



1999 SENATE BILL 107

March 31, 1999 - Introduced by Senators GEORGE, WELCH and DARLING, cosponsored by Representatives MUSSER and GRONEMUS. Referred to Committee on Judiciary and Consumer Affairs.

1 **AN ACT to repeal** 767.001 (2) (b), 767.11 (8) (b) 3., 767.11 (9) (a), 767.11 (10) (e)
2 1. to 3., 767.11 (14) (a) 3., 767.23 (1) (bm), 767.24 (2) (b) 2. a. to c., 767.24 (3),
3 767.24 (4) (cm), 767.24 (5), 767.24 (6) (a) and (am), 767.245 (2), 767.25 (1m)
4 (hm), 767.325 (2), 767.325 (3), 767.325 (4), 767.33 (1m) (b), 767.45 (2), 767.458
5 (1m), 767.463, 767.475 (1) (b), 767.51 (5) (i), (im) and (j), 767.62 (4) (e) 12., 13.
6 and 14. and 891.39 (1) (b); **to renumber** 767.23 (1) (d), 767.23 (1) (e), 767.23 (1)
7 (f), 767.23 (1) (g), 767.23 (1) (h), 767.23 (1) (i) and 767.23 (1) (k); **to renumber**
8 **and amend** 767.23 (1) (c), 767.23 (1) (L), 767.24 (2) (a), 767.24 (2) (b) 2. (intro.),
9 767.33 (1m) (a), 767.475 (1) (a) and 891.39 (1) (a); **to consolidate, renumber**
10 **and amend** 767.001 (2) (intro.) and (a), 767.11 (9) (intro.) and (b) and 767.11
11 (10) (e) (intro.) and 4.; **to amend** 20.921 (2) (a), 49.141 (1) (b), 51.30 (5) (bm),
12 55.07 (2), 102.27 (2) (a), 115.76 (12), 146.835, 757.48 (1) (a), 758.19 (5) (a) 2.,
13 767.001 (1s), 767.001 (2m), 767.001 (3), 767.02 (1) (k), 767.05 (1m), 767.081 (2)
14 (a) (intro.), 767.083 (2), 767.085 (1) (a), 767.085 (1) (j) (intro.), 767.085 (1) (j) 1.,

SENATE BILL 107

1 767.085 (1) (j) 2., 767.085 (2) (a), 767.087 (1) (c), 767.087 (2), 767.087 (3) (b),
2 767.10 (1), 767.11 (8) (b) (intro.), 767.11 (8) (b) 1., 767.11 (8) (b) 2., 767.11 (8) (b)
3 4., 767.11 (10) (intro.), 767.11 (10) (a), 767.11 (10) (b), 767.11 (12) (a) and (b),
4 767.11 (14) (a) 1., 767.11 (14) (a) 2., 767.11 (14) (b), 767.115 (1) (a), 767.115 (1)
5 (b), 767.115 (1m), 767.14, 767.23 (1) (intro.), 767.23 (1) (a), 767.23 (1n), 767.23
6 (2), 767.24 (1), 767.24 (2) (b) (intro.), 767.24 (2) (b) 1., 767.24 (4) (a), 767.24 (4)
7 (d), 767.24 (6) (b), 767.24 (6) (c), 767.245 (1), 767.245 (3) (intro.), 767.245 (3) (f),
8 767.245 (3m) (c), 767.25 (2), 767.255 (1), 767.265 (3h), 767.265 (4), 767.265 (6)
9 (a), 767.265 (6) (b), 767.265 (6) (c), 767.45 (1) (d), 767.45 (1) (i), 767.458 (1) (b),
10 767.458 (1) (c), 767.458 (1) (d), 767.46 (2) (c), 767.46 (4), 767.46 (5), 767.465 (2m)
11 (a), 767.51 (3), 767.51 (4), 767.51 (5) (e), 767.51 (6), 767.52 (1), 767.62 (3) (b),
12 767.62 (4) (a), 767.62 (4) (d) 3., 767.62 (4) (e) 6., 769.302, 802.12 (3) (b), 803.01
13 (3) (b) 1., 803.01 (3) (b) 2., 814.61 (1) (c) 1., 814.61 (7) (c), 977.05 (4) (i) 7. and
14 977.05 (6) (b) 1.; **to repeal and recreate** 767.045, 767.23 (1) (am), 767.24 (4)
15 (b), 767.325 (1) and 767.327; and **to create** 767.001 (4m), 767.23 (1c) (intro.),
16 767.24 (2) (a) 1. and 2., 767.24 (2) (c), 767.24 (2) (d), 767.24 (6) (bm) and 767.53
17 (3) of the statutes; **relating to:** standards for determining legal custody and
18 physical placement of children in actions affecting the family, jurisdictional
19 requirements in actions affecting the family, prohibitions against moving a
20 child outside of a school district after divorce, standards for modifying custody
21 and physical placement orders, temporary orders in actions affecting the
22 family, visitation rights of 3rd parties, prohibiting the appointment of a

SENATE BILL 107

1 guardian ad litem in all but certain actions affecting the family and making
2 records of paternity proceedings open records.

Analysis by the Legislative Reference Bureau

This bill makes a number of changes to the provisions of the statutes that apply to actions affecting the family, the two most common of which are divorce and paternity actions. The changes relate especially to procedure and custody and physical placement determinations, including revisions to custody and physical placement orders, and apply to all actions affecting the family, including paternity actions after paternity has been determined and actions related to custody and physical placement after a statement acknowledging paternity has been filed, unless otherwise indicated.

CUSTODY AND PHYSICAL PLACEMENT

Under current law, a court must make a custody determination based on the best interest of the child. The court may grant sole custody to one parent or joint custody to both parents, but the court may grant joint custody only if the parents agree to it or if the court finds that both parents are capable of caring for the child, that no conditions exist that would interfere with the exercise of joint custody and that the parents will be able to cooperate in the future decision making required under an award of joint custody. The court may also find that neither parent is fit and proper to have custody, declare the child to be in need of protection or services and transfer legal custody to a county social services or human services department or licensed child welfare agency. Joint legal custody means that both parents have the right and responsibility to make major decisions concerning the child, and major decisions include decisions regarding consent to marry, consent to obtain a driver's license, authorization for nonemergency health care and the choice of school and religion. Current law provides that in a paternity matter or a statement acknowledging a paternity matter the mother is to have sole legal custody unless the court orders otherwise.

This bill removes the best interest of the child as the basis for a court's determination regarding custody and provides that there are rebuttable presumptions that both parents are fit and have the ability to rear their children and that joint legal custody and equal periods of physical placement are fundamental rights of each parent and child. A court may order sole legal custody only if the parents agree that one parent should have sole legal custody or if the parental rights of one parent have been terminated. The court must order joint legal custody if both parents request it or if one parent requests it and a rebuttable presumption that the parties will not be able to cooperate in the future decision making required is not created or is rebutted. On the issue of whether the parties will not be able to cooperate in the future decision making required, the court may consider only whether a party has been convicted of a crime involving abuse of the child and whether a party has been convicted of battery against the other party. Evidence of conviction of either crime creates a rebuttable presumption that the parties will not

SENATE BILL 107

be able to cooperate. The presumption is rebutted, however, by clear and convincing evidence that the abuse or battery will not interfere with the parties' ability to cooperate. The provision that authorizes the court to transfer legal custody to a county department or licensed child welfare agency is eliminated, as well as the provision related to awarding sole custody to the mother in a paternity matter or a statement acknowledging a paternity matter.

Under current law, a court must allocate periods of physical placement (the time that a child is actually placed with a parent) after considering a number of factors, such as the wishes of the child and of each parent, the child's interaction and interrelationship with each parent, the child's adjustment to the home and community, the mental and physical health of the parties, the availability of child care services and whether either of the parties has a problem with alcohol or drug abuse. A child is entitled to periods of physical placement with each parent unless the court finds that physical placement with a parent would endanger the child's physical, mental or emotional health. The bill removes these provisions and provides that, if the court orders joint legal custody or sole legal custody because the parties have agreed to it, the court must approve any schedule for the allocation of physical placement that the parties agree to and submit to the court in writing. If the parties do not agree, the court must order each party to submit a schedule and the court must order the schedule that sets forth the most equal allocation of physical placement. If neither schedule submitted by the parties is substantially equal and each proposes a greater amount of time for himself or herself, the court must order equal periods and require the parties to alternate spending with the child specified holidays and the child's birthday.

The bill changes the definition of major decisions (those decisions that any parent with legal custody may make) by excluding choice of school and religion and removes from the court the authority to specify any major decisions in addition to the ones specified in the definition. Although the parties may stipulate that one party has the sole power to make specified decisions, the bill removes from the court the authority to give one party that power and limits the court to specifying one parent as the primary caretaker of the child for the purpose of determining eligibility for benefits under the Wisconsin works program (W-2) only if both parents are eligible for public assistance funded by a relief block grant. The court may determine and specify a child's primary provider for health care if the parties do not agree.

MODIFICATIONS TO CUSTODY AND PHYSICAL PLACEMENT ORDERS

Under current law, a court may not, within the first two years after the initial order is entered, modify a physical placement order if the modification would substantially alter the amount of time that a parent spends with a child, or modify a custody order, unless the modification is necessary because the current custodial conditions are physically or emotionally harmful to the best interest of the child. After two years after the initial order is entered, a court may modify a custody order, or modify a physical placement order even if the modification would substantially alter the amount of time that a parent spends with a child, if there has been a substantial change in circumstances since the entry of the last order and if the modification is in the child's best interest. The court may modify a physical

SENATE BILL 107

placement order if the modification does not substantially alter the amount of time that a parent spends with a child or if the parents have substantially equal periods of physical placement and that arrangement becomes impractical on the basis of the best interest of the child. This bill removes those provisions and provides that a court must modify a physical placement order in a way that alters the time a parent spends with a child, and must modify a custody order, if a parent requests a modification and the current order is not in compliance with the statutory provision that specifies the manner in which the court must award custody and physical placement, if a parent's parental rights have been terminated or if the parents agree to a modification.

Under current law, a parent who has legal custody of and physical placement with a child must provide notice to the other parent if he or she intends to establish his or her legal residence with the child at any location outside the state or at any location within the state at a distance of 150 miles or more from the other parent or if he or she intends to remove the child from the state for more than 90 consecutive days. If the other parent sends a notice of objection, the court or family court commissioner must refer the parties to mediation and appoint a guardian ad litem for the child. The parent proposing the move or removal is prohibited from taking the proposed action until the dispute is resolved, unless the parent obtains a temporary order from the court or family court commissioner allowing the move or removal. If mediation is not successful, the parent objecting to the proposed action may file a petition, motion or order to show cause for modification of legal custody or physical placement, and the matter proceeds to a hearing before the court. The court may modify legal custody or physical placement if the move will result in a substantial change of circumstances since the last order affecting legal custody or physical placement and if modification is in the child's best interest. As an alternative to modification of legal custody or physical placement, the objecting parent may request an order prohibiting the move or the removal of the child. The court must consider whether the proposed action is reasonable; the nature and extent of the child's relationship with the other parent and the disruption to the relationship that the proposed action may cause; and the availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent in making its determination of whether to prohibit the move or the removal of the child. The court may prohibit the move or the removal if it finds that doing so is in the child's best interest. The burden of proof is on the parent objecting to the move or removal. There is a rebuttable presumption that it is in the child's best interest to remain with the parent with whom the child currently resides for the greater period of time, which may be overcome by a showing that the move or the removal is unreasonable and not in the child's best interest.

This bill provides that, if both parents are awarded physical placement with the child in any action affecting the family, neither parent may establish a legal residence for the child that is outside the school district in which the child resided on the 180th day before the commencement of the action affecting the family, or since birth if the child is less than six months old, or other school district agreed upon by the parties. The court may, however, allow a parent to establish a legal residence for the child outside of that school district if the parent shows that for at least one year

SENATE BILL 107

the other parent has exercised his or her physical placement rights for less than 10% of the amount of time awarded by the court. If one of the parents wishes to establish his or her legal residence outside of the child's school district, that parent must provide at least 60 days' written notice to the other parent. If the proposed move would make it difficult or impractical for the physical placement arrangement to continue and at the same time for the child to remain in the same school district, either parent may request a modification to the physical placement order. The court must approve any modified physical placement schedule that the parents agree to. If the parents do not agree, the court may modify the physical placement schedule in such a way that the parent not proposing the move is awarded physical placement with the child during weekdays and weeknights while school is in session, at least one weekend per month, at least four weeks during the summer and alternating holidays. The parent proposing the move must be responsible for transportation costs incurred in exercising his or her physical placement rights and must be awarded the maximum amount of physical placement that is reasonable under the circumstances. If both parents wish to establish their legal residences or a legal residence for the child outside of the child's current school district and do not agree on a new school district, the court may designate one of the parents' new legal residences as the child's legal residence for the purpose of establishing a new school district for the child. The court must choose the legal residence that the court determines will maximize the amount of time that each parent may spend with the child. If one of the parents has already established a legal residence outside of the child's current school district, the court may allow the other parent to establish a legal residence for the child in a different school district if the parent who moved first does not wish to move back to the child's current school district and if the move does not increase the distance from the parent who moved first.

PATERNITY ACTIONS

In addition to the changes that the bill makes with respect to actions affecting the family in general, the bill makes some changes that relate to paternity actions alone. Under current law, in a paternity action that is commenced by a man who claims to be the father of a child who was born to a woman while she was married to another man, a party may allege that a judicial determination that a man other than the mother's husband is the child's father is not in the child's best interest. If the judge or family court commissioner agrees that such a determination is not in the child's best interest, no genetic tests may be taken and the action is dismissed. Additionally, at any time in a paternity action, regardless of who commenced it, a judge or family court commissioner may refuse to order genetic tests and dismiss the paternity action on the motion of a party or guardian ad litem if the judge or family court commissioner determines that a paternity determination is not in the child's best interest. The bill eliminates these provisions and provides that a man against whom a paternity action was dismissed, on the basis of one of the eliminated provisions, before the date on which the bill is enacted may commence another paternity action.

SENATE BILL 107

Current law provides that the liability of an adjudicated father of a child for past support is limited to support for the period after the birth of the child. The bill changes this to support for the period after the man is adjudicated to be the father.

Current law provides that, with certain exceptions, records of paternity proceedings are closed. The bill provides that the records are open to public inspection if the alleged father was adjudicated to be the father.

MISCELLANEOUS CHANGES

The bill makes an important change related to the appointment of a guardian ad litem. Under current law, a court in an action affecting the family must appoint a guardian ad litem for a minor child to represent the interests of the minor child if the court has reason for special concern as to the welfare of the child or if legal custody or physical placement is contested. The court must also appoint a guardian ad litem to bring a paternity action on behalf of a minor nonmarital child if the state is barred from commencing a paternity action by a statute of limitations and the child's custodian is receiving benefits under W-2 or an application for legal services has been filed on behalf of the child with the state child support program. The bill retains the requirement that the court appoint a guardian ad litem to bring a paternity action on behalf of a minor nonmarital child under the same circumstances as under current law, but prohibits the court from appointing a guardian ad litem under any other circumstances in an action affecting the family. Under the bill, if the court has reason for special concern as to the welfare of a minor child, the court must order one or both parents to file a petition alleging that the child is in need of protection or services. If the court takes jurisdiction of the child on the basis of that petition, the court may appoint a guardian ad litem for the proceedings related to that petition.

Another important change relates to temporary orders. Under current law, the court or family court commissioner may, upon request, make temporary orders pending the final judgment in an action affecting the family concerning such matters as custody and physical placement of minor children, child support and payment of debts. Under the bill, the court or family court commissioner is required in every action affecting the family to make a temporary order that grants joint legal custody of any minor children to the parties and that grants the parties equal periods of physical placement with any minor children of the parties.

Current law provides that the liability of a man who has signed and filed a statement acknowledging paternity to pay past support is limited to support for the period after the birth of the child. The bill changes this to support for the period after the date on which the statement acknowledging paternity was filed with the state registrar.

The bill makes a number of other miscellaneous changes. Under current law, a divorce action may not be commenced unless at least one of the parties has been a resident of the county in which the action is brought for not less than 30 days. This residency requirement is lengthened to six months. Stipulations under current law are subject to the approval of the court. The bill generally removes this approval requirement and requires the court to incorporate into the appropriate judgment or order any stipulation of the parties. Under current law, the parties to an action affecting the family are prohibited from certain actions during the pendency of the

SENATE BILL 107

action, including establishing a residence with a minor child of the parties outside the state or more than 150 miles from the residence of the other party within the state, removing a minor child of the parties from the state for more than 90 consecutive days or concealing a minor child of the parties from the other party. The bill instead prohibits any party from establishing a legal residence for a minor child of the parties outside the school district in which the child resided on the 180th day before the commencement of the action, or since birth if the child is less than six months old, or other school district agreed upon by the parties, and from removing a minor child of the parties from the state for 14 consecutive days or more without the written approval of the other party. The bill also makes some changes in the mediation procedure under current law and requires the court to approve any agreement that the parties reach as a result of mediation, as long as it is knowingly and voluntarily made and not unconscionable.

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.** 20.921 (2) (a) of the statutes is amended to read:

2 20.921 (2) (a) Whenever it becomes necessary in pursuance of any federal or
3 state law or court-ordered assignment of income under s. 46.10 (14) (e), 301.12 (14)
4 (e), 767.23 ~~(1)(L)~~ (1c)(i), 767.25 (4m) (c), 767.265, 767.51 (3m) (c) or 767.62 (4) (b) 3.
5 to make deductions from the salaries of state officers or employes or employes of the
6 University of Wisconsin Hospitals and Clinics Authority, the state agency or
7 authority by which the officers or employes are employed is responsible for making
8 such deductions and paying over the total thereof for the purposes provided by the
9 laws or orders under which they were made.

10 **SECTION 2.** 49.141 (1) (b) of the statutes is amended to read:

11 49.141 (1) (b) “Custodial parent” means, with respect to a dependent child, a
12 parent who resides with that child and, if there has been a determination of legal
13 custody with respect to the dependent child, has legal custody of that child. For the

SENATE BILL 107

1 purposes of this paragraph, “legal custody” has the meaning given in s. 767.001 (2)
2 (a).

3 **SECTION 3.** 51.30 (5) (bm) of the statutes is amended to read:

4 51.30 (5) (bm) *Parents denied physical placement.* A parent who has been
5 denied periods of physical placement with a child under s. 767.24 (4) ~~(b)~~ or 767.325
6 (4) may not have the rights of a parent or guardian under pars. (a) and (b) with
7 respect to access to that child’s court or treatment records.

8 **SECTION 4.** 55.07 (2) of the statutes is amended to read:

9 55.07 (2) A parent who has been denied periods of physical placement under
10 s. 767.24 (4) ~~(b)~~ or 767.325 (4) may not have the rights of a parent or guardian with
11 respect to access to a child’s records under this chapter.

12 **SECTION 5.** 102.27 (2) (a) of the statutes is amended to read:

13 102.27 (2) (a) A benefit under this chapter is assignable under s. 46.10 (14) (e),
14 301.12 (14) (e), 767.23 ~~(1) (L)~~ (1c) (i), 767.25 (4m) (c), 767.265 (1), 767.51 (3m) (c) or
15 767.62 (4) (b) 3.

16 **SECTION 6.** 115.76 (12) of the statutes is amended to read:

17 115.76 (12) “Parent” means a biological parent; a husband who has consented
18 to the artificial insemination of his wife under s. 891.40; a male who is presumed to
19 be the child’s father under s. 891.41; a male who has been adjudicated the child’s
20 father under subch. VIII of ch. 48, under ss. 767.45 to 767.51, by final order or
21 judgment of an Indian tribal court of competent jurisdiction or by final order or
22 judgment of a court of competent jurisdiction in another state; an adoptive parent;
23 a legal guardian; a person acting as a parent of a child; a person appointed as a
24 sustaining parent under s. 48.428; or a person assigned as a surrogate parent under
25 s. 115.792 (1) (a) 2. “Parent” does not include any person whose parental rights have

SENATE BILL 107**SECTION 6**

1 been terminated; the state or a county or a child welfare agency if a child was made
2 a ward of the state or a county or child welfare agency under ch. 880 or if a child has
3 been placed in the legal custody or guardianship of the state or a county or a child
4 welfare agency under ch. 48 ~~or ch. 767~~; or an American Indian tribal agency if the
5 child was made a ward of the agency or placed in the legal custody or guardianship
6 of the agency.

7 **SECTION 7.** 146.835 of the statutes is amended to read:

8 **146.835 Parents denied physical placement rights.** A parent who has
9 been denied periods of physical placement under s. 767.24 (4) ~~(b)~~ or 767.325 (4) may
10 not have the rights of a parent or guardian under this chapter with respect to access
11 to that child's patient health care records under s. 146.82 or 146.83.

12 **SECTION 8.** 757.48 (1) (a) of the statutes is amended to read:

13 757.48 (1) (a) Except as provided in s. 879.23 (4), in all matters in which a
14 guardian ad litem is appointed by the court, the guardian ad litem shall be an
15 attorney admitted to practice in this state. ~~In order to be appointed as a guardian~~
16 ~~ad litem under s. 767.045, an attorney shall have completed 3 hours of approved~~
17 ~~continuing legal education relating to the functions and duties of a guardian ad litem~~
18 ~~under ch. 767.~~

19 **SECTION 9.** 758.19 (5) (a) 2. of the statutes is amended to read:

20 758.19 (5) (a) 2. Fees for expert witnesses called by the guardian ad litem under
21 s. 767.045 (6), 1997 stats., if either or both parties are unable to pay those fees.

22 **SECTION 10.** 767.001 (1s) of the statutes is amended to read:

23 767.001 (1s) "Joint legal custody" means the condition under which both
24 parties share legal custody and neither party's legal custody rights are superior,

SENATE BILL 107

1 except with respect to specified decisions as ~~set forth~~ stipulated by the ~~court or the~~
2 parties and set forth in the final judgment or order.

3 **SECTION 11.** 767.001 (2) (intro.) and (a) of the statutes are consolidated,
4 renumbered 767.001 (2) and amended to read:

5 767.001 (2) “Legal custody” means: ~~(a) With,~~ with respect to any person
6 granted legal custody of a child, ~~other than a county agency or a licensed child welfare~~
7 ~~agency under par. (b),~~ the right and responsibility to make major decisions
8 concerning the child, except with respect to specified decisions as ~~set forth~~ stipulated
9 by the ~~court or the~~ parties and set forth in the final judgment or order.

10 **SECTION 12.** 767.001 (2) (b) of the statutes is repealed.

11 **SECTION 13.** 767.001 (2m) of the statutes is amended to read:

12 767.001 (2m) “Major decisions” ~~includes, but is not limited to,~~ means decisions
13 regarding consent to marry, consent to enter military service, consent to obtain a
14 motor vehicle operator’s license, and authorization for nonemergency health care
15 ~~and choice of school and religion.~~

16 **SECTION 14.** 767.001 (3) of the statutes is amended to read:

17 767.001 (3) “Mediation” means a cooperative process involving the parties and
18 a mediator, the purpose of which is to help the parties, by applying communication
19 and dispute resolution skills, define and resolve their own disagreements, ~~with the~~
20 ~~best interest of the child as the paramount consideration~~ and to encourage the
21 parties to cooperate in making decisions regarding their minor children, based on the
22 principle that each parent has an equal right of access to and equal responsibility to
23 provide care for their minor children.

24 **SECTION 15.** 767.001 (4m) of the statutes is created to read:

SENATE BILL 107**SECTION 15**

1 767.001 (4m) “Nonemergency health care” means routine health care and
2 includes such care as acute illness care, physical examinations and dental care.

3 **SECTION 16.** 767.02 (1) (k) of the statutes is amended to read:

4 767.02 (1) (k) Concerning periods of physical placement or visitation rights to
5 children, ~~including an action to prohibit a move with or the removal of a child under~~
6 ~~s. 767.327 (3) (e).~~

7 **SECTION 17.** 767.045 of the statutes is repealed and recreated to read:

8 **767.045 Petition to juvenile court; guardian ad litem. (1)**

9 Notwithstanding s. 803.01 (3) and except as provided in sub. (2), the court may not
10 appoint a guardian ad litem for a minor child in an action affecting the family. If at
11 any time during the pendency of an action affecting the family in which a minor child
12 is involved the court has reason for special concern as to the welfare of the minor
13 child, the court shall order a parent or the parents to file a petition under s. 48.25 (1)
14 to initiate proceedings under s. 48.13. If the court takes jurisdiction over the child
15 under s. 48.13, the court may appoint a guardian ad litem as provided in s. 48.235.

16 **(2)** (a) The attorney responsible for support enforcement under s. 59.53 (6) (a)
17 may request that the court or family court commissioner appoint a guardian ad litem
18 to bring an action or motion on behalf of a minor who is a nonmarital child whose
19 paternity has not been acknowledged under s. 767.62 (1) or a substantially similar
20 law of another state or adjudicated for the purpose of determining the paternity of
21 the child, and the court or family court commissioner shall appoint a guardian ad
22 litem, if any of the following applies:

23 1. Aid is provided under s. 46.261, 48.57 (3m) or (3n), 49.19 or 49.45 on behalf
24 of the child, or benefits are provided to the child’s custodial parent under ss. 49.141

SENATE BILL 107

1 to 49.161, but the state and its delegate under s. 49.22 (7) are barred by a statute of
2 limitations from commencing an action under s. 767.45 on behalf of the child.

3 2. An application for legal services has been filed with the child support
4 program under s. 49.22 on behalf of the child, but the state and its delegate under
5 s. 49.22 (7) are barred by a statute of limitations from commencing an action under
6 s. 767.45 on behalf of the child.

7 (b) A guardian ad litem appointed under par. (a) shall bring an action or motion
8 for the determination of the child's paternity. The appointment of a guardian ad
9 litem under par. (a) terminates upon the entry of the court's order determining the
10 existence or nonexistence of paternity.

11 **SECTION 18.** 767.05 (1m) of the statutes is amended to read:

12 767.05 (1m) RESIDENCE. No action under s. 767.02 (1) (a) or (b) may be brought
13 unless at least one of the parties has been a bona fide resident of the county in which
14 the action is brought for not less than ~~30 days~~ 6 months next preceding the
15 commencement of the action, or unless the marriage has been contracted within this
16 state within one year prior to the commencement of the action. No action under s.
17 767.02 (1) (c) or (d) may be brought unless at least one of the parties has been a bona
18 fide resident of the county in which the action is brought for not less than ~~30 days~~
19 6 months next preceding the commencement of the action. No action under s. 767.02
20 (1) (c) may be brought unless at least one of the parties has been a bona fide resident
21 of this state for not less than 6 months next preceding the commencement of the
22 action.

23 **SECTION 19.** 767.081 (2) (a) (intro.) of the statutes is amended to read:

SENATE BILL 107**SECTION 19**

1 767.081 (2) (a) (intro.) The family court commissioner shall, ~~with or~~ without
2 charge, provide the party with written information on the following, as appropriate
3 to the action commenced:

4 **SECTION 20.** 767.083 (2) of the statutes is amended to read:

5 767.083 (2) An order by the court, after consideration of the recommendation
6 of the family court commissioner, directing an immediate hearing on the petition for
7 the protection of the health or safety of either of the parties or of any child of the
8 marriage parties or for other emergency reasons consistent with the policies of this
9 chapter. The court shall upon granting such order specify the grounds therefor.

10 **SECTION 21.** 767.085 (1) (a) of the statutes is amended to read:

11 767.085 (1) (a) The name and birthdate of the parties, the social security
12 numbers of the ~~husband and wife~~ parties and their occupations, the date and place
13 of marriage and the facts relating to the residence of both parties.

14 **SECTION 22.** 767.085 (1) (j) (intro.) of the statutes is amended to read:

15 767.085 (1) (j) (intro.) Unless the action is one under s. 767.02 (1) (g) or (h), that
16 during the pendency of the action, the parties are prohibited from, and may be held
17 in contempt of court for, doing any of the following without the consent of the other
18 party ~~or an order of the court or family court commissioner~~:

19 **SECTION 23.** 767.085 (1) (j) 1. of the statutes is amended to read:

20 767.085 (1) (j) 1. Establishing a residence ~~with~~ for a minor child of the parties
21 outside the state ~~or more than 150 miles from the residence of the other party within~~
22 the state school district in which the child resided on the 180th day before the
23 commencement of the action, or since birth if the child is less than 6 months old, or
24 other school district agreed upon by the parties.

25 **SECTION 24.** 767.085 (1) (j) 2. of the statutes is amended to read:

SENATE BILL 107

1 767.085 (1) (j) 2. Removing a minor child of the parties from the state for more
2 ~~than 90~~ 14 consecutive days ~~or more without the written approval of the other party.~~

3 **SECTION 25.** 767.085 (2) (a) of the statutes is amended to read:

4 767.085 (2) (a) Either or both of the parties ~~to the marriage~~ may initiate the
5 action. The party initiating the action or his or her attorney shall sign the petition.
6 Both parties or their respective attorneys shall sign a joint petition.

7 **SECTION 26.** 767.087 (1) (c) of the statutes is amended to read:

8 767.087 (1) (c) Unless the action is one under s. 767.02 (1) (g) or (h), without
9 the consent of the other party ~~or an order of the court or family court commissioner,~~
10 establishing a residence ~~with~~ for a minor child of the parties outside the state ~~or more~~
11 ~~than 150 miles from the residence of the other party within the state~~ school district
12 in which the child resided on the 180th day before the commencement of the action,
13 or since birth if the child is less than 6 months old, or other school district agreed upon
14 by the parties, removing a minor child of the parties from the state for ~~more than 90~~
15 14 consecutive days ~~or more without the written approval of the other party or~~
16 concealing a minor child of the parties from the other party.

17 **SECTION 27.** 767.087 (2) of the statutes is amended to read:

18 767.087 (2) The prohibitions under sub. (1) shall apply until the action is
19 dismissed, or until a final judgment in the action is entered ~~or until the court or~~
20 ~~family court commissioner orders otherwise.~~

21 **SECTION 28.** 767.087 (3) (b) of the statutes is amended to read:

22 767.087 (3) (b) An act in violation of sub. (1) (c) is not a contempt of court if the
23 court finds ~~that the action was taken to protect a party or~~ by clear and convincing
24 evidence that the party took the action to protect a minor child of the parties from
25 physical abuse ~~by the other party and that there was no reasonable opportunity~~

SENATE BILL 107**SECTION 28**

1 ~~under the circumstances for the party and that the party obtained or made a~~
2 ~~reasonable attempt~~ to obtain an order under sub. (2) authorizing the action.

3 **SECTION 29.** 767.10 (1) of the statutes is amended to read:

4 767.10 (1) The parties in an action for an annulment, divorce or legal
5 separation may, ~~subject to the approval of the court,~~ stipulate for a division of
6 property, for maintenance payments, for the support of children, for periodic family
7 support payments under s. 767.261 or for legal custody and physical placement, in
8 case a divorce or legal separation is granted or a marriage annulled.

9 **SECTION 30.** 767.11 (8) (b) (intro.) of the statutes is amended to read:

10 767.11 (8) (b) (intro.) A court ~~may, in its discretion,~~ shall hold a trial or hearing
11 without requiring attendance at the session under par. (a) if the court finds that
12 attending the session will cause undue hardship or would endanger the health or
13 safety of one of the parties. In making its determination of whether attendance at
14 the session would endanger the health or safety of one of the parties, the court shall
15 consider evidence all of the following:

16 **SECTION 31.** 767.11 (8) (b) 1. of the statutes is amended to read:

17 767.11 (8) (b) 1. ~~That~~ Whether a party engaged in has been convicted of a crime
18 involving abuse, as defined in s. 813.122 (1)(a) 48.02 (1), of the child, as defined in
19 s. 48.02 (2).

20 **SECTION 32.** 767.11 (8) (b) 2. of the statutes is amended to read:

21 767.11 (8) (b) 2. ~~Interspousal~~ Whether a party has been convicted of battery as
22 described under s. 940.19 or 940.20 (1m) or domestic abuse as defined in s. 813.12
23 (1)(a) against the other party.

24 **SECTION 33.** 767.11 (8) (b) 3. of the statutes is repealed.

25 **SECTION 34.** 767.11 (8) (b) 4. of the statutes is amended to read:

SENATE BILL 107

1 767.11 (8) (b) 4. Any other clear and convincing evidence indicating that a
2 party's health or safety will be endangered by attending the session.

3 **SECTION 35.** 767.11 (9) (intro.) and (b) of the statutes are consolidated,
4 renumbered 767.11 (9) and amended to read:

5 767.11 (9) PROHIBITED ISSUES IN MEDIATION. If mediation is provided by a
6 mediator assigned under sub. (6), no issue relating to property division, maintenance
7 or child support may be considered during the mediation unless ~~all of the following~~
8 ~~apply: (b) The~~ the parties agree in writing to consider the property division,
9 maintenance or child support issue.

10 **SECTION 36.** 767.11 (9) (a) of the statutes is repealed.

11 **SECTION 37.** 767.11 (10) (intro.) of the statutes is amended to read:

12 767.11 (10) POWERS AND DUTIES OF MEDIATOR. (intro.) A mediator assigned
13 under sub. (6) shall ~~be guided by the best interest of the child and may do any of the~~
14 following, at his or her discretion:

15 **SECTION 38.** 767.11 (10) (a) of the statutes is amended to read:

16 767.11 (10) (a) Include the counsel of ~~any party or any appointed~~ both parties
17 and any guardian ad litem appointed under s. 48.235 in the mediation.

18 **SECTION 39.** 767.11 (10) (b) of the statutes is amended to read:

19 767.11 (10) (b) Interview any child of the parties, ~~with or without a party~~
20 neither of the parties present or with both of the parties present.

21 **SECTION 40.** 767.11 (10) (e) (intro.) and 4. of the statutes are consolidated,
22 renumbered 767.11 (10) (e) and amended to read:

23 767.11 (10) (e) Terminate mediation if a party does not cooperate ~~or if mediation~~
24 ~~is not appropriate or if any of the following facts exist: 4. Other evidence which~~

SENATE BILL 107**SECTION 40**

1 indicates ~~one of the parties'~~ that the health or safety of one of the parties will be
2 endangered if mediation is not terminated.

3 **SECTION 41.** 767.11 (10) (e) 1. to 3. of the statutes are repealed.

4 **SECTION 42.** 767.11 (12) (a) and (b) of the statutes are amended to read:

5 767.11 (12) (a) Any agreement which resolves issues of legal custody or periods
6 of physical placement between the parties reached as a result of mediation under this
7 section shall be prepared in writing, reviewed by the attorney, if any, for each party
8 and by any ~~appointed~~ guardian ad litem appointed under s. 48.235, and submitted
9 to the court to be included in the court order as a stipulation. Any reviewing attorney
10 or guardian ad litem shall certify on the mediation agreement that he or she reviewed
11 it ~~and the guardian ad litem, if any, shall comment on the agreement based on the~~
12 ~~best interest of the child. The mediator shall certify, that the written mediation~~
13 ~~agreement is in the best interest of the child based on the information presented to~~
14 ~~the mediator and~~ that it accurately reflects the agreement made between the parties.
15 ~~The court may approve or reject the agreement, based on the best interest of the~~
16 ~~child. The court shall state in writing its reasons for rejecting an agreement~~ shall
17 approve the agreement if the court finds that the agreement is knowingly and
18 voluntarily made. If the court as a matter of law finds that any aspect of the
19 agreement is unconscionable, the court shall reject the unconscionable aspect or so
20 limit the application of the unconscionable aspect as to avoid any unconscionable
21 result.

22 (b) If after mediation under this section the parties do not reach agreement on
23 legal custody or periods of physical placement, the parties or the mediator shall so
24 notify the court. ~~The court shall promptly appoint a guardian ad litem under s.~~
25 ~~767.045. After the appointment the court shall, if appropriate, refer the matter for~~

SENATE BILL 107

1 a legal custody or physical placement study under sub. (14). If the parties come to
2 agreement on legal custody or physical placement after the matter has been referred
3 for a study, the study shall be terminated. The parties may return to mediation at
4 any time before any trial or final hearing on legal custody or periods of physical
5 placement. If the parties return to mediation, the county shall collect any applicable
6 fee under s. 814.615.

7 **SECTION 43.** 767.11 (14) (a) 1. of the statutes is amended to read:

8 767.11 (14) (a) 1. The conditions of the child's each parent's home.

9 **SECTION 44.** 767.11 (14) (a) 2. of the statutes is amended to read:

10 767.11 (14) (a) 2. Each party's performance of parental duties and
11 responsibilities relating to the basic care of the child.

12 **SECTION 45.** 767.11 (14) (a) 3. of the statutes is repealed.

13 **SECTION 46.** 767.11 (14) (b) of the statutes is amended to read:

14 767.11 (14) (b) The person or entity investigating the parties under par. (a)
15 shall complete the investigation and submit the results to the court. The court shall
16 make the results available to both parties. The report shall be a part of the record
17 in the action unless the court orders otherwise. The report shall not be considered
18 as a recommendation as to legal custody or physical placement but as evidence
19 relating to the condition of each parent's home and the ability of each parent to
20 provide basic care for the child and may be considered by the court for the purpose
21 of determining whether to order the filing of a petition under s. 48.25 (1) to initiate
22 proceedings under s. 48.13.

23 **SECTION 47.** 767.115 (1) (a) of the statutes is amended to read:

24 767.115 (1) (a) At any time during the pendency of an action affecting the family
25 in which a minor child is involved and in which the court or family court

SENATE BILL 107**SECTION 47**

1 commissioner determines that it is appropriate ~~and in the best interest of the child,~~
2 the court or family court commissioner, on its own motion, may order the parties to
3 attend a program specified by the court or family court commissioner concerning the
4 effects on a child of a ~~dissolution of the marriage~~ break in the family relationship.

5 **SECTION 48.** 767.115 (1) (b) of the statutes is amended to read:

6 767.115 (1) (b) At any time during the pendency of an action to determine the
7 paternity of a child, or an action affecting the family for which the underlying action
8 was an action to determine the paternity of a child, if the court or family court
9 commissioner determines that it is appropriate ~~and in the best interest of the child,~~
10 the court or family court commissioner, on its own motion, may order either or both
11 of the parties to attend a program specified by the court or family court commissioner
12 providing training in parenting or coparenting skills, or both.

13 **SECTION 49.** 767.115 (1m) of the statutes is amended to read:

14 767.115 (1m) A program under sub. (1) shall be educational rather than
15 therapeutic in nature ~~and may not exceed a total of 4 hours in length.~~ The parties
16 shall be responsible for the cost, if any, of attendance at the program. ~~The court or~~
17 ~~family court commissioner may specifically assign responsibility for payment of any~~
18 ~~cost. No facts or information obtained in the course of the program, and no report~~
19 ~~resulting from the program, is admissible in any action or proceeding.~~

20 **SECTION 50.** 767.14 of the statutes is amended to read:

21 **767.14 Service on and appearance by family court commissioner.** In
22 any action affecting the family, each party shall, either within 20 days after making
23 service on the opposite party of any petition or pleading or before filing such petition
24 or pleading in court, serve a copy of the same upon the family court commissioner of
25 the county in which the action is begun, whether such action is contested or not. No

SENATE BILL 107

1 judgment in any such action shall be granted unless this section is complied with
2 except when otherwise ordered by the court. Such commissioner ~~may~~ shall appear
3 in an action under this chapter ~~when appropriate, and shall appear~~ when requested
4 by the court or by a party.

5 **SECTION 51.** 767.23 (1) (intro.) of the statutes is amended to read:

6 767.23 (1) (intro.) Except as provided in ch. 822, in every action affecting the
7 family, including a paternity action after paternity has been adjudicated, the court
8 or family court commissioner ~~may~~ shall, during the pendency thereof, make just and
9 reasonable temporary orders concerning the following matters:

10 **SECTION 52.** 767.23 (1) (a) of the statutes is amended to read:

11 767.23 (1) (a) ~~Upon request of one party, granting~~ Granting legal custody of the
12 minor children to the parties jointly, ~~to one party solely or to a relative or agency~~
13 ~~specified under s. 767.24 (3). The court or family court commissioner may order joint~~
14 ~~legal custody without the agreement of the other party and without the findings~~
15 ~~required under s. 767.24 (2) (b) 2. parties.~~ This order may not have a binding effect
16 on a final custody determination.

17 **SECTION 53.** 767.23 (1) (am) of the statutes is repealed and recreated to read:

18 767.23 (1) (am) Granting equal periods of physical placement to the parties
19 unless the parties agree to a different physical placement allocation or unless a
20 conflicting order under s. 48.345 or subch. VI of ch. 938 is in effect.

21 **SECTION 54.** 767.23 (1) (bm) of the statutes is repealed.

22 **SECTION 55.** 767.23 (1) (c) of the statutes is renumbered 767.23 (1c) (a) and
23 amended to read:

24 767.23 (1c) (a) ~~Requiring~~ Subject to s. 767.477, requiring either party or both
25 parties to make payments for the support of minor children, which payment amounts

SENATE BILL 107**SECTION 55**

1 may be expressed as a percentage of parental income or as a fixed sum, or as a
2 combination of both in the alternative by requiring payment of the greater or lesser
3 of either a percentage of parental income or a fixed sum.

4 **SECTION 56.** 767.23 (1) (d) of the statutes is renumbered 767.23 (1c) (b).

5 **SECTION 57.** 767.23 (1) (e) of the statutes is renumbered 767.23 (1c) (c).

6 **SECTION 58.** 767.23 (1) (f) of the statutes is renumbered 767.23 (1c) (d).

7 **SECTION 59.** 767.23 (1) (g) of the statutes is renumbered 767.23 (1c) (e).

8 **SECTION 60.** 767.23 (1) (h) of the statutes is renumbered 767.23 (1c) (f).

9 **SECTION 61.** 767.23 (1) (i) of the statutes is renumbered 767.23 (1c) (g).

10 **SECTION 62.** 767.23 (1) (k) of the statutes is renumbered 767.23 (1c) (h).

11 **SECTION 63.** 767.23 (1) (L) of the statutes is renumbered 767.23 (1c) (i) and
12 amended to read:

13 767.23 (1c) (i) ~~Requiring~~ Subject to s. 767.477, requiring either party or both
14 parties to execute an assignment of income for payment of health care expenses of
15 minor children.

16 **SECTION 64.** 767.23 (1c) (intro.) of the statutes is created to read:

17 767.23 (1c) (intro.) In every action affecting the family, the court or family court
18 commissioner may, during the pendency thereof, make just and reasonable
19 temporary orders concerning the following matters:

20 **SECTION 65.** 767.23 (1n) of the statutes is amended to read:

21 767.23 (1n) ~~Before~~ Except as provided in sub. (1) (a) and (am), before making
22 any temporary order under sub. (1) or (1c), the court or family court commissioner
23 shall consider those factors which the court is required by this chapter to consider
24 before entering a final judgment on the same subject matter. If the court or family
25 court commissioner makes a temporary child support order that deviates from the

SENATE BILL 107

1 amount of support that would be required by using the percentage standard
2 established by the department under s. 49.22 (9), the court or family court
3 commissioner shall comply with the requirements of s. 767.25 (1n). A temporary
4 order under sub. (1) or (1c) may be based upon the written stipulation of the parties,
5 ~~subject to the approval of the court or the family court commissioner.~~ Temporary
6 orders made by the family court commissioner may be reviewed by the court as
7 provided in s. 767.13 (6).

8 **SECTION 66.** 767.23 (2) of the statutes is amended to read:

9 767.23 (2) Notice of motion for an order or order to show cause under sub. (1)
10 or (1c) may be served at the time the action is commenced or at any time thereafter
11 and shall be accompanied by an affidavit stating the basis for the request for relief.

12 **SECTION 67.** 767.24 (1) of the statutes is amended to read:

13 767.24 (1) GENERAL PROVISIONS. In rendering a judgment of annulment, divorce
14 or legal separation, or in rendering a judgment in an action under s. 767.02 (1) (e),
15 ~~the~~ there are rebuttable presumptions that both parents are fit and have the ability
16 to rear their children, that both parents are qualified to decide what is best for their
17 children and that joint legal custody and equal periods of physical placement are
18 fundamental rights of each parent and child. ~~The~~ court shall make such provisions
19 as it deems just and reasonable concerning the legal custody and physical placement
20 of any minor child of the parties, as are provided in this section.

21 **SECTION 68.** 767.24 (2) (a) of the statutes is renumbered 767.24 (2) (a) (intro.)
22 and amended to read:

23 767.24 (2) (a) (intro.) ~~Subject to par. (b), based on the best interest of the child~~
24 ~~and after considering the factors under sub. (5), the~~ The court may give joint legal

SENATE BILL 107**SECTION 68**

1 ~~eustody or sole legal custody of a minor child. to one parent if either of the following~~
2 ~~applies:~~

3 **SECTION 69.** 767.24 (2) (a) 1. and 2. of the statutes are created to read:

4 767.24 (2) (a) 1. Both parties agree to sole legal custody with one parent.

5 2. The parental rights of one parent have been terminated under subch. VIII
6 of ch. 48.

7 **SECTION 70.** 767.24 (2) (b) (intro.) of the statutes is amended to read:

8 767.24 (2) (b) (intro.) The court ~~may~~ shall give joint legal custody ~~only if it finds~~
9 ~~that doing so is in the child's best interest and that~~ if either of the following applies:

10 **SECTION 71.** 767.24 (2) (b) 1. of the statutes is amended to read:

11 767.24 (2) (b) 1. Both parties ~~agree to~~ request joint legal custody.

12 **SECTION 72.** 767.24 (2) (b) 2. (intro.) of the statutes is renumbered 767.24 (2)
13 (b) 2. and amended to read:

14 767.24 (2) (b) 2. ~~The parties do not agree to joint legal custody, but one One~~
15 ~~party requests joint legal custody and the court specifically finds all of the following:~~
16 presumption under par. (c) is not created or is rebutted.

17 **SECTION 73.** 767.24 (2) (b) 2. a. to c. of the statutes are repealed.

18 **SECTION 74.** 767.24 (2) (c) of the statutes is created to read:

19 767.24 (2) (c) If one party requests joint legal custody and the other party
20 objects to joint legal custody, on the objection the court is limited to considering
21 whether a party has been convicted of a crime involving abuse, as defined in s. 48.02
22 (1), of the child, as defined in s. 48.02 (2), or whether a party has been convicted of
23 battery, as described under s. 940.19 or 940.20 (1m), against the other party.
24 Evidence of either conviction creates a rebuttable presumption that the parties will
25 not be able to cooperate in the future decision making required. This presumption

SENATE BILL 107

1 may be rebutted by clear and convincing evidence that the abuse or battery will not
2 interfere with the parties' ability to cooperate in the future decision making required.

3 **SECTION 75.** 767.24 (2) (d) of the statutes is created to read:

4 767.24 (2) (d) If a presumption under par. (c) is created and the court orders
5 joint custody because the presumption is rebutted, the court may request that the
6 parties submit in writing suggestions as to how the parties may reduce possible
7 sources of conflict, contact or physical proximity between the parties. The court may
8 order the parties to comply with any suggestions that the court considers appropriate
9 and necessary.

10 **SECTION 76.** 767.24 (3) of the statutes is repealed.

11 **SECTION 77.** 767.24 (4) (a) of the statutes is amended to read:

12 767.24 (4) (a) ~~Except as provided under par. (b), if~~ If the court orders sole legal
13 custody because the parties agree to it under sub. (2) (a) 1. or joint legal custody under
14 sub. (2) (b), the court shall allocate periods of physical placement between the parties
15 in accordance with this subsection. ~~In determining the allocation of periods of~~
16 ~~physical placement, the court shall consider each case on the basis of the factors in~~
17 ~~sub. (5).~~

18 **SECTION 78.** 767.24 (4) (b) of the statutes is repealed and recreated to read:

19 767.24 (4) (b) The court shall approve any written schedule for physical
20 placement that the parties agree to and submit to the court. If the parties do not
21 agree on a placement schedule, the court shall require each party to submit a
22 placement proposal. The court shall approve the proposal submitted that sets forth
23 the most equal allocation of periods of physical placement between the parties. If
24 neither party proposes substantially equal periods of physical placement and each
25 party proposes that he or she be awarded physical placement for the greater period

SENATE BILL 107**SECTION 78**

1 of time, the court shall allocate equal alternating periods of physical placement
2 between the parties and shall require that the parties annually alternate spending
3 all of the following with the child:

- 4 1. New Year's Day.
- 5 2. Easter.
- 6 3. Memorial Day.
- 7 4. Independence Day (July 4).
- 8 5. Labor Day.
- 9 6. Thanksgiving Day.
- 10 7. Christmas Eve.
- 11 8. Christmas Day.
- 12 9. New Year's Eve.
- 13 10. The child's birthday.

14 **SECTION 79.** 767.24 (4) (cm) of the statutes is repealed.

15 **SECTION 80.** 767.24 (4) (d) of the statutes is amended to read:

16 767.24 (4) (d) ~~If the~~ The court grants periods of physical placement to more than
17 ~~one parent, it shall order a parent with legal custody and physical placement rights~~
18 ~~to provide the notice required under s. 767.327 (1) (2).~~

19 **SECTION 81.** 767.24 (5) of the statutes is repealed.

20 **SECTION 82.** 767.24 (6) (a) and (am) of the statutes are repealed.

21 **SECTION 83.** 767.24 (6) (b) of the statutes is amended to read:

22 767.24 (6) (b) ~~Notwithstanding s. 767.001 (1s), in making an order of~~ If the
23 court awards joint legal custody, the court may give one party parties may stipulate
24 that one party has the sole power to make specified decisions, while both parties

SENATE BILL 107

1 retain equal rights and responsibilities for other decisions. The court shall
2 incorporate the terms of the stipulation into the final judgment or order.

3 **SECTION 84.** 767.24 (6) (bm) of the statutes is created to read:

4 767.24 (6) (bm) If the court awards joint legal custody, the parties may stipulate
5 to the primary care physicians for a minor child, and the court shall incorporate the
6 terms of the stipulation into the final judgment or order. If the parties do not agree
7 on the primary care physicians, the court may specify the primary care physicians
8 for a minor child after considering the child's present health care and health
9 insurance arrangements and any orders made by the court under s. 767.25 (4m).

10 **SECTION 85.** 767.24 (6) (c) of the statutes is amended to read:

11 767.24 (6) (c) ~~In making an order of joint legal custody and periods of physical~~
12 ~~placement, the~~ The court may specify one parent as the primary caretaker of the
13 child and one home as the primary home of the child, for the purpose of determining
14 eligibility for aid under s. 49.19 or benefits under ss. 49.141 to 49.161 ~~or for any other~~
15 ~~purpose the court considers appropriate~~ only if both parents are dependent persons,
16 as defined in s. 49.01 (2).

17 **SECTION 86.** 767.245 (1) of the statutes is amended to read:

18 767.245 (1) Except as provided in sub. (2m), upon petition by a grandparent,
19 greatgrandparent, stepparent or person who has maintained a relationship similar
20 to a parent-child relationship with the child, the court may grant reasonable
21 visitation rights to that person if the parents have notice of the hearing and if the
22 court determines ~~that by a preponderance of the evidence that the~~ visitation is ~~in the~~
23 ~~best interest of the child~~ not harmful to the child or to the child's relationship with
24 either of the child's parents.

25 **SECTION 87.** 767.245 (2) of the statutes is repealed.

SENATE BILL 107**SECTION 88**

1 **SECTION 88.** 767.245 (3) (intro.) of the statutes is amended to read:

2 767.245 (3) (intro.) The court may grant reasonable visitation rights, with
3 respect to a child, to a grandparent of the child if the child's parents have notice of
4 the hearing and the court determines, by a preponderance of the evidence, all of the
5 following:

6 **SECTION 89.** 767.245 (3) (f) of the statutes is amended to read:

7 767.245 (3) (f) The visitation is ~~in the best interest of the child~~ not harmful to
8 the child or to the child's relationship with either of the child's parents.

9 **SECTION 90.** 767.245 (3m) (c) of the statutes is amended to read:

10 767.245 (3m) (c) If a party or ~~the~~ any guardian ad litem appointed under s.
11 48.235 refuses to accept a recommendation under this subsection, the action shall be
12 set for trial.

13 **SECTION 91.** 767.25 (1m) (hm) of the statutes is repealed.

14 **SECTION 92.** 767.25 (2) of the statutes is amended to read:

15 767.25 (2) The court may ~~protect and promote the best interests of the minor~~
16 ~~children by setting~~ set aside a portion of the child support which either party is
17 ordered to pay in a separate fund or trust for the support, education and welfare of
18 such children.

19 **SECTION 93.** 767.255 (1) of the statutes is amended to read:

20 767.255 (1) Upon every judgment of annulment, divorce or legal separation, or
21 in rendering a judgment in an action under s. 767.02 (1) (h), the court shall divide
22 the property of the parties and divest and transfer the title of any such property
23 accordingly. A certified copy of the portion of the judgment that affects title to real
24 estate shall be recorded in the office of the register of deeds of the county in which
25 the lands so affected are situated. The court may ~~protect and promote the best~~

SENATE BILL 107

1 interests of the children by setting set aside a portion of the property of the parties
2 in a separate fund or trust for the support, maintenance, education and general
3 welfare of any minor children of the parties.

4 **SECTION 94.** 767.265 (3h) of the statutes, as affected by 1997 Wisconsin Act 191,
5 is amended to read:

6 767.265 (3h) A person who receives notice of assignment under this section or
7 s. 767.23 (1) ~~(L)~~ (1c) (i), 767.25 (4m) (c), 767.51 (3m) (c) or 767.62 (4) (b) 3. or similar
8 laws of another state shall withhold the amount specified in the notice from any
9 money that person pays to the payer later than one week after receipt of notice of
10 assignment. Within 5 days after the day the person pays money to the payer, the
11 person shall send the amount withheld to the clerk of court or support collection
12 designee, whichever is appropriate, of the jurisdiction providing notice or, in the case
13 of an amount ordered withheld for health care expenses, to the appropriate health
14 care insurer, provider or plan. With each payment sent to the clerk of court or support
15 collection designee, the person from whom the payer receives money shall report to
16 the clerk or support collection designee the payer's gross income or other gross
17 amount from which the payment was withheld. Except as provided in sub. (3m), for
18 each payment sent to the clerk of court or support collection designee, the person
19 from whom the payer receives money shall receive an amount equal to the person's
20 necessary disbursements, not to exceed \$3, which shall be deducted from the money
21 to be paid to the payer. Section 241.09 does not apply to assignments under this
22 section.

23 **SECTION 95.** 767.265 (4) of the statutes is amended to read:

SENATE BILL 107**SECTION 95**

1 767.265 (4) A withholding assignment or order under this section or s. 767.23
2 ~~(1)-(L) (1c) (i)~~, 767.25 (4m) (c), 767.51 (3m) (c) or 767.62 (4) (b) 3. has priority over any
3 other assignment, garnishment or similar legal process under state law.

4 **SECTION 96.** 767.265 (6) (a) of the statutes, as affected by 1997 Wisconsin Act
5 191, is amended to read:

6 767.265 (6) (a) Except as provided in sub. (3m), if after receipt of notice of
7 assignment the person from whom the payer receives money fails to withhold the
8 money or send the money to the clerk of court or support collection designee or the
9 appropriate health care insurer, provider or plan as provided in this section or s.
10 767.23 ~~(1)-(L) (1c) (i)~~, 767.25 (4m) (c), 767.51 (3m) (c) or 767.62 (4) (b) 3., the person
11 may be proceeded against under the principal action under ch. 785 for contempt of
12 court or may be proceeded against under ch. 778 and be required to forfeit not less
13 than \$50 nor more than an amount, if the amount exceeds \$50, that is equal to 1%
14 of the amount not withheld or sent.

15 **SECTION 97.** 767.265 (6) (b) of the statutes, as affected by 1997 Wisconsin Act
16 191, is amended to read:

17 767.265 (6) (b) If an employer who receives an assignment under this section
18 or s. 767.23 ~~(1)-(L) (1c) (i)~~, 767.25 (4m) (c), 767.51 (3m) (c) or 767.62 (4) (b) 3. fails to
19 notify the clerk of court or support collection designee, whichever is appropriate,
20 within 10 days after an employe is terminated or otherwise temporarily or
21 permanently leaves employment, the employer may be proceeded against under the
22 principal action under ch. 785 for contempt of court.

23 **SECTION 98.** 767.265 (6) (c) of the statutes is amended to read:

24 767.265 (6) (c) No employer may use an assignment under this section or s.
25 767.23 ~~(1)-(L) (1c) (i)~~, 767.25 (4m) (c), 767.51 (3m) (c) or 767.62 (4) (b) 3. as a basis for

SENATE BILL 107

1 the denial of employment to a person, the discharge of an employe or any disciplinary
2 action against an employe. An employer who denies employment or discharges or
3 disciplines an employe in violation of this paragraph may be fined not more than
4 \$500 and may be required to make full restitution to the aggrieved person, including
5 reinstatement and back pay. Except as provided in this paragraph, restitution shall
6 be in accordance with s. 973.20. An aggrieved person may apply to the district
7 attorney or to the department for enforcement of this paragraph.

8 **SECTION 99.** 767.325 (1) of the statutes is repealed and recreated to read:

9 767.325 (1) MODIFICATIONS. (a) The court shall modify an order of physical
10 placement in a way that alters the time a parent may spend with his or her child or
11 an order of legal custody if any of the following applies:

12 1. A parent requests a modification and the current order is not in conformity
13 with s. 767.24.

14 2. The parental rights of a parent have been terminated under subch. VIII of
15 ch. 48.

16 3. The parties agree to a modification.

17 (b) A modification under this subsection shall be consistent with s. 767.24.

18 **SECTION 100.** 767.325 (2) of the statutes is repealed.

19 **SECTION 101.** 767.325 (3) of the statutes is repealed.

20 **SECTION 102.** 767.325 (4) of the statutes is repealed.

21 **SECTION 103.** 767.327 of the statutes is repealed and recreated to read:

22 **767.327 Moving the child's residence outside the school district and**
23 **other removals.** (1) Except as provided in sub. (5), if both parents of a child in an
24 action affecting the family are awarded physical placement rights to the child,
25 neither parent may establish a legal residence for the child outside the school district

SENATE BILL 107**SECTION 103**

1 in which the child resided on the 180th day before the commencement of the action
2 affecting the family, or since birth if the child is less than 6 months old, or other school
3 district agreed upon by the parties.

4 (2) (a) A parent specified in sub. (1) who wishes to establish his or her legal
5 residence outside the state or at any location within the state that is at a distance
6 of 150 miles or more from the school district in which the child resided on the 180th
7 day before the commencement of the action affecting the family, or since birth if the
8 child is less than 6 months old, or other school district agreed upon by the parties,
9 shall provide not less than 60 days' written notice to the other parent, with a copy
10 to the court, of his or her intent regarding changing his or her legal residence.

11 (b) The parent shall send the notice under par. (a) by certified mail. The notice
12 shall state the parent's proposed action, including the specific date and location of
13 the move, and that the other parent may request a modification to the physical
14 placement order as provided in sub. (3).

15 (3) If the proposed move under sub. (2) would make it difficult or impractical
16 for the parties to comply with the physical placement order and at the same time for
17 the child to remain in the same school district, either party may file a petition, motion
18 or order to show cause for modification of the physical placement order.

19 (4) (a) If after a notice under sub. (2) has been sent or a petition, motion or order
20 to show cause under sub. (3) has been filed the parties agree to a modification of the
21 physical placement order or to a change in the child's school district and file a
22 stipulation with the court, the court shall approve the agreement and incorporate the
23 terms of the stipulation into a revised order.

SENATE BILL 107

1 (b) If the parties do not agree to a modification after a petition, motion or order
2 to show cause under sub. (3) has been filed, the court may modify the physical
3 placement order, subject to all of the following:

4 1. The parent not proposing the move shall be awarded periods of physical
5 placement that include weekdays and weeknights when school is in session, at least
6 one weekend per month, at least 4 weeks during the summer months when school
7 is not in session and alternating holidays.

8 2. The parent proposing the move shall be awarded the maximum amount of
9 physical placement that is reasonable under the circumstances.

10 3. The parent proposing the move shall be responsible for the transportation
11 costs of exercising his or her physical placement rights.

12 (5) The court may allow a parent specified in sub. (1) to establish a legal
13 residence for the child outside the school district in which the child resided on the
14 180th day before the commencement of the action affecting the family, or since birth
15 if the child is less than 6 months old, or other school district agreed upon by the
16 parties, if all of the following apply:

17 (a) The parent desiring to establish a different legal residence for the child files
18 a petition, motion or order to show cause for that purpose.

19 (b) The other parent has notice of the hearing on the petition, motion or order
20 to show cause.

21 (c) The parent desiring to establish a different legal residence for the child
22 shows by clear and convincing evidence that, for a period of at least one year, the
23 other parent has exercised his or her physical placement rights for less than 10% of
24 the amount of time that he or she was awarded by the court.

SENATE BILL 107**SECTION 103**

1 **(6)** Notwithstanding sub. (1), if both parents specified in sub. (1) wish to
2 establish their legal residences or a legal residence for the child outside the current
3 school district of the child and do not agree on a new school district for the child, the
4 court may designate one of the new legal residences of the parents as the child's legal
5 residence for the purpose of establishing a new school district for the child. In
6 making the determination under this subsection, the court shall specify as the child's
7 legal residence the location that the court determines will maximize the amount of
8 time that each parent may spend with the child.

9 **(7)** Notwithstanding sub. (1), if a parent specified in sub. (1) has established
10 his or her legal residence outside the state or at a location within the state that is at
11 a distance of 150 miles or more from the child's current school district, the court may
12 allow the parent whose legal residence is in the child's current school district to
13 establish a legal residence for the child outside the child's current school district if
14 the move does not increase the distance between the child and the other parent and
15 the other parent does not wish to move back to the child's current school district.

16 **(8)** Unless the parents agree otherwise, a parent with legal custody and
17 physical placement rights shall notify and obtain the written approval of the other
18 parent before removing the child from the state for a period of 14 days or more.

19 **SECTION 104.** 767.33 (1m) (a) of the statutes is renumbered 767.33 (1m) and
20 amended to read:

21 **767.33 (1m)** ~~Except as provided in par. (b), this~~ This section applies only to an
22 order under s. 767.23 or 767.25 in which payment is expressed as a fixed sum. It does
23 not apply to such an order in which payment is expressed as a percentage of parental
24 income.

25 **SECTION 105.** 767.33 (1m) (b) of the statutes is repealed.

SENATE BILL 107

1 **SECTION 106.** 767.45 (1) (d) of the statutes is amended to read:

2 767.45 (1) (d) A man alleged or alleging himself to be the father of the child,
3 including a man against whom an action was dismissed under s. 767.458 (1m), 1997
4 stats., or 767.463, 1997 stats., before the effective date of this paragraph [revisor
5 inserts date].

6 **SECTION 107.** 767.45 (1) (i) of the statutes is amended to read:

7 767.45 (1) (i) A guardian ad litem appointed for the child under s. 48.235,
8 767.045 (1)(e) (2) (a) or 938.235.

9 **SECTION 108.** 767.45 (2) of the statutes is repealed.

10 **SECTION 109.** 767.458 (1) (b) of the statutes is amended to read:

11 767.458 (1) (b) If the respondent is unable to afford counsel due to indigency,
12 and the petitioner is represented by a government attorney under s. 767.45 (1) (g) or
13 (6) or the action is commenced on behalf of the child by an attorney appointed under
14 s. 767.045 (1)(e) (2) (a), counsel shall be appointed for the respondent as provided in
15 s. 767.52 and ch. 977, unless the respondent knowingly and voluntarily waives the
16 appointment of counsel;

17 **SECTION 110.** 767.458 (1) (c) of the statutes is amended to read:

18 767.458 (1) (c) ~~Except as provided under sub. (1m) and s. 767.463, the~~ The
19 respondent may request the administration of genetic tests which either
20 demonstrate that he is not the father of the child or which demonstrate the
21 probability that he is or is not the father of the child;

22 **SECTION 111.** 767.458 (1) (d) of the statutes is amended to read:

23 767.458 (1) (d) ~~Except as provided in subs. (1m) and (2) and s. 767.463, the~~ The
24 court will order genetic tests upon the request of any party; and

25 **SECTION 112.** 767.458 (1m) of the statutes is repealed.

SENATE BILL 107**SECTION 113**

1 **SECTION 113.** 767.46 (2) (c) of the statutes is amended to read:

2 767.46 (2) (c) If the alleged father voluntarily acknowledges paternity of the
3 child, that he agree to the duty of support, the legal custody of the child, periods of
4 physical placement of the child and other matters as determined to be in the best
5 interests of the child by the court.

6 **SECTION 114.** 767.46 (4) of the statutes is amended to read:

7 767.46 (4) If a party or the any guardian ad litem appointed under s. 48.235
8 or 767.475 (1) refuses to accept a recommendation made under this section and
9 genetic tests have not yet been taken, the court shall require the appropriate parties
10 to submit to genetic tests. After the genetic tests have been taken the court shall
11 make an appropriate final recommendation.

12 **SECTION 115.** 767.46 (5) of the statutes is amended to read:

13 767.46 (5) If the any guardian ad litem appointed under s. 48.235 or 767.475
14 (1) or any party refuses to accept any final recommendation, the action shall be set
15 for trial.

16 **SECTION 116.** 767.463 of the statutes is repealed.

17 **SECTION 117.** 767.465 (2m) (a) of the statutes is amended to read:

18 767.465 (2m) (a) At any time after service of the summons and petition, a
19 respondent who is the alleged father may, with or without appearance in court and
20 ~~subject to the approval of the court,~~ in writing acknowledge that he has read and
21 understands the notice under s. 767.455 (5g) and stipulate that he is the father of the
22 child and for child support payments, legal custody and physical placement. The
23 court may not approve a stipulation for child support unless it provides for payment
24 of child support determined in a manner consistent with s. 767.25 or 767.51.

SENATE BILL 107**SECTION 118**

1 **SECTION 118.** 767.475 (1) (a) of the statutes is renumbered 767.475 (1) and
2 amended to read:

3 767.475 (1) ~~Except as provided in par. (b), the court may appoint a guardian~~
4 ~~ad litem for the child and~~ The court shall appoint a guardian ad litem for a minor
5 parent or minor who is alleged to be a parent in a paternity proceeding unless the
6 minor parent or the minor alleged to be the parent is represented by an attorney.

7 **SECTION 119.** 767.475 (1) (b) of the statutes is repealed.

8 **SECTION 120.** 767.51 (3) of the statutes is amended to read:

9 767.51 (3) A judgment or order determining paternity may contain any other
10 provision directed against the ~~appropriate party~~ parties to the proceeding,
11 concerning the duty of support, the legal custody and guardianship of the child,
12 periods of physical placement, the furnishing of bond or other security for the
13 payment of the judgment, or any other matter ~~in the best interest of the child.~~ Unless
14 ~~the court orders otherwise, if there is no presumption of paternity under s. 891.41~~
15 ~~(1) the mother shall have sole legal custody of the child.~~ The court shall order either
16 party or both to pay for the support of any child of the parties who is less than 18 years
17 old, or any child of the parties who is less than 19 years old if the child is pursuing
18 an accredited course of instruction leading to the acquisition of a high school diploma
19 or its equivalent. The judgment or order may direct the father to ~~pay or contribute~~
20 make an equal contribution to the reasonable expenses of the mother's pregnancy
21 and confinement during pregnancy and may ~~shall~~ direct ~~either party~~ both parties to
22 pay or contribute to the costs of genetic tests, attorney fees and other costs.
23 Contributions to the costs of genetic tests shall be paid to the county which paid for
24 the genetic tests.

25 **SECTION 121.** 767.51 (4) of the statutes is amended to read:

SENATE BILL 107**SECTION 121**

1 767.51 (4) Support judgments or orders ordinarily shall be for periodic
2 payments which may vary in amount if appropriate. The payment amount may be
3 expressed as a percentage of the parent's income or as a fixed sum, or as a
4 combination of both in the alternative by requiring payment of the greater or lesser
5 of either a percentage of the parent's income or a fixed sum. The father's liability for
6 past support of the child shall be limited to support for the period after ~~the birth of~~
7 the child paternity has been adjudicated.

8 **SECTION 122.** 767.51 (5) (e) of the statutes is amended to read:

9 767.51 (5) (e) The need and capacity of the child for education, ~~including higher~~
10 education.

11 **SECTION 123.** 767.51 (5) (i), (im) and (j) of the statutes are repealed.

12 **SECTION 124.** 767.51 (6) of the statutes is amended to read:

13 767.51 (6) Sections 767.24, 767.245, 767.263, 767.265, 767.267, 767.29,
14 767.293, 767.30, 767.305, 767.31, 767.32 ~~and~~, 767.325, 767.327 and 767.329, where
15 applicable, shall apply to a judgment or order under this section.

16 **SECTION 125.** 767.52 (1) of the statutes is amended to read:

17 767.52 (1) At the pretrial hearing, at the trial and in any further proceedings
18 in any paternity action, any party may be represented by counsel. If the respondent
19 is indigent and the state is the petitioner under s. 767.45 (1) (g), the petitioner is
20 represented by a government attorney as provided in s. 767.45 (6) or the action is
21 commenced on behalf of the child by an attorney appointed under s. ~~767.045 (1) (e)~~
22 (2) (a), counsel shall be appointed for the respondent as provided in ch. 977, and
23 subject to the limitations under sub. (2m), unless the respondent knowingly and
24 voluntarily waives the appointment of counsel.

25 **SECTION 126.** 767.53 (3) of the statutes is created to read:

SENATE BILL 107**SECTION 126**

1 767.53 (3) The records of any past proceeding in which paternity was
2 established are open to public inspection under ss. 19.31 to 19.39.

3 **SECTION 127.** 767.62 (3) (b) of the statutes is amended to read:

4 767.62 (3) (b) ~~Except as provided in s. 767.045, in~~ In an action specified in par.
5 (a), the court or family court commissioner ~~may appoint a guardian ad litem for the~~
6 ~~child and~~ shall appoint a guardian ad litem for a party who is a minor, unless the
7 minor party is represented by an attorney.

8 **SECTION 128.** 767.62 (4) (a) of the statutes is amended to read:

9 767.62 (4) (a) In an action under sub. (3) (a), if the persons who signed and filed
10 the statement acknowledging paternity as parents of the child had notice of the
11 hearing, the court or family court commissioner may make an order that contains
12 any provision directed against the ~~appropriate party~~ parties to the proceeding
13 concerning the duty of support, the legal custody or guardianship of the child, periods
14 of physical placement, the furnishing of bond or other security for the payment of
15 amounts under the order or any other matter ~~in the best interest of the child.~~ ~~Unless~~
16 ~~the court orders otherwise, if there is no presumption of paternity under s. 891.41~~
17 ~~(1) the mother shall have sole legal custody of the child.~~ The court or family court
18 commissioner shall order either party or both to pay for the support of any child of
19 the parties who is less than 18 years old, or any child of the parties who is less than
20 19 years old if the child is pursuing an accredited course of instruction leading to the
21 acquisition of a high school diploma or its equivalent. The order may direct the father
22 to ~~pay or contribute~~ make an equal contribution to the reasonable expenses of the
23 mother's pregnancy and confinement during pregnancy and ~~may~~ shall direct either
24 party both parties to pay or contribute to the costs of attorney fees or other costs.

25 **SECTION 129.** 767.62 (4) (d) 3. of the statutes is amended to read:

SENATE BILL 107**SECTION 129**

1 767.62 (4) (d) 3. Support orders under par. (a) ordinarily shall be for periodic
2 payments which may vary in amount if appropriate. The payment amount may be
3 expressed as a percentage of the parent's income or as a fixed sum, or as a
4 combination of both in the alternative by requiring payment of the greater or lesser
5 of either a percentage of the parent's income or a fixed sum. The father's liability for
6 past support of the child shall be limited to support for the period after the birth of
7 the child date on which the statement acknowledging paternity was filed with the
8 state registrar under s. 69.15 (3) (b) 3.

9 **SECTION 130.** 767.62 (4) (e) 6. of the statutes is amended to read:

10 767.62 (4) (e) 6. The need and capacity of the child for education, including
11 higher education.

12 **SECTION 131.** 767.62 (4) (e) 12., 13. and 14. of the statutes are repealed.

13 **SECTION 132.** 769.302 of the statutes is amended to read:

14 **769.302 Action by minor parent.** A minor parent, or a guardian or other
15 legal representative of a minor parent, may maintain a proceeding on behalf of or for
16 the benefit of the minor's child. Notwithstanding s. ~~767.045 (1) or~~ 803.01 (3), the
17 ~~court may appoint a guardian ad litem for the minor's child, but~~ the court need not
18 appoint a guardian ad litem for a minor parent who maintains such a proceeding
19 unless the proceeding is one for the determination of parentage, in which case the
20 court or a family court commissioner shall appoint a guardian ad litem for a minor
21 parent within this state who maintains such a proceeding or for a minor within this
22 state who is alleged to be a parent, as provided in s. 767.475 (1).

23 **SECTION 133.** 802.12 (3) (b) of the statutes is amended to read:

SENATE BILL 107

1 802.12 (3) (b) If a guardian ad litem has been appointed under s. 48.235, he or
2 she shall be a party to any settlement alternative regarding custody, physical
3 placement, visitation rights, support or other interests of the ward.

4 **SECTION 134.** 803.01 (3) (b) 1. of the statutes is amended to read:

5 803.01 (3) (b) 1. The guardian ad litem shall be appointed by a circuit court of
6 the county where the action is to be commenced or is pending, except that ~~the a~~
7 guardian ad litem appointed under s. 767.475 (1) shall be appointed by a family court
8 commissioner of the county in those actions to establish paternity that are before the
9 family court commissioner and a guardian ad litem appointed under s. 767.62 (3) (b)
10 shall be appointed by a family court commissioner of the county in those actions
11 specified in s. 767.62 (3) (a) that are before the family court commissioner.

12 **SECTION 135.** 803.01 (3) (b) 2. of the statutes is amended to read:

13 803.01 (3) (b) 2. When the plaintiff is a minor 14 years of age or over, upon the
14 plaintiff's application or upon the state's application under s. 767.045 (1)(e) (2) (a);
15 or if the plaintiff is under that age or is mentally incompetent, upon application of
16 the plaintiff's guardian or of a relative or friend or upon application of the state under
17 s. 767.045 (1)(e) (2) (a). If the application is made by a relative, friend or the state,
18 notice thereof must first be given to the guardian if the plaintiff has one in this state;
19 if the plaintiff has none, then to the person with whom the minor or mentally
20 incompetent resides or who has the minor or mentally incompetent in custody.

21 **SECTION 136.** 814.61 (1) (c) 1. of the statutes is amended to read:

22 814.61 (1) (c) 1. An action to determine paternity brought by the state or its
23 delegate under s. 767.45 (1) (g) or (h) or commenced on behalf of the child by an
24 attorney appointed under s. 767.045 (1)(e) (2) (a).

25 **SECTION 137.** 814.61 (7) (c) of the statutes is amended to read:

SENATE BILL 107**SECTION 137**

1 814.61 (7) (c) Paragraphs (a) and (b) do not apply to a petition or motion filed
2 by the state or its delegate in connection with an action to determine paternity under
3 s. 767.45 (1) (g), to a petition or motion filed by an attorney appointed under s.
4 767.045 (1)(e) (2) (a) in connection with an action to determine paternity when the
5 circumstances specified in s. 767.045 (1)(e) (2) (a) 1. or 2. apply or to a petition or
6 motion filed in an action under ch. 769.

7 **SECTION 138.** 891.39 (1) (a) of the statutes is renumbered 891.39 (1) and
8 amended to read:

9 891.39 (1) Whenever it is established in an action or proceeding that a child was
10 born to a woman while she was the lawful wife of a specified man, any party asserting
11 in such action or proceeding that the husband was not the father of the child shall
12 have the burden of proving that assertion by a clear and satisfactory preponderance
13 of the evidence. In all such actions or proceedings the husband and the wife are
14 competent to testify as witnesses to the facts. The Except as provided in s. 767.045,
15 the court or judge in such cases shall appoint a guardian ad litem to appear for and
16 represent the child whose paternity is questioned. Results of a genetic test, as
17 defined in s. 767.001 (1m), showing that a man other than the husband is not
18 excluded as the father of the child and that the statistical probability of the man's
19 parentage is 99.0% or higher constitute a clear and satisfactory preponderance of the
20 evidence of the assertion under this paragraph, even if the husband is unavailable
21 to submit to genetic tests, as defined in s. 767.001 (1m).

22 **SECTION 139.** 891.39 (1) (b) of the statutes is repealed.

23 **SECTION 140.** 977.05 (4) (i) 7. of the statutes is amended to read:

24 977.05 (4) (i) 7. Cases involving paternity determinations, as specified under
25 s. 767.52, in which the state is the petitioner under s. 767.45 (1) (g) or in which the

SENATE BILL 107

1 action is commenced on behalf of the child by an attorney appointed under s. 767.045
2 ~~(1)(e)~~ (2)(a).

3 **SECTION 141.** 977.05 (6) (b) 1. of the statutes is amended to read:

4 977.05 **(6)** (b) 1. The action is not brought by the state, its delegate under s.
5 59.53 (6) (a) or an attorney appointed under s. 767.045 ~~(1)(e)~~ (2)(a).

6 **SECTION 142. Initial applicability.**

7 (1) This act first applies to actions affecting the family, including an action to
8 enforce or modify a judgment or order in an action affecting the family previously
9 granted, that are commenced on the effective date of this subsection.

10 **(END)**