

No. 449, S.]

[Published July 9, 1957.

CHAPTER 296

AN ACT to amend 52.22, 52.25, 52.26, 52.27, 52.28, 52.31 (1), 52.32, 52.35, 52.37 (2), 52.39, 52.40, 52.45 and 69.29 (1); and to create 52.355, 328.395 and 330.195 of the statutes, relating to illegitimacy proceedings and related matters and providing a penalty incident thereto, to make necessary changes of phraseology in other sections, all for the purpose of revising the paternity statutes as a supplement to the 1955 children's code.

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

SECTION 1. 52.22 of the statutes is amended to read:

52.22 The district attorney shall appear *in* and prosecute * * * *every paternity * * * proceeding where the complainant is not represented by private counsel*, including both the preliminary examination in justice court and the proceedings in the trial court and all subsequent proceedings brought to modify the original judgment or agreement. *Where the complainant is a minor or incompetent the district attorney shall automatically act as her guardian ad litem without court order in every such proceeding which he prosecutes.* Private counsel in behalf of the complainant may appear * * * *instead of the district attorney after a warrant or summons is issued pursuant to s. 52.25, and reasonable attorney's fees may be allowed and taxed against the defendant. In every case where private counsel does so appear in behalf of the complainant, the private counsel shall be charged with the duty of prosecuting the proceeding in all respects thereafter (except that any settlement agreement in such case shall be drawn by the district attorney as provided in s. 52.28); and the private counsel shall be automatically substituted by the court as complainant's counsel in place of the district attorney, who shall thereafter withdraw from the case. If a complainant represented by private counsel is a minor or incompetent, the private counsel may also be appointed as her guardian ad litem with court approval; provided that if a conflict of interest should thereafter arise on the part of said private counsel, the court may then appoint another qualified person to act as guardian ad litem.* In counties having a population of 500,000 or more the corporation counsel of such county or an assistant corporation counsel shall have all the powers and perform all the duties conferred or imposed upon the district attorney by ss. 52.21 to 52.45 exclusively and in lieu of such district attorney.

SECTION 2. 52.25 of the statutes is amended to read:

52.25 PATERNITY; PROCEEDINGS ON AND CONTENTS OF COMPLAINT. On complaint made to any justice of the peace or district attorney by any woman who has borne * * * *a child out of wedlock* or who is pregnant with a child * * * *likely to be born * * * out of wedlock*, accusing a named person of being the father of such child, the justice or

district attorney shall take such complaint in writing, under oath of such woman, and shall thereupon issue his warrant, returnable before such justice or, if issued by a district attorney, before a magistrate of the county, directed to the sheriff or any constable of his county, commanding him forthwith to bring such accused person before the justice or magistrate before whom the warrant is returnable to answer such complaint. The district attorney shall forthwith deliver any complaint filed with him to the magistrate before whom the warrant is returnable. With the consent of the complainant *and the district attorney*, a summons may be issued as provided in s. 954.02. * * *

SECTION 3. 52.26 of the statutes is amended to read:

52.26 WARRANT; ATTENDANCE OF PARTIES; ARRAIGNMENT AND BAIL. Any warrant issued under ss. 52.21 to 52.45 may be executed in any part of this state; and in all cases *a copy of the complaint shall be served upon the defendant and the justice may compel the * * * complainant and defendant to attend and testify the same as witnesses in other cases. At the time of arraignment, the defendant may give bail, as provided in ss. 960.07 and 960.08, to insure his appearances at the time of the preliminary examination and all subsequent stages of the proceedings until entry of judgment or until the matter is dismissed or he is otherwise discharged by the court; and in default thereof he shall be committed pending such proceedings, to the county jail.*

SECTION 4. 52.27 and 52.28 of the statutes are amended to read:

52.27 On the * * * *entry of defendant's plea denying paternity, or on the date to which the matter is then adjourned*, the justice shall examine the complainant under oath respecting the cause of complaint; the defendant may cross-examine her and put any questions necessary for his defense. Witnesses may be examined on behalf of either party. If * * * the defendant does not appear, the justice shall proceed in the same manner as though he were present, and shall make such orders as if the defendant were in court. The justice may at his discretion exclude the public from attendance at such examination. All testimony taken and proceedings had shall be reduced to writing; *and the proceedings for cause shown may be adjourned from time to time * * *. The defendant shall be entitled to a removal of such action as in criminal examination before justices of the peace.*

52.28 A woman who has borne * * * *a child out of wedlock* or who is pregnant with a child which * * * *is likely to be born, * * * out of wedlock*, may enter into an agreement with the person claimed by her to be the father of the child. Such agreement may be entered into at any time prior to final judgment, either before or after issuance of process, *or at any time while said judgment is still in effect*. No agreement shall be entered into before the birth of the child unless the court finds that there are special circumstances making it advisable to do so. The agreement shall include a determination of all facts and orders which s. 52.37 requires the court to determine in its order for judgment, except that where the parties are unable to agree as to the paternity of the child, the alleged father may deny paternity in the agreement. By the terms of the agreement the defendant must submit personally to the jurisdiction of the court, and consent to entry of judgment in accordance with the terms of the agreement. Upon motion of the district attorney, the judge of a court of record having power to enter final judgment in * * * *paternity* proceedings, being satisfied with the terms of the agreement, shall order judgment in accordance therewith if paternity of the child is admitted. Where the paternity of the child is not admitted, after said agreement is approved by the court, it shall be filed but judgment shall

not be rendered until there is a default of the payments agreed upon, when, upon motion of the district attorney, judgment shall be rendered and entered forthwith. All agreements referred to in ss. 52.21 to 52.45 shall be drawn by the district attorney. No other agreement or settlement of any * * * *paternity proceeding* shall be valid.

SECTION 5. 52.31 (1) of the statutes is amended to read:

52.31 WHEN BOUND OVER FOR TRIAL; NEW PROCEEDINGS, WHEN HAD IF DISCHARGED. (1) If the defendant does not enter into a settlement agreement with the complainant as provided in s. 52.28 or 52.29 and there is probable cause to believe him * * * *to be the father of the child*, the justice shall * * * *cause him to be bound over* for trial at the next term of the circuit court for the proper county. * * *

SECTION 6. 52.32 of the statutes is amended to read:

52.32 All cases begun under ss. 52.21 to 52.45 shall be tried in the county where the * * * *complainant resides (or if said complainant is a nonresident of the state, then in the county where the defendant resides)*, unless it appears to the satisfaction of the court by affidavit that a fair and impartial trial cannot be had in such county, in which case the court may direct that the defendant be tried in some adjoining county where a fair and impartial trial can be had *or in the county where the defendant resides*; the defendant shall be entitled to only one change of venue.

SECTION 7. 52.35 of the statutes is amended to read:

52.35 Upon the trial of the proceedings the issue shall be whether the defendant * * * *is or is not the father of complainant's child*. The trial shall be by jury, if either party demands a jury, otherwise by the court; *provided that such demand shall be made in writing at the time when the defendant is bound over for trial or within 20 days thereafter, and any neglect to make such demand shall be a waiver of the right to trial by jury. The court may in its discretion order a trial by jury of any issue of fact unless waived by the parties. As provided in s. 270.27, the court may, and when requested by either party, before the introduction of any testimony in his behalf, shall direct the jury to find a special verdict.* If the mother is dead or becomes insane or cannot be found within the jurisdiction *or fails to prosecute*, the proceeding does not abate, but the child shall be substituted as complainant *and the case prosecuted as provided in s. 52.23*. The testimony of the mother taken at the preliminary hearing may in any such case be read in evidence * * * *insofar as it is competent, relevant and material*. The judge may at his discretion exclude the public from attendance at such trial.

SECTION 8. 52.355 of the statutes is created to read:

52.355 BURDEN OF PROOF. The complainant shall have the burden of proving the issues involved by clear and satisfactory evidence, which shall be greater than a clear preponderance of the evidence required in other civil cases, but which shall be less than proof beyond a reasonable doubt required in criminal cases; provided that if the child whose paternity is at issue was born to the complainant while she was the lawful wife of a specified man the complainant shall then have the burden, as required in s. 328.39, of proving beyond all reasonable doubt that the husband is not the father of such child.

SECTION 9. 52.37 (2) of the statutes is amended to read:

52.37 (2) The * * * *defendant* shall also pay to the county the costs of the action and is chargeable for the future support of the child until

it attains the age of 18 years. Payments for such future support shall be directed to be made in either of the 2 following methods:

(a) Payment of a specified monthly sum until the child is 18 years of age;

(b) Payment of a specified lump sum to be paid upon the approval of an agreement or entry of judgment, or in specified *minimum* monthly instalments *and other necessary instalments* within * * * 4 years * * * following a period of 30 days after the date of such approval or entry of judgment, subject to the condition that upon default in any monthly instalment, the court reserves the right to require the defendant to pay monthly support money for the child until it attains the age of 18 years. All payments for the future support of the child shall be paid to a trustee and shall be held by him for the benefit of the child, subject to the order of the court, and shall be paid by him to the person, agency or institution having legal custody of the child in such manner and amounts as the court directs.

SECTION 10. 52.39 and 52.40 of the statutes are amended to read:

52.39 If the person adjudged to be the father of such child pays the cost of the prosecution, and any lump or total sum adjudged to be paid, he shall be discharged and the judgment satisfied of record; or if he gives a bond to the proper town or county in such sum and with such surety as the court approves, conditioned on the performance of such judgment and the payment of all sums ordered to be paid as therein directed, he shall be discharged; otherwise he shall be committed, *but not more than once in any one calendar year*, to the county jail until he complies with such judgment or is otherwise discharged according to law. The court may stay execution of such commitment; execution so stayed shall issue at any time when it appears to the court that the defendant has defaulted on any of the provisions of the judgment. *The provisions of s. 56.08 relating to the employment of misdemeanants shall at his request be applicable to any person committed to the county jail under ss. 52.21 to 52.45.*

52.40 Any person who has been so imprisoned 90 days *commencing in any one calendar year* may apply for his discharge from *such* imprisonment * * * as provided by law for the discharge from imprisonment of persons confined in jail upon executions against the person; but notice of the application for such discharge shall be given to the complainant, if she lives within the state, and also to the district attorney at least 15 days before such application for discharge is made. Upon defendant's release, if he at any time fails to comply with the judgment of the court with reference to the continued support of the child, he may be summarily dealt with as for contempt of court, and shall likewise be subject to all the penalties for failure to care for and support such child which are imposed by law upon the father of a legitimate child of like age and capacity, and in case of such failure to abide by any order of the court, the defendant shall be fully liable for the support of such child without reference to such order.

SECTION 11. 52.45 of the statutes is amended to read:

52.45 Sections 52.21 to 52.45 shall be so interpreted and construed as to effectuate the protection and welfare of the child involved in any proceedings hereunder. *Any proceeding commenced under the the foregoing sections is a civil special proceeding, and all such proceedings shall be commenced in the name of the state on the relation of the complainant, or on relation of the child if the complainant is dead, or insane, or does not prosecute. Such proceeding shall be commenced and conducted and the orders and judgments therein enforced according to the provisions of these statutes with respect to civil actions and civil proceedings in*

courts of record, as far as applicable except as otherwise provided in this chapter; provided that no fee shall be required for filing any such proceeding in court. Wherever the language "child born out of wedlock" is used in this chapter, it shall be construed to mean either a child born to an unmarried woman, or a child which, although born to a married woman, is either alleged or adjudicated not to be the issue of her marriage.

SECTION 12. 69.29 (1) of the statutes is amended to read:

69.29 (1) The certificate of birth shall contain such items as the state board of health may determine are necessary and shall agree in the main with the standard form recommended by the U. S. public health service; *provided that whenever a child is born to a woman while she is the lawful wife of a specified man, the certificate of birth for such child shall list the name of the husband as the father of such child unless and until the illegitimacy of such child is proven beyond all reasonable doubt in accordance with law and in any proceeding under ss. 52.21 to 52.45 such birth record shall not be admissible in evidence.*

SECTION 13. 328.395 of the statutes is created to read:

328.395 PRESUMPTION AS TO TIME OF CONCEPTION. In any paternity proceeding, where the child whose paternity is at issue weighed 5½ pounds or more at the time of its birth, the testimony of the mother as to such weight shall be presumptive evidence that the child was a full term child, unless competent evidence to the contrary is presented to the court. The conception of such child shall be presumed to have occurred within a span of time extending from 240 days to 300 days before the date of its birth, unless competent evidence to the contrary is presented to the court.

SECTION 14. 330.195 of the statutes is created to read:

330.195 WITHIN 5 YEARS. Within 5 years of date of birth of child: An action under ch. 52 for the establishment of the paternity of the child, except that this limitation shall not apply where the parties thereto enter into an agreement for the support of the child in accordance with s. 52.28 or where a second proceeding is had pursuant to s. 52.31 (2). Where a warrant or summons under ch. 52 has been issued within such 5 years, the provisions of ss. 330.30 and 939.74 (3) shall both be applicable in computing time under this section.

SECTION 15. Wherever the words "illegitimate child" appear in the statutes prior to the effective date of this act, the revisor of statutes is directed to substitute therefor the words "child born out of wedlock". Wherever the words "illegitimacy action" or "illegitimacy proceeding" appear in the statutes prior to the effective date of this act, the revisor of statutes is directed to substitute therefor the words "paternity proceeding". Wherever the respective words "accused", "guilt" and "guilty" appear in ss. 52.21 to 52.45 prior to the effective date of this act, the revisor of statutes is directed to substitute respectively therefor the words "defendant", "paternity" and "the father of the child".

Approved July 2, 1957.