2019 ASSEMBLY BILL 166

April 15, 2019 – Introduced by Representatives KRUG, SUBECK, BRANDTJEN, CROWLEY, KITCHENS, KULP, MURSAU, SPIROS, SKOWRONSKI, TUSLER and VANDERMEER, cosponsored by Senators TESTIN, L. TAYLOR, BERNIER, BEWLEY, JACQUE, KOOYENGA and WIRCH. Referred to Committee on Family Law.

1   AN ACT *to renumber and amend* 49.141 (1) (i) and 767.84 (1) (a); *to amend*

2   48.02 (13), 48.27 (5), 48.396 (2) (dm), 48.42 (4) (b) 2., 48.837 (4) (e), 48.91 (2),

3   49.225 (2) (a), 49.855 (3), 49.855 (4m) (b), 69.15 (3) (a) (intro.), 69.15 (3) (a) 3.,

4   565.30 (5m) (a), 767.407 (1) (c) (intro.), 767.41 (1) (b), 767.41 (1m) (intro.),

5   767.44 (1), 767.511 (1) (intro.), 767.511 (5), 767.513 (2), 767.55 (1), 767.55 (2)

6   (am) (intro.), 767.55 (3) (a) 1., 767.55 (3) (d), 767.55 (4) (b) (intro.), 767.59 (2s),

7   767.73 (1) (a), 767.75 (1) (b), 767.77 (1), 767.78 (1), 767.80 (1) (intro.), 767.80 (1)

8   (c), 767.80 (5m), 767.80 (6m), 767.82 (2), 767.82 (2m), 767.855, 767.87 (8),

9   802.12 (3) (d) 1., 802.12 (3) (d) 3., 808.075 (4) (d) 9., 808.075 (4) (d) 10., 852.05

10   (2), 938.02 (13), 938.27 (5) and 938.396 (2g) (g); and *to create* 49.141 (1) (i) 3.,

11   49.141 (1) (j) 6., 767.80 (1) (hm), 767.804, 767.84 (1) (a) 1., 767.84 (1) (a) 2.,

12   767.84 (1) (a) 3., 769.201 (1m) (gm) and 891.407 of the statutes; **relating to:**

1   presumption and conclusive determination of paternity on the basis of genetic

2   test results and orders that may be granted on the basis of genetic test results.

Analysis by the Legislative Reference Bureau

This bill creates a new presumption of paternity and a new way to conclusively determine paternity under the law using genetic testing. The bill also generally requires the court in a paternity action to order genetic testing. Also, the bill allows a court that determines that a judicial determination of whether a man is the father of the child is not in the best interest of the child to dismiss the paternity action with respect to that man, regardless of whether genetic tests have already been performed or what the results of those genetic tests were.

Under current law, a court may adjudicate a man to be a child's father in a paternity action, or a man and a child's mother may sign and file a statement acknowledging paternity with the state registrar. Both cases result in a conclusive determination that the man is the child's father, and the state registrar may change the child's birth record to show the man as the child's father and a court may enter orders for child support, legal custody, and physical placement rights with respect to the man.

Under the bill, a man is conclusively determined to be a child's father if all of the following are satisfied: 1) genetic tests are performed with respect to the child, the child's mother, and the man in response to a subpoena issued by a county child support agency requiring the parties to submit to the tests; 2) the test results show that the man is not excluded as the father and the statistical probability that he is the father is 99 percent or higher; 3) both the mother and the man are at least 18 years old; and 4) there is no marriage or statement acknowledging paternity presumption. If all of those requirements are satisfied, the child support agency must send notice to the parties advising of the test results, that an action may be commenced for orders related to child support, legal custody, and physical placement, and that either party may submit to the child support agency a written objection to the test results. If either party submits an objection, the child support agency must commence a paternity action on behalf of the state and the test results are admissible in the action. If neither party submits an objection by the time specified in the notice, the child support agency must file with the state registrar a report of the test results, showing a conclusive determination of paternity. On the basis of the report, the state registrar must insert the name of the father on the child's original birth record if the father's name was omitted.

Under the bill, if genetic test results conclusively determine a man to be a child's father and neither the mother nor the man submits an objection after receiving notice, an action may be brought for child support, legal custody, and physical placement. The court may also require the man to pay or contribute to the reasonable expenses of the mother's pregnancy, require either the man or mother to pay or contribute to the other party's attorney fees, and change the child's name upon the request of one or both of the parties.

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Current law also contains presumptions of paternity. There is a presumption (marriage presumption) that a man is the father of a child if: 1) he and the child's mother were married when the child was conceived or born; or 2) he and child's mother married after the child was born but had a relationship during the time within which the child was conceived and no other man has been adjudicated to be the father or is presumed to be the father because he was married to the child's mother when the child was conceived or born. There is also a presumption (statement acknowledging paternity presumption) that a man is a child's father if he and the child's mother signed and filed a statement acknowledging paternity with the state registrar and no other man is presumed to be the child's father under the marriage presumption. The bill creates a presumption that a man is a child's father if all of the requirements under the bill are satisfied for conclusively determining a man to be a child's father on the basis of genetic test results and no other man is presumed to be the child's father under the marriage or statement acknowledging paternity presumption.

The bill also makes other modifications related to genetic testing and paternity adjudications. Under current law, in a paternity action the court may require, and upon the request of a party must require, the child, the child's mother, and any male for whom there is probable cause to believe that he had sexual relations with the mother during the possible time of the child's conception to submit to genetic tests. Under the bill, the court in a paternity action must require the child, the child's mother, and any male for whom there is probable cause to believe that he had sexual relations with the mother during the possible time of the child's conception to submit to genetic tests with the following exceptions:

1. Genetic tests are not required if the action will be dismissed or a default judgment will be entered because of the failure of a party to appear.

2. The court is not required to require any of the following persons to submit to genetic tests:

a. A person who was required by a child support agency to submit to a genetic test and who has done so.

b. The respondent in the action if he or she is deceased and genetic material is not available without undue hardship.

c. A male respondent who fails to appear if genetic test results with respect to another male show that the other male is not excluded as the father and that the statistical probability that the other male is the father is 99 percent or higher.

Current law includes an exception to the requirement to order genetic tests in a paternity action. If the court determines, upon the motion of a party or guardian ad litem, that a judicial determination of whether a male is the father of the child is not in the best interest of the child, the court may, with respect to the male, refuse to order genetic tests, if they haven't already been performed, and dismiss the action. The Wisconsin Supreme Court, in *Randy A.J. v. Norma I.J.*, 2004 WI 41, 270 Wis. 2d 384, 677 N.W. 2d 630, determined that a court may not dismiss the paternity action if genetic tests have already been performed, even if the court finds that a judicial determination of paternity is not in the child's best interest. The bill provides that if the court determines that a judicial determination of whether a male is the

father of the child is not in the best interest of the child, the court may dismiss the action with respect to that male, regardless of whether genetic tests have been performed or what the results of those genetic tests were. The bill also provides that if, in fact, genetic tests have not yet been performed with respect to that male, the court is not required to order them.

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. 48.02 (13) of the statutes is amended to read:

2   48.02 **(13)** "Parent" means a biological parent, a husband who has consented

3   to the artificial insemination of his wife under s. 891.40, or a parent by adoption. If

4   the child is a nonmarital child who is not adopted or whose parents do not

5   subsequently intermarry under s. 767.803, "parent" includes a person conclusively

6   determined from genetic test results to be the father under s. 767.804 or a person

7   acknowledged under s. 767.805 or a substantially similar law of another state or

8   adjudicated to be the biological father. "Parent" does not include any person whose

9   parental rights have been terminated. For purposes of the application of s. 48.028

10   and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, "parent" means a

11   biological parent, an Indian husband who has consented to the artificial

12   insemination of his wife under s. 891.40, or an Indian person who has lawfully

13   adopted an Indian child, including an adoption under tribal law or custom, and

14   includes, in the case of a nonmarital child who is not adopted or whose parents do

15   not subsequently intermarry under s. 767.803, a person conclusively determined

16   from genetic test results to be the father under s. 767.804, a person acknowledged

17   under s. 767.805, a substantially similar law of another state, or tribal law or custom

1   to be the biological father, or a person adjudicated to be the biological father, but does

2   not include any person whose parental rights have been terminated.

3   SECTION 2. 48.27 (5) of the statutes is amended to read:

4   48.27 **(5)** Subject to sub. (3) (b), the court shall make every reasonable effort

5   to identify and notify any person who has filed a declaration of paternal interest

6   under s. 48.025, any person conclusively determined from genetic test results to be

7   the father under s. 767.804 (1), any person who has acknowledged paternity of the

8   child under s. 767.805 (1), and any person who has been adjudged to be the father

9   of the child in a judicial proceeding unless the person's parental rights have been

10   terminated.

11   SECTION 3. 48.396 (2) (dm) of the statutes is amended to read:

12   48.396 **(2)** (dm) Upon request of a court having jurisdiction over actions

13   affecting the family, an attorney responsible for support enforcement under s. 59.53

14   (6) (a) or a party to a paternity proceeding under subch. IX of ch. 767, the party's

15   attorney or the guardian ad litem for the child who is the subject of that proceeding

16   to review or be provided with information from the records of the court assigned to

17   exercise jurisdiction under this chapter and ch. 938 relating to the paternity of a child

18   for the purpose of determining the paternity of the child or for the purpose of

19   rebutting the presumption of paternity under s. 891.405, 891.407, or 891.41 (1), the

20   court assigned to exercise jurisdiction under this chapter and ch. 938 shall open for

21   inspection by the requester its records relating to the paternity of the child or disclose

22   to the requester those records.

23   SECTION 4. 48.42 (4) (b) 2. of the statutes is amended to read:

24   48.42 **(4)** (b) 2. If the child is a nonmarital child who is not adopted or whose

25   parents do not subsequently intermarry under s. 767.803 and paternity has not been

1   conclusively determined from genetic test results under s. 767.804, acknowledged

2   under s. 767.805 or a substantially similar law of another state, or adjudicated, the

3   court may, as provided in s. 48.422 (6) (b), order publication of a notice under subd.

4   4.

5   SECTION 5. 48.837 (4) (e) of the statutes is amended to read:

6   48.837 **(4)** (e) Shall, before hearing the petitions under subs. (2) and (3),

7   ascertain whether the paternity of a nonmarital child who is not adopted or whose

8   parents do not subsequently intermarry under s. 767.803 has been conclusively

9   determined from genetic test results under s. 767.804, acknowledged under s.

10   767.805 or a substantially similar law of another state, or adjudicated in this state

11   or another jurisdiction. If the child's paternity has not been conclusively determined

12   from genetic test results, acknowledged, or adjudicated, the court shall attempt to

13   ascertain the paternity of the child and shall determine the rights of any person who

14   may be the father of the child as provided under s. 48.423. The court may not proceed

15   with the hearing on the petitions under this section unless the parental rights of the

16   nonpetitioning parent, whether known or unknown, have been terminated.

17   SECTION 6. 48.91 (2) of the statutes is amended to read:

18   48.91 **(2)** In an adoption proceeding for a nonmarital child who is not adopted

19   or whose parents do not subsequently intermarry under s. 767.803, the court shall

20   establish whether the child's paternity has been conclusively determined from

21   genetic test results under s. 767.804, acknowledged under s. 767.805 or a

22   substantially similar law of another state, or adjudicated in this state or in another

23   jurisdiction. If the child's paternity has not been conclusively determined from

24   genetic test results, acknowledged, or adjudicated, the court shall attempt to

25   ascertain the paternity of the child and shall determine the rights of any person who

1   may be the father of the child as provided under s. 48.423. The court may not proceed

2   with the hearing on the petition for adoption unless the parental rights of the

3   nonpetitioning parent, whether known or unknown, have been terminated.

4   **SECTION 7.** 49.141 (1) (i) of the statutes is renumbered 49.141(1) (i) (intro.) and

5   amended to read:

6   49.141 **(1)** (i) (intro.) "Nonmarital coparent" means, with respect to an

7   individual and a dependent child, a parent who is not married to the individual, <u>who</u>

8   <u>resides with the dependent child,</u> and <u>who</u> is ~~either an~~ <u>one of the following:</u>

9   <u>1. An</u> adjudicated parent ~~or a~~ <u>.</u>

10   <u>2. A</u> parent who has signed and filed with the state registrar under s. 69.15 (3)

11   (b) 3. a statement acknowledging paternity.

12   **SECTION 8.** 49.141 (1) (i) 3. of the statutes is created to read:

13   49.141 **(1)** (i) 3. A parent who has been conclusively determined from genetic

14   test results to be the father under s. 767.804.

15   **SECTION 9.** 49.141 (1) (j) 6. of the statutes is created to read:

16   49.141 **(1)** (j) 6. A man who has been conclusively determined from genetic test

17   results to be the father under s. 767.804.

18   **SECTION 10.** 49.225 (2) (a) of the statutes is amended to read:

19   49.225 **(2)** (a) A county child support agency under s. 59.53 (5) may require, by

20   subpoena in substantially the form authorized under s. 885.02 or by other means, a

21   child, the child's mother<u>,</u> and a male alleged, or alleging himself, to be the child's

22   father to submit to genetic tests if there is probable cause to believe that the male

23   had sexual intercourse with the child's mother during a possible time of the child's

24   conception. Probable cause of sexual intercourse during a possible time of conception

25   may be established by a sufficient affidavit of the child's mother ~~or~~<u>,</u> the male alleged,

1   or alleging himself, to be the child's father, or the county child support agency under

2   s. 59.53 (5) based on information provided by the child's mother.

3   SECTION 11. 49.855 (3) of the statutes is amended to read:

4   49.855 **(3)** Receipt of a certification by the department of revenue shall

5   constitute a lien, equal to the amount certified, on any state tax refunds or credits

6   owed to the obligor. The lien shall be foreclosed by the department of revenue as a

7   setoff under s. 71.93 (3), (6), and (7). When the department of revenue determines

8   that the obligor is otherwise entitled to a state tax refund or credit, it shall notify the

9   obligor that the state intends to reduce any state tax refund or credit due the obligor

10   by the amount the obligor is delinquent under the support, maintenance, or receiving

11   and disbursing fee order or obligation, by the outstanding amount for past support,

12   medical expenses, or birth expenses under the court order, or by the amount due

13   under s. 46.10 (4), 49.345 (4), or 301.12 (4). The notice shall provide that within 20

14   days the obligor may request a hearing before the circuit court rendering the order

15   under which the obligation arose. Within 10 days after receiving a request for

16   hearing under this subsection, the court shall set the matter for hearing. Pending

17   further order by the court or a circuit court commissioner, the department of children

18   and families or its designee, whichever is appropriate, is prohibited from disbursing

19   the obligor's state tax refund or credit. A circuit court commissioner may conduct the

20   hearing. The sole issues at that hearing shall be whether the obligor owes the

21   amount certified and, if not and it is a support or maintenance order, whether the

22   money withheld from a tax refund or credit shall be paid to the obligor or held for

23   future support or maintenance, except that the obligor's ability to pay shall also be

24   an issue at the hearing if the obligation relates to an order under s. 767.804 (3) (d)

25   1., 767.805 (4) (d) 1., or 767.89 (3) (e) 1. and the order specifies that the court found

1   that the obligor's income was at or below the poverty line established under 42 USC

2   9902 (2).

3   SECTION 12. 49.855 (4m) (b) of the statutes is amended to read:

4   49.855 **(4m)** (b) The department of revenue may provide a certification that it

5   receives under sub. (1), (2m), (2p), or (2r) to the department of administration. Upon

6   receipt of the certification, the department of administration shall determine

7   whether the obligor is a vendor or is receiving any other payments from this state,

8   except for wages, retirement benefits, or assistance under s. 45.352, 1971 stats., s.

9   45.40 (1m), this chapter, or ch. 46, 108, or 301. If the department of administration

10   determines that the obligor is a vendor or is receiving payments from this state,

11   except for wages, retirement benefits, or assistance under s. 45.352, 1971 stats., s.

12   45.40 (1m), this chapter, or ch. 46, 108, or 301, it shall begin to withhold the amount

13   certified from those payments and shall notify the obligor that the state intends to

14   reduce any payments due the obligor by the amount the obligor is delinquent under

15   the support, maintenance, or receiving and disbursing fee order or obligation, by the

16   outstanding amount for past support, medical expenses, or birth expenses under the

17   court order, or by the amount due under s. 46.10 (4), 49.345 (4), or 301.12 (4). The

18   notice shall provide that within 20 days after receipt of the notice the obligor may

19   request a hearing before the circuit court rendering the order under which the

20   obligation arose. An obligor may, within 20 days after receiving notice, request a

21   hearing under this paragraph. Within 10 days after receiving a request for hearing

22   under this paragraph, the court shall set the matter for hearing. A circuit court

23   commissioner may conduct the hearing. Pending further order by the court or circuit

24   court commissioner, the department of children and families or its designee,

25   whichever is appropriate, may not disburse the payments withheld from the obligor.

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1   The sole issues at the hearing are whether the obligor owes the amount certified and,

2   if not and it is a support or maintenance order, whether the money withheld shall be

3   paid to the obligor or held for future support or maintenance, except that the obligor's

4   ability to pay is also an issue at the hearing if the obligation relates to an order under

5   s. <u>767.804 (3) (d) 1.</u>, 767.805 (4) (d) 1., or 767.89 (3) (e) 1. and the order specifies that

6   the court found that the obligor's income was at or below the poverty line established

7   under 42 USC 9902 (2).

8   **SECTION 13.** 69.15 (3) (a) (intro.) of the statutes is amended to read:

9   69.15 **(3)** (a) (intro.) If the state registrar receives an order under sub. (1) ~~which~~

10   <u>that</u> establishes paternity or determines that the man whose name appears on a

11   registrant's birth record is not the father of the registrant, <u>or a report under s.</u>

12   <u>767.804 (1) (c) that shows a conclusive determination of paternity</u>, the state registrar

13   shall do the following, as appropriate:

14   **SECTION 14.** 69.15 (3) (a) 3. of the statutes is amended to read:

15   69.15 **(3)** (a) 3. Except as provided under subd. 4., insert the name of the

16   adjudicated <u>or conclusively determined</u> father on the original birth record if the

17   name of the father was omitted on the original record.

18   **SECTION 15.** 565.30 (5m) (a) of the statutes is amended to read:

19   565.30 **(5m)** (a) The administrator shall report to the department of children

20   and families the name, address, and social security number of each winner of a

21   lottery prize that is payable in installments and the name, address, and social

22   security number or federal income tax number of the person who has been assigned

23   a lottery prize that is payable in installments. Upon receipt of the report, the

24   department of children and families shall certify to the administrator whether any

25   payee or assignee named in the report is obligated to provide child support, spousal

1   support, maintenance, or family support under s. 767.001 (1) (f) or (g), 767.225,

2   767.34, 767.511, 767.531, 767.56, 767.804 (3), 767.805 (4), 767.85, 767.863 (3), 767.89

3   (3), 767.893 (2m), or 948.22 (7) or ch. 769 and the amount required to be withheld

4   from the lottery prize under s. 767.75. Subject to par. (b), the administrator shall

5   withhold the certified amount from each payment made to the winner or assignee

6   and remit the certified amount to the department of children and families.

7   SECTION 16. 767.407 (1) (c) (intro.) of the statutes is amended to read:

8   767.407 **(1)** (c) (intro.) The attorney responsible for support enforcement under

9   s. 59.53 (6) (a) may request that the court appoint a guardian ad litem to bring an

10 action or motion on behalf of a minor who is a nonmarital child whose paternity has

11 not been conclusively determined from genetic test results under s. 767.804,

12 acknowledged under s. 767.805 (1) or a substantially similar law of another state, or

13 adjudicated for the purpose of determining the paternity of the child, and the court

14 shall appoint a guardian ad litem, if any of the following applies:

15   SECTION 17. 767.41 (1) (b) of the statutes is amended to read:

16   767.41 **(1)** (b) In rendering a judgment of annulment, divorce, legal separation,

17 or paternity, or in rendering a judgment in an action under s. 767.001 (1) (e), 767.501,

18 767.804 (2), or 767.805 (3), the court shall make such provisions as it deems just and

19 reasonable concerning the legal custody and physical placement of any minor child

20 of the parties, as provided in this section.

21   SECTION 18. 767.41 (1m) (intro.) of the statutes is amended to read:

22   767.41 **(1m)** PARENTING PLAN. (intro.) Unless the court orders otherwise, in an

23 action for annulment, divorce, or legal separation, an action to determine paternity,

24 or an action under s. 767.001 (1) (e), 767.501, 767.804 (2), or 767.805 (3), in which

25 legal custody or physical placement is contested, a party seeking sole or joint legal

1   custody or periods of physical placement shall file a parenting plan with the court if

2   the court waives the requirement to attend mediation under s. 767.405 (8) (b) or if

3   the parties attend mediation and the mediator notifies the court under s. 767.405

4   (12) (b) that the parties have not reached an agreement. Unless the court orders

5   otherwise, the parenting plan shall be filed within 60 days after the court waives the

6   mediation requirement or the mediator notifies the court that no agreement has been

7   reached. Except for cause shown, a party required to file a parenting plan under this

8   subsection who does not timely file a parenting plan waives the right to object to the

9   other party's parenting plan. A parenting plan shall provide information about the

10   following questions:

11   SECTION 19. 767.44 (1) of the statutes is amended to read:

12   767.44 **(1)** WHEN PROHIBITED. Notwithstanding ss. 767.225 (1) (am), 767.41 (1),

13   (4), and (5), 767.804 (3) (a), 767.805 (4) (a), and 767.89 (3) and except as provided in

14   sub. (2), in an action under this chapter that affects a minor child, a court may not

15   grant to the child's parent visitation or physical placement rights with the child if the

16   parent has been convicted under s. 940.01 of the first-degree intentional homicide,

17   or under s. 940.05 of the 2nd-degree intentional homicide, of the child's other parent,

18   and the conviction has not been reversed, set aside, or vacated.

19   SECTION 20. 767.511 (1) (intro.) of the statutes is amended to read:

20   767.511 **(1)** WHEN ORDERED. (intro.) When the court approves a stipulation for

21   child support under s. 767.34, enters a judgment of annulment, divorce, or legal

22   separation, or enters an order or a judgment in a paternity action or in an action

23   under s. 767.001 (1) (f) or (j), 767.501, 767.804 (2), or 767.805 (3), the court shall do

24   all of the following:

25   SECTION 21. 767.511 (5) of the statutes is amended to read:

1   767.511 **(5)** LIABILITY FOR PAST SUPPORT. Subject to ss. 767.804 (4), 767.805 (4m),

2   and 767.89 (4), liability for past support is limited to the period after the birth of the

3   child.

4   **SECTION 22.** 767.513 (2) of the statutes is amended to read:

5   767.513 **(2)** RESPONSIBILITY AND PAYMENT. In addition to ordering child support

6   for a child under s. 767.511 (1), the court shall specifically assign responsibility for

7   and direct the manner of payment of the child's health care expenses. In assigning

8   responsibility for a child's health care expenses, the court shall consider whether a

9   child is covered under a parent's health insurance policy or plan at the time the court

10   approves a stipulation for child support under s. 767.34, enters a judgment of

11   annulment, divorce, or legal separation, or enters an order or a judgment in a

12   paternity action or in an action under s. 767.001 (1) (f) or (j), 767.501, 767.804 (2), or

13   767.805 (3), the availability of health insurance to each parent through an employer

14   or other organization, the extent of coverage available to a child, and the costs to the

15   parent for the coverage of the child. A parent may be required to initiate or continue

16   health care insurance coverage for a child under this section. If a parent is required

17   to do so, he or she shall provide copies of necessary program or policy identification

18   to the custodial parent and is liable for any health care costs for which he or she

19   receives direct payment from an insurer. This section shall not be construed to limit

20   the authority of the court to enter or modify support orders containing provisions for

21   payment of medical expenses, medical costs, or insurance premiums that are in

22   addition to and not inconsistent with this section.

23   **SECTION 23.** 767.55 (1) of the statutes is amended to read:

24   767.55 **(1)** GENERALLY. In an action for modification of a child support order

25   under s. 767.59 or an action in which an order for child support is required under s.

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1   767.511 (1), 767.804 (3), 767.805 (4), or 767.89 (3), the court may order either or both

2   parents of the child to seek employment or participate in an employment or training

3   program.

4   **SECTION 24.** 767.55 (2) (am) (intro.) of the statutes is amended to read:

5   767.55 **(2)** (am) (intro.) In an action for modification of a child support order

6   under s. 767.59, an action in which an order for child support is required under s.

7   767.511 (1), 767.804 (3), 767.805 (4), or 767.89 (3), or a contempt of court proceeding

8   to enforce a child support or family support order in a county that contracts under

9   s. 49.36 (2), the court may order a parent who is not a custodial parent to register for

10   a work experience and job training program under s. 49.36 if all of the following

11   conditions are met:

12   **SECTION 25.** 767.55 (3) (a) 1. of the statutes is amended to read:

13   767.55 **(3)** (a) 1. Is an action for modification of a child support order under s.

14   767.59 or an action in which an order for child support is required under s. 767.511

15   (1), 767.804 (3), 767.805 (4), or 767.89 (3).

16   **SECTION 26.** 767.55 (3) (d) of the statutes is amended to read:

17   767.55 **(3)** (d) Paragraph (b) does not limit the authority of a court to issue an

18   order, other than an order under par. (b), regarding employment of a parent in an

19   action for modification of a child support order under s. 767.59 or an action in which

20   an order for child support is required under s. 767.511 (1), 767.804 (3), 767.805 (4),

21   or 767.89 (3).

22   **SECTION 27.** 767.55 (4) (b) (intro.) of the statutes is amended to read:

23   767.55 **(4)** (b) (intro.) In an action for revision of a judgment or order providing

24   for child support under s. 767.59 or an action in which an order for child support is

1   required under s. 767.511 (1), 767.804 (3), 767.805 (4), or 767.89 (3), the court shall

2   order an unemployed teenage parent to do one or more of the following:

3   SECTION 28. 767.59 (2s) of the statutes is amended to read:

4   767.59 **(2s)** STIPULATION FOR REVISION OF SUPPORT. In an action under sub. (1c),

5   the court may not approve a stipulation for the revision of a judgment or order with

6   respect to an amount of child support or family support unless the stipulation

7   provides for payment of an amount of child support or family support that is

8   determined in the manner required under s. 46.10 (14), 49.345 (14), 301.12 (14),

9   767.511, 767.804 (3), 767.805 (4), or 767.89, whichever is appropriate.

10   SECTION 29. 767.73 (1) (a) of the statutes is amended to read:

11   767.73 **(1)** (a) In this subsection, "support payment" means a payment ordered

12   for support under s. 767.521, support under s. 767.501, child support or family

13   support under s. 767.225, ~~child support under s. 767.511,~~ family support under s.

14   767.531, revised child or family support under s. 767.59, or child support under s.

15   ~~767.863 (3), child support under s. 767.85, child support under s. 767.89, child~~

16   ~~support under s. 767.805 (4), child support under ch. 769, or child support under s.~~

17   767.511, 767.804 (3), 767.805 (4), 767.85, 767.863 (3), 767.89, or 948.22 (7) or ch. 769.

18   SECTION 30. 767.75 (1) (b) of the statutes is amended to read:

19   767.75 **(1)** (b) "Payment order" means an order for child support under this

20   chapter, for maintenance payments under s. 767.225 or 767.56, for family support

21   under this chapter, for costs ordered under s. 767.804 (3), 767.805 (4), or 767.89 (3),

22   for support by a spouse under s. 767.001 (1) (f), or for maintenance payments under

23   s. 767.001 (1) (g); an order for or obligation to pay the annual receiving and

24   disbursing fee under s. 767.57 (1e) (a); an order for a revision in a judgment or order

25   with respect to child support, maintenance, or family support payments under s.

1   767.59; a stipulation approved by the court for child support under this chapter; and

2   an order for child or spousal support entered under s. 948.22 (7).

3   SECTION 31. 767.77 (1) of the statutes is amended to read:

4   767.77 **(1)** DEFINITION. In this section, "payment obligation" means an

5   obligation to pay support under s. 48.355 (2) (b) 4. or (4g) (a), 48.357 (5m) (a), 48.363

6   (2), 938.183 (4), 938.355 (2) (b) 4. or (4g) (a), 938.357 (5m) (a), or 938.363 (2), support

7   or maintenance under s. 767.501, child support, family support, or maintenance

8   under s. 767.225, child support under s. 767.511, maintenance under s. 767.56,

9   family support under s. 767.531, attorney fees under s. 767.241, child support or a

10   child's health care expenses under s. 767.85, paternity obligations under s. 767.804

11   (3), 767.805 (4), 767.863 (3), or 767.89, support arrearages under s. 767.71, or child

12   or spousal support under s. 948.22 (7).

13   SECTION 32. 767.78 (1) of the statutes is amended to read:

14   767.78 **(1)** DEFINITION. In this section, "financial obligation" means an

15   obligation for payment incurred under s. 48.355 (2) (b) 4. or (4g) (a), 48.357 (5m) (a),

16   48.363 (2), 767.225, 767.241, 767.511, 767.531, 767.56, 767.61, 767.71, 767.804 (3),

17   767.805 (4), 767.85, 767.863 (3), 767.89, 938.183 (4), 938.355 (2) (b) 4. or (4g) (a),

18   938.357 (5m) (a), or 938.363 (2).

19   SECTION 33. 767.80 (1) (intro.) of the statutes is amended to read:

20   767.80 **(1)** WHO MAY BRING ACTION OR FILE MOTION. (intro.) The following persons

21   may bring an action or file a motion, including an action or motion for declaratory

22   judgment, for the purpose of determining the paternity of a child, or for the purpose

23   of rebutting the presumption of paternity under s. 891.405, 891.407, or 891.41 (1):

24   SECTION 34. 767.80 (1) (c) of the statutes is amended to read:

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1   767.80 **(1)** (c) Unless s. <u>767.804 (1) or</u> 767.805 (1) applies, a male presumed to

2   be the child's father under s. 891.405<u>, 891.407,</u> or 891.41 (1).

3   **SECTION 35.** 767.80 (1) (hm) of the statutes is created to read:

4   767.80 **(1)** (hm) The state as provided under s. 767.804 (1) (d).

5   **SECTION 36.** 767.80 (5m) of the statutes is amended to read:

6   767.80 **(5m)** APPLICABLE PROCEDURE; EXCEPTIONS. Except as provided in ss.

7   <u>767.804,</u> 767.805, 767.863 (3), 767.85, 767.893 (2) and (2m), and 769.401, unless a

8   male is presumed the child's father under s. 891.41 (1), is adjudicated the child's

9   father either under s. 767.89 or by final order or judgment of a court of competent

10   jurisdiction in another state, <u>is conclusively determined to be the child's father from</u>

11   <u>genetic test results under s. 767.804,</u> or has acknowledged himself to be the child's

12   father under s. 767.805 (1) or a substantially similar law of another state, no order

13   or temporary order may be entered for child support, legal custody, or physical

14   placement until the male is adjudicated the father using the procedure set forth in

15   this subchapter, except s. <u>767.804 or</u> 767.805. Except as provided in ss. <u>767.804,</u>

16   767.805, 767.85, and 769.401, the exclusive procedure for establishment of child

17   support obligations, legal custody, or physical placement rights for a male who is not

18   presumed the child's father under s. 891.41 (1), adjudicated the father, <u>conclusively</u>

19   <u>determined to be the child's father from genetic test results under s. 767.804,</u> or

20   acknowledged under s. 767.805 (1) or a substantially similar law of another state to

21   be the father is by an action under this subchapter, except s. <u>767.804 or</u> 767.805, or

22   under s. 769.402. No person may waive the use of this procedure. If a presumption

23   under s. 891.41 (1) exists, a party denying paternity has the burden of rebutting the

24   presumption.

25   **SECTION 37.** 767.80 (6m) of the statutes is amended to read:

1   767.80 **(6m)** WHEN ACTION MUST BE COMMENCED. The attorney designated under

2   sub. (6) (a) shall commence an action under this section on behalf of the state within

3   6 months after receiving notification under s. 69.03 (15) that no father is named on

4   the birth record of a child who is a resident of the county if paternity has not been

5   conclusively determined from genetic test results under s. 767.804, acknowledged

6   under s. 767.805 (1) or a substantially similar law of another state, or adjudicated,

7   except in situations under s. 69.14 (1) (g) and (h) and as provided by the department

8   by rule.

9   SECTION 38. 767.804 of the statutes is created to read:

10   **767.804 Genetic test results. (1)** CONCLUSIVE DETERMINATION OF PATERNITY.

11   (a) If genetic tests have been performed with respect to a child, the child's mother,

12   and a male alleged, or alleging himself, to be the child's father, the test results

13   constitute a conclusive determination of paternity, effective on the date on which the

14   report under par. (c) is submitted to the state registrar, which has the same effect as

15   a judgment of paternity, if all of the following apply:

16   1. Both the child's mother and the male are over the age of 18 years.

17   2. The genetic tests were required to be performed by a county child support

18   agency under s. 59.53 (5) pursuant to s. 49.225.

19   3. The test results show that the male is not excluded as the father and that

20   the statistical probability of the male's parentage is 99.0 percent or higher.

21   4. No other male is presumed to be the father under s. 891.405 or 891.41 (1).

22   (b) When the county child support agency under s. 59.53 (5) receives genetic

23   test results described in par. (a) 3. and the requirements under par. (a) are satisfied,

24   the county child support agency shall send notice to the mother and male by regular

25   mail at their last-known addresses. The notice must be sent at least 15 days in

1   advance of the date on which the county child support agency intends to file the

2   report under par. (c) and shall advise the mother and male of all of the following:

3   1. The test results.

4   2. That the report under par. (c) will be filed with the state registrar if neither

5   the mother nor the male timely objects under subd. 4., and the date on which the

6   report will be filed.

7   3. That an action affecting the family concerning custody, child support, or

8   physical placement rights may be brought with respect to the mother and male.

9   4. That the mother or the male, or both, may object to the test results by

10   submitting an objection in writing to the county child support agency no later than

11   the day before the date specified in subd. 2., and that, if either the mother or the male

12   timely submits an objection, the state will commence a paternity action.

13   (c) 1. If neither the mother nor the male timely submits an objection under par.

14   (b) 4., the county child support agency shall file with the state registrar a report

15   showing the names, dates, and birth places of the child and the father, the social

16   security numbers of the mother, father, and child, and the maiden name of the

17   mother on a form prescribed by the state registrar, along with the fee set forth in s.

18   69.22 (5), if any, which the county child support agency shall collect.

19   2. The department shall pay, and may not require the county or county child

20   support agency to reimburse the department, for the cost of a fee for inserting the

21   father's name on a birth certificate under s. 69.15 (3) (a) 3. if the county child support

22   agency is unable to collect the fee.

23   (d) If either the mother or the male timely submits an objection under par. (b)

24   4., the county child support agency shall commence an action under s. 767.80 (1) on

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1   behalf of the state. The genetic test results described in par. (a) are admissible in an

2   action commenced under this paragraph.

3   **(2)** ACTIONS. Unless sub. (1) (d) applies, an action affecting the family

4   concerning custody, child support, or physical placement rights may be brought

5   under this subsection with respect to a child's mother and a male who, along with the

6   child, were the subjects of genetic tests, the results of which constitute a conclusive

7   determination of paternity under sub. (1). Except as provided in s. 767.407, in an

8   action under this subsection the court may appoint a guardian ad litem for the child.

9   **(3)** ORDERS. In an action under sub. (2), if the child's custodial and noncustodial

10   parent had notice of the hearing, the court shall make an order that contains all of

11   the following provisions:

12   (a) Orders for the legal custody of and periods of physical placement with the

13   child, determined in accordance with s. 767.41.

14   (b) An order requiring either or both of the parents to contribute to the support

15   of any child of the parties who is less than 18 years old, or any child of the parties who

16   is less than 19 years old if the child is pursuing an accredited course of instruction

17   leading to the acquisition of a high school diploma or its equivalent, determined in

18   accordance with s. 767.511.

19   (c) A determination as to which parent, if eligible, shall have the right to claim

20   the child as an exemption for federal tax purposes under 26 USC 151 (c), or as an

21   exemption for state tax purposes under s. 71.07 (8) (b).

22   (d) 1. An order establishing the amount of the father's obligation to pay or

23   contribute to the reasonable expenses of the mother's pregnancy and the child's

24   birth. The amount established may not exceed one-half of the total actual and

25   reasonable pregnancy and birth expenses. The order also shall specify the court's

1 findings as to whether the father's income is at or below the poverty line established

2 under 42 USC 9902 (2), and shall specify whether periodic payments are due on the

3 obligation, based on the father's ability to pay or contribute to those expenses.

4 2. If the order does not require periodic payments because the father has no

5 present ability to pay or contribute to the expenses, the court may modify the

6 judgment or order at a later date to require periodic payments if the father has the

7 ability to pay at that time.

8 (e) An order requiring either or both parties to pay or contribute to the costs

9 of guardian ad litem fees, if any, and other costs.

10 (f) An order requiring either party to pay or contribute to the attorney fees of

11 the other party.

12 **(3m)** CHANGE OF CHILD'S NAME. (a) Upon the request of both parents, the court

13 shall include in the order under sub. (3) an order changing the name of the child to

14 a name agreed upon by the parents.

15 (b) Except as provided in par. (a), the court may include an order changing the

16 surname of the child to a surname that consists of the surnames of both parents

17 separated by a hyphen or, if one or both parents have more than one surname, of one

18 of the surnames of each parent separated by a hyphen, if all of the following apply:

19 1. Only one parent requests that the child's name be changed, or both parents

20 request that the child's name be changed but each parent requests a different name

21 change.

22 2. The court finds that such a name change is in the child's best interest.

23 (c) Section 786.36 does not apply to a name change under this subsection.

24 **(4)** LIABILITY FOR PAST SUPPORT. (a) Subject to par. (b), liability for past support

25 of the child shall be limited to support for the period after the day on which the

1   petition, motion, or order to show cause requesting support is filed in the action for

2   support under sub. (2), unless a party shows, to the satisfaction of the court, all of the

3   following:

4   1. That he or she was induced to delay commencing the action by any of the

5   following:

6   a. Duress or threats.

7   b. Actions, promises, or representations by the other party upon which the

8   party relied.

9   c. Actions taken by the other party to evade proceedings under sub. (2).

10   2. That, after the inducement ceased to operate, he or she did not unreasonably

11   delay in commencing the action.

12   (b) In no event may liability for past support of the child be imposed for any

13   period before the birth of the child.

14   SECTION 39. 767.82 (2) of the statutes is amended to read:

15   767.82 **(2)** PRESUMPTION. Presumption of paternity shall be as provided in ss.

16   891.39, 891.405, 891.407, and 891.41 (1).

17   SECTION 40. 767.82 (2m) of the statutes is amended to read:

18   767.82 **(2m)** CUSTODY PENDING COURT ORDER. If there is no presumption of

19   paternity under s. 891.41 (1) or if paternity is conclusively determined from genetic

20   test results under s. 767.804 (1) or acknowledged under s. 767.805 (1), the mother

21   shall have sole legal custody of the child until the court orders otherwise.

22   SECTION 41. 767.84 (1) (a) of the statutes is renumbered 767.84 (1) (a) (intro.)

23   and amended to read:

24   767.84 **(1)** (a) (intro.) The Except as provided in ss. 767.855 and 767.863, and

25   except in actions to which s. 767.893 applies, the court may, and upon request of a

1 ~~party~~ shall~~,~~ require the child, mother, any male for whom there is probable cause to

2 believe that he had sexual intercourse with the mother during a possible time of the

3 child's conception, or any male witness who testifies or will testify about his sexual

4 relations with the mother at a possible time of conception to submit to genetic tests.

5 Probable cause of sexual intercourse during a possible time of conception may be

6 established by a sufficient petition or affidavit of the child's mother or an alleged

7 father, filed with the court, or after an examination under oath of a party or witness,

8 when the court determines that an examination is necessary. The court is not

9 required to order a ~~person who has undergone a genetic test under s. 49.225 to submit~~

10 ~~to another~~ genetic test under this paragraph ~~unless a party requests additional tests~~

11 ~~under sub. (2).~~ with respect to any of the following:

12   **SECTION 42.** 767.84 (1) (a) 1. of the statutes is created to read:

13   767.84 **(1)** (a) 1. A person who has undergone a genetic test under s. 49.225,

14 unless a party requests additional tests under sub. (2).

15   **SECTION 43.** 767.84 (1) (a) 2. of the statutes is created to read:

16   767.84 **(1)** (a) 2. A deceased respondent if genetic material is not available

17 without undue hardship as provided in s. 767.865 (2).

18   **SECTION 44.** 767.84 (1) (a) 3. of the statutes is created to read:

19   767.84 **(1)** (a) 3. a. Except as provided in subd. 3. b., a male respondent who fails

20 to appear, if genetic test results with respect to another man show that the other man

21 is not excluded as the father and that the statistical probability of the other man's

22 parentage is 99.0 percent or higher creating a presumption of the other man's

23 paternity.

24   b. Subdivision 3. a. does not apply if the presumption of the other man's

25 paternity is rebutted.

1   **SECTION 45.** 767.855 of the statutes is amended to read:

2   **767.855 Dismissal if adjudication not in child's best interest.** Except as

3   provided in s. 767.863 (1m), at any time in an action to establish the paternity of a

4   child, upon the motion of a party or guardian ad litem, the court or supplemental

5   court commissioner under s. 757.675 (2) (g) may, ~~with respect to a male, refuse to~~

6   ~~order genetic tests, if genetic tests have not yet been taken, and dismiss the action~~

7   if the court or supplemental court commissioner determines that a judicial

8   determination of whether ~~the~~ a male is the father of the child is not in the best

9   interest of the child, dismiss the action with respect to the male, regardless of

10   whether genetic tests have been performed or what the results of the tests, if

11   performed, were. Notwithstanding ss. 767.813 (5g) (form) 4., 767.84 (1) and (2),

12   767.863 (2), 767.865 (2), and 767.88 (4), if genetic tests have not yet been performed

13   with respect to the male, the court or supplemental court commissioner is not

14   required to order those genetic tests.

15   **SECTION 46.** 767.87 (8) of the statutes is amended to read:

16   767.87 **(8)** BURDEN OF PROOF. The party bringing an action for the purpose of

17   determining paternity or for the purpose of declaring the nonexistence of paternity

18   presumed under s. 891.405, 891.407, or 891.41 (1) shall have the burden of proving

19   the issues involved by clear and satisfactory preponderance of the evidence.

20   **SECTION 47.** 769.201 (1m) (gm) of the statutes is created to read:

21   769.201 **(1m)** (gm) The individual was conclusively determined from genetic

22   test results to be the father under s. 767.804.

23   **SECTION 48.** 802.12 (3) (d) 1. of the statutes is amended to read:

24   802.12 **(3)** (d) 1. Custody and physical placement under s. 767.41, 767.804 (3),

25   767.805 (4), 767.863 (3), or 767.89 (3).

1   **SECTION 49.** 802.12 (3) (d) 3. of the statutes is amended to read:

2   802.12 **(3)** (d) 3. Child support under s. 767.511, 767.804 (3), 767.805 (4),

3   767.863 (3), or 767.89 (3).

4   **SECTION 50.** 808.075 (4) (d) 9. of the statutes is amended to read:

5   808.075 **(4)** (d) 9. Enforcement of payments under s. 767.77, 767.804 (3),

6   767.805 (4), or 767.89.

7   **SECTION 51.** 808.075 (4) (d) 10. of the statutes is amended to read:

8   808.075 **(4)** (d) 10. Enforcement of orders under s. 767.78, 767.804 (3), 767.805

9   (4), or 767.89.

10   **SECTION 52.** 852.05 (2) of the statutes is amended to read:

11   852.05 **(2)** Property of a child born to unmarried parents passes in accordance

12   with s. 852.01 except that the father or the father's kindred can inherit only if the

13   father has been adjudicated to be the father in a paternity proceeding under ch. 767

14   or by final order or judgment of a court of competent jurisdiction in another state or

15   has been determined to be the father under s. 767.804 or 767.805 or a substantially

16   similar law of another state.

17   **SECTION 53.** 891.407 of the statutes is created to read:

18   **891.407 Presumption of paternity based on genetic test results.** A man

19   is presumed to be the natural father of a child if the man has been conclusively

20   determined from genetic test results to be the father under s. 767.804 and no other

21   man is presumed to be the father under s. 891.405 or 891.41 (1).

22   **SECTION 54.** 938.02 (13) of the statutes is amended to read:

23   938.02 **(13)** "Parent" means a biological parent, a husband who has consented

24   to the artificial insemination of his wife under s. 891.40, or a parent by adoption. If

25   the juvenile is a nonmarital child who is not adopted or whose parents do not

1   subsequently intermarry under s. 767.803, "parent" includes a <u>person conclusively</u>

2   <u>determined from genetic test results to be the father under s. 767.804 or a</u> person

3   acknowledged under s. 767.805 or a substantially similar law of another state or

4   adjudicated to be the biological father. "Parent" does not include any person whose

5   parental rights have been terminated. For purposes of the application of s. 938.028

6   and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, "parent" means a

7   biological parent, an Indian husband who has consented to the artificial

8   insemination of his wife under s. 891.40, or an Indian person who has lawfully

9   adopted an Indian juvenile, including an adoption under tribal law or custom, and

10   includes, in the case of a nonmarital child who is not adopted or whose parents do

11   not subsequently intermarry under s. 767.803, <u>a person conclusively determined</u>

12   <u>from genetic test results to be the father under s. 767.804,</u> a person acknowledged

13   under s. 767.805, a substantially similar law of another state, or tribal law or custom

14   to be the biological father<u>,</u> or a person adjudicated to be the biological father, but does

15   not include any person whose parental rights have been terminated.

16   **SECTION 55.** 938.27 (5) of the statutes is amended to read:

17   938.27 **(5)** NOTICE TO BIOLOGICAL FATHERS. Subject to sub. (3) (b), the court shall

18   make reasonable efforts to identify and notify any person who has filed a declaration

19   of paternal interest under s. 48.025, <u>any person conclusively determined from</u>

20   <u>genetic test results to be the father under s. 767.804 (1),</u> any person who has

21   acknowledged paternity of the child under s. 767.805 (1), and any person who has

22   been adjudged to be the father of the juvenile in a judicial proceeding unless the

23   person's parental rights have been terminated.

24   **SECTION 56.** 938.396 (2g) (g) of the statutes is amended to read:

1   938.396 **(2g)** (g) *Paternity of juvenile.*   Upon request of a court having

2   jurisdiction over actions affecting the family, an attorney responsible for support

3   enforcement under s. 59.53 (6) (a) or a party to a paternity proceeding under subch.

4   IX of ch. 767, the party's attorney or the guardian ad litem for the juvenile who is the

5   subject of that proceeding to review or be provided with information from the records

6   of the court assigned to exercise jurisdiction under this chapter and ch. 48 relating to

7   the paternity of a juvenile for the purpose of determining the paternity of the

8   juvenile or for the purpose of rebutting the presumption of paternity under s.

9   891.405, 891.407, or 891.41, the court assigned to exercise jurisdiction under this

10   chapter and ch. 48 shall open for inspection by the requester its records relating to

11   the paternity of the juvenile or disclose to the requester those records.

12   SECTION 57. **Initial applicability.**

13   (1) PATERNITY DETERMINATION OR PRESUMPTION BASED ON GENETIC TEST RESULTS.

14   The treatment of s. 767.804 first applies to genetic tests that are performed on the

15   effective date of this subsection.

16   (2) GENETIC TESTS IN PATERNITY ACTIONS.   The treatment of s. 767.855, the

17   renumbering and amendment of s. 767.84 (1) (a), and the creation of s. 767.84 (1) (a)

18   1., 2., and 3. first apply to paternity actions commenced on the effective date of this

19   subsection.

20   SECTION 58. **Effective dates.**

21   (1) This act takes effect on the first day of the 6th month beginning after

22   publication.

23   **(END)**