



# SCOTT KRUG

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TO: Assembly Committee on Family Law  
FROM: Rep. Scott Krug  
RE: 2019 ASSEMBLY BILL 166  
DATE: May 21, 2019

I write today to thank the committee and Rep. Rodriguez for holding a hearing on AB 166, which deals with a presumption and conclusive determination of paternity on the basis of genetic test results and orders that may be granted on the basis of genetic test results.

One of the most pressing issues to me as the Chair of the Public Benefit Reform committee is finding ways to make it easier for families to succeed on their own as much as humanly possible.

We know that when fathers are involved as quickly as possible in a child's life that long term outcomes are improved. Whether through voluntary stipulation, court ordered paternity, or this new avenue of administrative paternity two parent involvement should be the norm. This norm can be achieved without artificially clogging the family court system, or process service.

This bi-partisan bill takes a step towards better outcomes for families. I know it looks like a very long intense bill, but when broken down into laymen terms is about as common sense as a bill can be. This legislation simply creates another way for paternity to be established.

The administrative paternity option created in AB 166 allows fathers who go through genetic testing to opt out of having to go a court hearing to establish their parental status. It should not be acceptable to us any longer that long delays and costly court time be spent on establishing something as simple as paternity unless it's necessary to use that process.

This bill helps reach the goals of WI's "Father for Every Child Law" s. 767.80 (6m). It is good for children, parents (both custodial and non-custodial), and for our overworked court system. Yes, there are circumstances still that establishing paternity isn't in the best interest of

***MORE***

a child and this bill protects the ability of the courts to not establish paternity in those cases. Rare as they are, these cases exist and (again) AB 166 protects the ability of courts to not establish paternity in those cases.

In preparing AB 166 I've been blessed to have some very good partners from the Wisconsin Child Support Enforcement Association which is made up of very talented, dedicated county child support agency directors and staff.

This proposal is supported by the Wisconsin Child Support Enforcement Association (WCSEA), the Wisconsin Counties Association (WCA) and the Family Law section of the State Bar of Wisconsin.

Over the years we have worked towards the goal of making Wisconsin the number-1 state in child support collections. We are close to that goal, and I am committed to seeing this goal achieved.

Several people are here with us today to help inform you on how important this new avenue of establishing paternity can be and I am sure to talk a little bit on how well WI is doing on child support enforcement/collections but more importantly how agencies in our counties across the state are doing in helping parents become more self-sufficient.

With me right now is Wood Child Support Director Brent Vruwink, who has been a leader statewide on this issue and other child support policy. Brent can walk you through the process of how paternity is established currently, how establishing paternity early on is important for long term outcomes and the burden we are placing on our courts under current law. Thank you for your consideration of this bill and we'll be happy to take your questions after Mr. Vruwink's testimony.

I conclude by asking for your support for AB 166. Thank you for your attention to this matter.

State Rep. Scott Krug



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Secretary Emilie Amundson  
  
Secretary's Office

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**TO:** Honorable Members of Assembly Committee on Family Law

**FROM:** Connie Chesnik, Administrator, Division of Family and Economic Security,  
Department of Children and Families

**DATE:** May 21, 2019

**SUBJECT:** 2019 Assembly Bill 166

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Good Morning Chairwoman Rodriguez and Members of the Assembly Committee on Children and Families:

My name is Fredi Bove and I am a Policy Initiatives Advisor for the Department of Children and Families. I am accompanied by Connie Chesnik, Administrator of the Division of Family and Economic Security in the Department of Children and Families (DCF). Connie Chesnik will be providing testimony in support of 2019 Assembly Bill 166.

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Assembly Bill 166 creates a new presumption of paternity and a new way to determine paternity under the law using genetic testing.

There are currently two ways to establish paternity in Wisconsin. One is a judicial process that requires serving a potential father with a summons and petition to commence a paternity action. The other is a voluntary paternity acknowledgment process that is only available when both parents consent and there is only one potential father.

**An additional method using genetic testing would be available for establishing paternity.** AB 166 creates a third method for establishing paternity that avoids the stigma associated with a court process and would be available for use where the current voluntary acknowledgment process is unavailable. Under the new method, a conclusive determination of paternity would be established based on genetic test results demonstrating a probability of paternity greater than 99% if there is no marital presumption and no presumption based on the filing of a voluntary paternity acknowledgment and if both parents are over the age of 18. Current law authorizes the use of an administrative subpoena by county child support agencies to require the parents and child to submit to genetic

testing based upon a finding of probable cause. However, a court action must still be completed before paternity can be adjudicated.

Under AB 166, child support agencies can utilize the faster administrative subpoena process while still affording the parties the opportunity to object to test results and preserving all due process of a court action.

AB 166 would also provide that probable cause of sexual intercourse may be established by an affidavit of the state, based upon information provided by the mother, thus avoiding parents having to take time off of work for court hearings.

AB 166 would also mandate genetic testing in all paternity actions except in defaults, cases where the alleged father is deceased and genetic material cannot be obtained without undue hardship, and cases where either a marital presumption or a presumption based on the filing of a voluntary paternity acknowledgment exists.

**Paternity can be established by streamlining processes.** We support this bill because it not only allows us to greatly decrease both the time and disruption to the parents' lives in the adjudication of legal fathers, but it also accomplishes this in a more mother and father friendly manner. Until the past few decades, the determination of paternity involved the court making credibility determinations between the mother and alleged father in a trial to a judge or a jury. This was inexact and created such an adversarial system the appellate courts deemed paternity cases "quasi-criminal." Since then two very big changes have occurred. First, the number of children born to unmarried mothers has increased to over 38% of all births in Wisconsin, often involving the naming of multiple potential fathers. Second, the issue of paternity has evolved from an issue of testimony and credibility, to a matter of science due to the advent of genetic testing. Wis. Stat. Sec. 767.84(1m)ii creates a rebuttable presumption of paternity for a genetic test result indicating a probability of paternity of 99.0% or higher.

Establishing paternity through a court action can take two to three months at a minimum and can often take significantly longer if there are multiple potential fathers. During this time the father and child are not forming a bond and the mother is not receiving financial support for the child. The process is also adversarial, requiring that all potential fathers be served by the Sheriff with a summons notifying them that they are being sued.

Both state and federal law contain extensive protections to prevent child support agencies from attempting to adjudicate paternity when it would not be in the best interest of the child. The application of those safeguards would not change with the passage of this legislation.

DCF supports AB 166 as it would improve our ability to serve the children of Wisconsin and afford both great flexibility and due process to the parents.

Thank you for the opportunity to testify.



JOHN P. HAYES CENTER • CHILD SUPPORT SERVICES

# Milwaukee County

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Legal Counsel Administrator

AGNES MARCINOWSKI  
Operations Manager

JETAUNNE RICHARDSON  
Program & Grants Manager

SANDRA STEVENS  
Fiscal & Budget Manager

**TO:** Assembly Committee on Family Law

**FROM:** Janet Nelson, Legal Counsel Administrator, Milwaukee County Child Support

**DATE:** May 21, 2019

**SUBJECT:** Testimony on 2019 Assembly Bill 166, relating to the presumptive and conclusive determination of paternity on the basis of genetic test results and orders that may be granted on the basis of genetic test results.

I support the provisions of Assembly Bill 166.

Mothers and fathers who have children outside of marriage generally recognize the importance of establishing paternity and getting the father's name on his child's birth certificate. They also value the idea of genetic testing, so we often find that they cooperate with administrative genetic testing prior to a paternity court case being filed.

They do not look quite so favorably, however, upon the mechanics of court procedures: service of process, the intricacies of legal paperwork and court appearances.

The primary goal of this legislation is to accurately and effectively establish legal fatherhood in as non-adversarial manner as possible while protecting both parties due process rights.

Genetic testing is the gold standard for establishing paternity, and the assurance of such testing gives peace of mind to all concerned.

In 2018, Milwaukee County Child Support established paternity for 3,294 children through the judicial paternity process. The judicial process, when things go smoothly, takes an average of about eight months.

- A summons and petition is drafted and filed.
- A court date is set.
- A summons, petition and affidavit is served upon parties by a process server.
- An initial appearance is held, and if parties request genetic testing at that time, that is scheduled.
- On the return court date, genetic test results are filed; if the named father is excluded, the case is dismissed; if results show a 99% or greater probability of paternity, he is likely to be adjudicated the father.
- Occasionally a party will not appear for a court date or for testing, or there is some other delay in the process; when this occurs, an adjudication may take months or even years.

*The Department of Child Support Services, through the utilization of community resources, promotes family stability, creating a better quality of life for the children of Milwaukee County.*

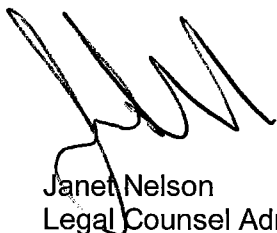
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With this legislation, the Child Support Agency is able to arrange for testing through approved genetic testing facilities that meet strict federal requirements. Once results are received, notices with the results are sent to both parents, giving both the opportunity to object. If neither object, the results will be filed with the State birth registrar so the father's name can be added to the birth certificate. This is a matter of weeks rather than months. Unlike the judicial process, it is confirmed with genetic tests each and every time.

In 2018 Milwaukee County Child Support had genetic tests done 3,219 times, sometimes prior to a court case being filed, sometimes court-ordered. Of those, there were 2,630 inclusions (the man tested was the father) and 589 exclusions (the man tested could not have fathered the child).

Under AB166, the cases where the parties question test results can still go before court commissioners and judges. Cases in which families could be helped with orders regarding custody, placement and child support also will still be scheduled for court. Instead of using expensive and limited court time on the relatively straightforward issue of whether or not an individual is the father, commissioners and judges will be able to focus on the issues that require a higher level of discretion and discernment.

This legislation provides a common-sense approach to allowing adults to take responsibility for their children once genetic testing has confirmed parentage. It protects parents' due process rights while making it more convenient for those that have resolved the parentage issue to get the father's name on the child's birth certificate. I'd be happy to answer any questions you may have.



Janet Nelson  
Legal Counsel Administrator, Milwaukee County Child Support Services  
Past President, Wisconsin Child Support Enforcement Association  
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## FAMILY LAW SECTION

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To: Members, Assembly Family Law Committee  
From: Family Law Section, State Bar of Wisconsin  
Date: May 21, 2019  
Re: AB 166 – mandatory paternity testing

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The Family Law Section of the State Bar of Wisconsin supports AB 166, Rep. Scott Krug's proposal regarding the determination of paternity based on genetic testing. The section members believe there are many benefits to this legislation, which provides a level of certainty of parentage from the beginning of these cases, and encourage you to support this measure.

The first benefit to enacting this legislation entails a reduction in court time. This proposal provides one less hearing for the mother to attend, who in many of these administrative cases is the primary financial support for the child, and frequently has very limited ability to take time off of work.

Secondly, AB 166 encourages collaboration amongst the parties. Rather than starting off the relationship between the parties and between the State and potential father in an adversarial manner, it allows them to work together, rather than require pleadings to be filed and a sheriff to serve a summons.

Procedurally, section members also see a benefit to this proposal in that the child support agency already has the ability to administratively genetically test the parties. Presently, if the genetic tests support a finding of paternity, the court is bound by the results under current law and can't make the best interest determination once they're completed. The new bill recognizes this and allows the court to make a best interest determination even after testing.

Lastly, the bill allows couples a path in between filing the paternity acknowledgment form and filing a lawsuit. Given the many difficulties with paternity acknowledgment later on, it provides certainty which benefits all the parties, but particularly the child. Further, it keeps the court from having the difficult decision related to finding out months or years later that legal father is not the biological father and dealing with the subsequent litigation that is not beneficial to any party, in particular the child.

For these reasons, the State Bar's Family Law Section asks for your support in the passage of AB 166.

For more information, please do not hesitate to contact our Government Relations Coordinator, Lynne Davis, [ldavis@wisbar.org](mailto:ldavis@wisbar.org) or 608.852.3603.

*The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.*

*The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.*



STATE BAR OF WISCONSIN



## MEMORANDUM

**TO:** Honorable Members of the Assembly Committee on Family Law

**FROM:** Sarah Diedrick-Kasdorf, Deputy Director of Government Affairs

**DATE:** May 21, 2019

**SUBJECT:** Support for Assembly Bill 166 – Administrative Paternity

County child support agencies work with parents to ensure both mother and father, when appropriate, take responsibility for the care and well-being of their children. In a number of cases, the first step in ensuring parental responsibility is establishing paternity.

Under current law, a court may adjudicate a man to be a child's father in a paternity action, or a man and a child's mother may sign and file a statement acknowledging paternity with the state registrar. 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.

Administrative paternity legislation would streamline the paternity establishment process in Wisconsin by allowing local child support agencies to walk participants through the paternity establishment process without having to go to court.

Under Assembly Bill 166, a man is conclusively determined to be a child's father if all of the following are satisfied:

- Genetic tests are performed with respect to the child, the child's mother, and the man in response to a subpoena issued by a county child support agency.
- 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.
- Both the mother and the man are at least 18 years old.
- There is no marriage or statement acknowledging paternity presumption.

If all of the 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 placement, and that either party may submit to the child support agency a written objection to the test results. If either party 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 neither party objects, the name of the father will be added on the child's original birth certificate.

Establishing administrative paternity in Wisconsin makes sense for the following reasons:

- Frees up time for already overworked judges and court personnel.
- Streamlines the paternity establishment process in Wisconsin.
- Affords participants the same due process rights they enjoy under current law. If a man alleged to be the father objects to the use of the test results to establish paternity administratively, the child support agency would not be allowed to submit the results to the state registrar, and instead, would have to file a court action to proceed with paternity establishment.
- Many parents prefer to avoid a court process to establish paternity.
- Establishes paternity in a timely manner – no need to wait for a court date, especially in uncontested cases.
- Supports the state's interest in ensuring all children have two parents to care and provide for them [Wis. Stats. §767.80(6m) - "Father for Every Child Law"].

Thank you for considering our comments.