



1995 SENATE BILL 343

September 21, 1995 - Introduced by Senators DARLING, RUDE and BURKE, cosponsored by Representatives WALKER, NOTESTEIN, HAHN, KELSO, F. LASEE, R. POTTER, PORTER, DUFF, SCHNEIDERS, PLOMBON, KLUSMAN, AINSWORTH, BRANDEMUEHL, BOYLE and LA FAVE. Referred to Committee on Judiciary.

1 **AN ACT to amend** 767.458 (1) (c), 767.458 (1) (d), 767.458 (2), 767.458 (3), 767.46
2 (2) (intro.), 767.465 (2) (a) and 767.48 (1) (a); and **to create** 767.463 and 767.48
3 (1) (c) of the statutes; **relating to:** paternity determination not in best interest
4 of child.

Analysis by the Legislative Reference Bureau

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 blood tests may be taken and the action is dismissed.

This bill provides that at any time in any paternity action the child's mother may allege that a judicial determination that the alleged father is the child's father is not in the child's best interest. If the judge or family court commissioner agrees that it is not in the child's best interest to find that the alleged father is the child's father, the action must be dismissed. Without a paternity determination, no child support may be ordered (unless the man signed a statement acknowledging paternity at the birth of the child), and no physical placement rights may be granted to the alleged father.

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

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

1 767.458 (1) (c) Except as provided under sub. (1m) or unless the court has made
2 the determination under s. 767.463, the respondent may request the administration
3 of blood tests which either demonstrate that he is not the father of the child or which
4 demonstrate the probability that he is or is not the father of the child;

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

6 767.458 (1) (d) Except as provided under sub. (1m) or unless the court has made
7 the determination under s. 767.463, the court will order blood tests upon the request
8 of any party; and

9 **SECTION 3.** 767.458 (2) of the statutes is amended to read:

10 767.458 (2) At the first appearance, if it appears from a sufficient petition or
11 affidavit of the child's mother that there is probable cause to believe that any of the
12 males named has had sexual intercourse with the mother during a possible time of
13 the child's conception, the court may, or upon the request of any party shall, order any
14 of the named persons to submit to blood tests, except for any named person with
15 respect to whom the court has made the determination under s. 767.463. The tests
16 shall be conducted in accordance with s. 767.48.

17 **SECTION 4.** 767.458 (3) of the statutes is amended to read:

18 767.458 (3) At the first appearance, if a statement acknowledging paternity
19 under s. 69.15 (3) (b) 1. or 3. is on file, unless the court has made the determination
20 under s. 767.463, the court may enter an order for child support, legal custody or
21 physical placement and, if the respondent who filed the statement does not dispute
22 his paternity, may enter a judgment of paternity.

23 **SECTION 5.** 767.46 (2) (intro.) of the statutes is amended to read:

24 767.46 (2) (intro.) On the basis of the information produced at the pretrial
25 hearing, unless the court has made the determination under s. 767.463, the court

1 shall evaluate the probability of determining the existence or nonexistence of
2 paternity in a trial and shall so advise the parties. On the basis of the evaluation,
3 the court may make an appropriate recommendation for settlement to the parties.
4 This recommendation may include any of the following:

5 **SECTION 6.** 767.463 of the statutes is created to read:

6 **767.463 Paternity determination not in child's best interest.** Except as
7 provided in s. 767.458 (1m), at any time during the pendency of a paternity action
8 before paternity is adjudicated, the child's mother may allege that a judicial
9 determination of paternity with respect to a man alleged or alleging himself to be the
10 father of the child is not in the best interest of the child. If the court or court
11 commissioner under s. 757.69 (3) (g) determines that a judicial determination of
12 whether the man is the father is not in the best interest of the child, the action shall
13 be dismissed with respect to the man.

14 **SECTION 7.** 767.465 (2) (a) of the statutes is amended to read:

15 767.465 (2) (a) Except as provided in sub. (2m) or unless the court has made
16 the determination under s. 767.463, if a respondent is the alleged father and fails to
17 appear at the first appearance, unless the first appearance is not required under s.
18 767.457 (2), scheduled blood test, pretrial hearing or trial, the court shall enter an
19 order adjudicating the respondent to be the father and appropriate orders for
20 support, legal custody and physical placement. The orders shall be either served on
21 the respondent or mailed by regular, registered or certified mail, to the last-known
22 address of the respondent. The orders shall take effect 30 days after service or 30
23 days after the date on which the orders were mailed unless, within that time, the
24 respondent presents to the court or court commissioner under s. 757.69 (3) (g)
25 evidence of good cause for failure to appear or failure to have undergone a blood test.

