takes action to establish paternity.

(6) "Department" means the Wisconsin department of health and social services.

(7) "Establish paternity" means to file a statement acknowledging paternity pursuant to s.69.15(3)(b)1 or 3, Stats., provided that s.891.41, Stats., does not apply to any other person, or to obtain a judgment of paternity.

(8) "Nonmarital child" means a child for whom no father is named on the child's birth certificate.

HSS 81.03 TIMELY ACTION. When the attorney receives from the department under s. 69.03(15), Stats., the name of a nonmarital child who is a resident of the county and the nonmarital mother's address, the attorney shall:

(1) Send a written communication to the mother at the mother's last known address, describing the legal implications of paternity establishment, the paternity establishment process, applicable fees, how to apply for the services offered by the child support agency, including services to establish paternity, the circumstances when the attorney will not take action to establish paternity under s. HSS 81.04, and the rights of the mother and other caretaker relatives under s. HSS 81.05.

(2) Make a reasonable effort to obtain the mother's cooperation in establishing paternity;

(3) Make a reasonable effort to locate the father within 90 days after the date on the written communication required under sub. (1); and

(4) With the cooperation of the mother, if obtained, and upon location of the probable father or a possible father, commence an action to establish paternity, except as provided under s.HSS 81.04.

HSS 81.04 EXCLUDED CASES. The attorney may not take any action to establish paternity if:

(1) The child was conceived by artificial insemination and information about the father has been omitted from the birth certificate in accordance with s.69.14(1)(g), Stats.;

(2) The child was born to a surrogate mother and information about the father has been omitted from the birth certificate in accordance with s.69.14(1)(h), Stats.;

(3) The child was conceived as a result of sexual assault as defined in s.940.225(1)(a), Stats.;

(4) The child was conceived by incest;

(5) Adoption proceedings for the child are pending as evidenced by a petition for adoption filed with the court;

(6) The mother or the caretaker relative opposes the establishment of paternity and the attorney determines that the establishment of paternity would be reasonably anticipated to result in physical or emotional harm to the child, the mother or the caretaker relative; or

(7) A guardian ad litem appointed under s. HSS 81.05 (2), or appointed under any other provision, determines that it would not be in the best interests of the child to establish paternity.

HSS 81.05 DISPUTED CASES. (1) The attorney shall commence a court action to establish paternity for all cases except those meeting the criteria for exclusion in s.HSS 81.04, unless:

(a) The mother opposes the establishment of paternity because of the risk of physical or emotional harm to the child or herself; or

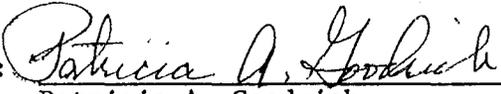
(b) The caretaker relative opposes the establishment of paternity because of the risk of physical or emotional harm to the child or the caretaker relative.

(2) If there is a dispute between the attorney and the mother about commencing a paternity action or the seriousness of the risk of physical or emotional harm, the attorney shall petition the court for appointment of a guardian ad litem to determine whether it would be in the best interests of the child to determine paternity.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s.227.22(2), Stats.

Wisconsin Department of Health and  
Social Services

Date: July 7, 1989

By:   
Patricia A. Goodrich  
Secretary

Seal:



State of Wisconsin \

DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
1 West Wilson Street, Madison, Wisconsin 53702

Tommy G. Thompson  
Governor

Patricia A. Goodrich  
Secretary

July 7, 1989

RECEIVED

JUL 7 1989

Revisor of Statutes  
Bureau

Mailing Address:  
Post Office Box 7850  
Madison, WI 53707

Mr. Orlan Prestegard  
Revisor of Statutes  
7th Floor - 30 on the Square  
Madison, Wisconsin 53702

Dear Mr. Prestegard:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of HSS 81, administrative rules relating to establishment of the paternity of nonmarital children for purposes of child support enforcement.

These rules are also being submitted to the Secretary of State as required by s. 227.20, Stats.

These rules apply to county attorneys and may affect the parents of nonmarital children and the children. The rules do not directly impact on small businesses as defined in s. 227.114(1)(a), Stats.

Sincerely,

Patricia A. Goodrich  
SECRETARY

Enclosure