



## 2003 ASSEMBLY BILL 557

October 2, 2003 – Introduced by Representatives WASSERMAN, MUSSER, ALBERS, M. LEHMAN and STONE. Referred to Committee on Family Law.

1     **AN ACT** *to renumber* 767.458 (1m); *to amend* 767.458 (1) (c), 767.458 (1) (d) and  
2             891.39 (1) (a); and *to create* 767.458 (1m) (b) and 891.39 (4) of the statutes;  
3             **relating to:** ordering genetic tests when a child's mother or her husband  
4             desires to rebut the presumption of paternity.

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### *Analysis by the Legislative Reference Bureau*

Under current law, a man who was married to the mother of a child when the child was born or conceived is presumed to be the father of the child. The man may bring an action or a motion in another action, such as a divorce, to rebut that presumption. The presumption is rebutted if the results of genetic tests show that another man is not excluded as the father of the child and the probability that the other man is the father is 99 percent or higher. Current law also provides that in a paternity action brought by a man alleging that he, not the mother's husband, is the father of a child, a judge or court commissioner may refuse to order genetic tests and dismiss the action if, upon the motion of a party or guardian ad litem, the judge or court commissioner determines that it is not in the child's best interest to determine whether a man other than the mother's husband is the father.

This bill provides that a judge or court commissioner may not refuse to order genetic tests or refuse to admit the results of the tests into evidence if, before judgment is entered in an annulment, divorce, legal separation, custody, or paternity action, the child's mother or the man who is presumed to be the father of the child because he is the mother's husband desires to rebut the presumption that the husband is the father. The bill also provides that the provision under current law

**ASSEMBLY BILL 557**

that sets out the bases for reopening judgments and orders applies to a motion to reopen a divorce or legal separation judgment or a judgment or order for legal custody or child or family support on the basis that a presumption of paternity is rebutted.

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

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

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

2           767.458 (1) (c) Except as provided under sub. (1m) (a) and s. 767.463, the  
3 respondent may request the administration of genetic tests which either  
4 demonstrate that he is not the father of the child or which demonstrate the  
5 probability that he is or is not the father of the child;

6           **SECTION 2.** 767.458 (1) (d) of the statutes is amended to read:

7           767.458 (1) (d) Except as provided in subs. (1m) (a) and (2) and s. 767.463, the  
8 court will order genetic tests upon the request of any party; and

9           **SECTION 3.** 767.458 (1m) of the statutes is renumbered 767.458 (1m) (a).

10          **SECTION 4.** 767.458 (1m) (b) of the statutes is created to read:

11          767.458 (1m) (b) Notwithstanding par. (a), if either the woman or the husband  
12 desires to rebut the presumption under s. 891.41 (1) that the husband is the father  
13 of the child, the court or circuit or supplemental court commissioner may not refuse  
14 to order genetic tests and may not refuse to admit the results of the genetic tests into  
15 evidence.

16          **SECTION 5.** 891.39 (1) (a) of the statutes is amended to read:

17          891.39 (1) (a) Whenever it is established in an action or proceeding that a child  
18 was born to a woman while she was the lawful wife of a specified man, any party  
19 asserting in such action or proceeding that the husband was not the father of the

**ASSEMBLY BILL 557**

1 child shall have the burden of proving that assertion by a clear and satisfactory  
2 preponderance of the evidence. In all such actions or proceedings the husband and  
3 the wife are competent to testify as witnesses to the facts. The court or judge in such  
4 cases shall appoint a guardian ad litem to appear for and represent the child whose  
5 paternity is questioned. If either the husband or the wife desires to rebut the  
6 presumption of paternity under s. 891.41 (1) before the entry of a judgment in an  
7 action affecting the family under s. 767.02 (1) (b), (c), (d), (e), or (L), the court may  
8 not refuse to order genetic tests and may not refuse to admit the results of the genetic  
9 tests into evidence. Results of a genetic test, as defined in s. 767.001 (1m), showing  
10 that a man other than the husband is not excluded as the father of the child and that  
11 the statistical probability of the man's parentage is 99.0% or higher constitute a clear  
12 and satisfactory preponderance of the evidence of the assertion under this  
13 paragraph, even if the husband is unavailable to submit to genetic tests, as defined  
14 in s. 767.001 (1m).

15 **SECTION 6.** 891.39 (4) of the statutes is created to read:

16 891.39 (4) Section 806.07 applies to any motion to reopen a judgment of divorce  
17 or legal separation or an order or judgment for legal custody or child or family support  
18 on the basis that the man presumed to be the father of a child under s. 891.41 (1) is  
19 not the child's father.

20 (END)