

1979 Assembly Bill 293

Date published: May 6, 1980

## CHAPTER 196, Laws of 1979

AN ACT to repeal 767.37 (1) (b); to renumber 767.24 (1m) and 767.26 (1); to renumber and amend 767.145; to amend 46.25 (1) and (2), 765.12 (1), 767.01, 767.02 (1) (i), 767.045, 767.05 (1) and (3), 767.083 (1) and (2) (a), 767.085 (2) and (3), 767.125, 767.15, 767.23 (1) and (3), 767.24 (title), (1) (c) and (d) and (2) (intro.), as renumbered, 767.255 (intro.), 767.26 (3), as renumbered, 767.265 (title), (1) and (2), 767.27 (2), 767.30, 767.305, 767.31, 801.05 (11), 891.39 (1) (a) and 946.71 (2); to repeal and recreate 767.24 (3); and to create 767.02 (1) (k), 767.05 (6), 767.085 (2m), 767.13 (1m), 767.145 (2), 767.23 (1) (a) to (j) and (1n), 767.24 (2) (am), 767.25 (4) and (5), 767.255 (2r), 767.26 (9), 767.265 (1m) and (4), 801.50 (10m) and 946.715 of the statutes, relating to miscellaneous changes in the divorce laws, granting rule-making authority and creating a penalty.

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

SECTION 1. 46.25 (1) and (2) of the statutes are amended to read:

46.25 (1) There is created a child support and establishment of paternity program in the department. The purpose of this program is the establishment of paternity when possible and the enforcement of support obligations owed by ~~absent~~ parents to their children and to locate persons who are alleged to have taken their child in violation of s. 946.71 or 946.715. To accomplish the objectives of the program, county and state agencies will cooperate with one another to implement a child support and paternity establishment program in accordance with state and federal laws, regulations and rules.

(2) The department shall constitute the state location service which shall assist in locating parents who have deserted their children and other persons liable for support of dependents or persons who are alleged to have taken their child in violation of s. 946.71 or 946.715. The department may request and shall receive any information which is appropriate and necessary for the state location service available from the records of all departments, boards, bureaus or other agencies of this state and the same shall provide such information as is necessary for this purpose within 7 days of such request. The department or county child support agency may make such information available only to those officials as defined by state or federal law, agencies of this state, other states and political subdivisions of this state and other states seeking to locate parents who have deserted their children or taken them in violation of s. 946.71 or 946.715. This information may be given to them only upon their assurance that it will be used solely in connection with their official duties ~~under the child support and establishment of paternity program.~~ Disclosure of information under this subsection shall comply with s. 402 (a) (9) of the social security act, as amended (42 USC 602 (a) (9)).

SECTION 4. 765.12 (1) of the statutes, as affected by chapter 32, laws of 1979, is amended to read:

765.12 (1) If ss. 765.02, 765.05, 765.06, 765.08 and 765.09 are complied with, and if there is no prohibition against or legal objection to the marriage, the county clerk shall issue a marriage license; ~~but after.~~ After the application for ~~such~~ the license the clerk shall, upon the sworn statement of either of the applicants, correct any erroneous, false or insufficient statement in ~~such~~ the license or in the application therefor which shall come to the clerk's attention prior to the marriage and shall show the corrected statement as soon as reasonably possible to the other applicant.

SECTION 5. 767.01 of the statutes, as affected by chapter 32, laws of 1979, is amended to read:

**767.01 Jurisdiction.** The circuit courts have jurisdiction of all actions affecting marriage and of all actions under s. 52.10 ~~(or concurrent jurisdiction where other courts are vested with like jurisdiction)~~, and have authority to do all acts and things necessary and proper in such actions and to carry their orders and judgments into execution as prescribed in this chapter. All ~~such~~ actions shall be commenced and conducted and the orders and judgments therein enforced according to these statutes in respect to actions in circuit court, as far as applicable, except as provided in this chapter and in s. 52.10.

SECTION 6. 767.02 (1) (i) of the statutes, as affected by chapter 32, laws of 1979, is amended to read:

767.02 (1) (i) To enforce or modify a judgment in an action affecting marriage granted in this state or elsewhere. If a petition requesting enforcement or modification of a judgment in an action affecting marriage which was granted by a court of this state is filed in a county other than the county in which the judgment was rendered, the petitioner shall send a copy of the petition and summons to the clerk of the court in which the judgment was rendered. The petitioner shall send a copy of any order rendered pursuant to this petition to the clerk of the court in which the original judgment was rendered.

SECTION 7. 767.02 (1) (k) of the statutes is created to read:

767.02 (1) (k) Concerning visitation rights to children.

SECTION 8. 767.045 of the statutes, as affected by chapter 32, laws of 1979, is amended to read:

**767.045 Guardian ad litem for minor children.** In any action ~~for an annulment, divorce, legal separation, or other action~~ affecting marriage, ~~when in which~~ the court has reason for special concern as to the future welfare of the minor children, ~~and in all actions affecting marriage where in which~~ the custody of such children is contested, and in any action in which paternity is contested under s. 891.39, the court shall appoint an attorney admitted to practice in this state as guardian ad litem to represent ~~such~~ the interests of children as to custody, support and visitation. The guardian ad litem shall be an advocate for the best interests of the child or children and consider the factors under s. 767.24. If a guardian ad litem is appointed, the court shall direct either or both parties to pay the fee of the guardian ad litem, the amount of which fee shall be approved by the court. ~~In the event of inability to pay on the part of~~ If either or both parties are unable to pay, the court, in its discretion, may direct that the fee of the guardian ad litem, in whole or in part, be paid by the county of venue, and may direct either party to reimburse the county, in whole or in part, for ~~such~~ the payment.

SECTION 9. 767.05 (1) and (3) of the statutes, as affected by chapter 32, laws of 1979, are amended to read:

767.05 (1) **JURISDICTION.** A court of this state having jurisdiction to hear actions affecting marriage may exercise jurisdiction as provided under ch. 801 except that personal jurisdiction is limited by s. 801.05 (11).

(3) **PARTIES.** The party initiating an action affecting marriage shall be denominated the petitioner. The party responding to the action shall be denominated the respondent. All references to "plaintiff" in chs. 801 to 807 shall apply to the petitioner, and all refer-

ences to “defendant” in chs. 801 to 807 shall apply to the respondent. Both parties together may initiate the petition by signing and filing a joint petition. The parties to a joint petition shall be called joint petitioners. The parties to a joint petition shall state within the joint petition that both parties consent to personal jurisdiction and waive service of summons.

SECTION 10. 767.05 (6) of the statutes is created to read:

767.05 (6) An action affecting marriage may not be dismissed under s. 805.04 (1) unless all the parties who have appeared in the action have been served with a copy of the notice of dismissal and have had an opportunity to file a responsive pleading or motion.

SECTION 11. 767.083 (1) and (2) (a) of the statutes, as affected by chapter 32, laws of 1979, are amended to read:

767.083 (1) COUNSELING INFORMATION. No petition for annulment, divorce or legal separation may be brought to trial until the family court commissioner has certified to the court that the parties have been informed of counseling and referral services available and the moving party one of the parties or, in the case of a joint petition, one of the joint petitioners has met the counseling requirement, if any, under s. 767.081. The certification by the family court commissioner shall be filed and entered in the court record. The wilful failure or refusal of the other party to satisfy the counseling requirement under s. 767.081, if any, may be punished under ch. 785, but such failure or refusal may not prevent the timely trial of the action.

(2) (a) The expiration of 120 days after service of the summons and petition upon the respondent or the expiration of 120 days after the filing of the joint petition; or

SECTION 12. 767.085 (2) of the statutes, as affected by chapter 32, laws of 1979, is amended to read:

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

SECTION 13. 767.085 (2m) of the statutes is created to read:

767.085 (2m) Where only one party initiates the action and the parties have minor children, the summons served on the other party shall include notification of the contents of s. 946.715.

SECTION 14. 767.085 (3) of the statutes, as affected by chapter 32, laws of 1979, is amended to read:

767.085 (3) SERVICE. If only one party initiates the action, the other shall be served under ch. 801 and may serve a response or counterclaim within 20 days after the date of service, except that questions of jurisdiction may be raised at any time prior to judgment. Service shall be made upon the petitioner and upon the family court commissioner as provided in s. 767.14, and the original copy of the response shall be filed in court. If the parties together initiate the action, ~~service shall be made upon the family court commissioner as provided in s. 767.14~~ with a joint petition, service of summons is not required.

SECTION 15. 767.125 of the statutes, as affected by chapter 32, laws of 1979, is amended to read:

**767.125 Order for appearance of litigants.** Unless nonresidence in the state is shown by competent evidence, service is by publication, or the court shall for other good cause otherwise order, both parties in actions affecting marriage shall be required to appear upon the trial. An order of the court or family court commissioner to that effect shall accordingly be procured by the moving party, and shall be served upon the nonmoving party before the trial. In the case of a joint petition the order is not required.

SECTION 16. 767.13 (1m) of the statutes is created to read:

767.13 (1m) REVIEW OF THE DECISIONS OF THE FAMILY COURT COMMISSIONER. Upon the motion of any party any decision of the family court commissioner shall be reviewed by the judge of the branch of the court to which the case has been assigned. Upon the motion of any party any such review shall include a new hearing on the subject of the decision, order or ruling.

SECTION 17. 767.145 of the statutes, as affected by chapter 32, laws of 1979, is renumbered 767.145 (1) and amended to read:

767.145 (1) After the expiration of the period specified by the statute, the court may in its discretion, upon petition and without notice, extend the time within which service shall be made upon the family court commissioner. ~~Extension of time under any other circumstances will be governed by s. 801.15 (2).~~

SECTION 18. 767.145 (2) of the statutes is created to read:

767.145 (2) Extension of time under any other circumstances shall be governed by s. 801.15 (2), except that the court may, upon the petitioner's demonstration of good cause, and without notice, order one additional 60-day extension for service of the initial papers in the action.

SECTION 19. 767.15 of the statutes, as affected by chapter 32, laws of 1979, is amended to read:

**767.15 Service on child support agency.** In any action affecting marriage in which either party is a recipient of aid under s. 49.19, each party, unless represented by a child support agency, shall, either within 20 days after making service on the opposite party of any petition motion or pleading requesting the court or family court commissioner to order, or to modify a previous order, relating to child support or family support, or before filing such petition the motion or pleading in court, serve a copy of the petition motion or pleading upon the child support agency of the county in which the action is begun. No judgment in any such action shall be granted unless this section is complied with except as otherwise ordered by the court.

SECTION 20. 767.23 (1) of the statutes, as affected by chapter 32, laws of 1979, is amended to read:

767.23 (1) Except as provided in ch. 822, in every action affecting marriage, the court or family court commissioner may, during the pendency thereof, make ~~such just and reasonable temporary orders concerning the care, custody and suitable maintenance of the minor children, requiring either party to pay such sums for the support of the other party and enabling the other party to carry on or respond to the action, and requiring either party or both to pay such sums for the support of the minor children, to order temporary family support under s. 767.261 or wage assignments under s. 767.265 and in relation to the persons or property of the parties as in its discretion shall be deemed just and reasonable in light of all circumstances, including the factors set forth in ss. 767.25 and 767.26; may require counseling of either party; and may prohibit either spouse from imposing any restraint on the personal liberty of the other.~~ The award of custody of a child under this subsection shall give to the custodian the power and duty to authorize necessary medical, surgical, hospital, dental, institutional or psychiatric care for such child where there is no existing guardian for the child appointed under ch. 48 or 880; and the right to give or withhold consent for such child to marry under s. 765.02 (2), in addition to the consent of the parents or guardian of such child required therein. Any such order may be based upon the written stipulation of the parties, subject to the approval of the family court commissioner or the court. following matters:

SECTION 21. 767.23 (1) (a) to (j) of the statutes are created to read:

767.23 (1) (a) Granting legal custody of the minor children to the parties jointly, to one party or to a relative or agency specified under s. 767.24 (1) (c).

(b) Prohibiting the removal of minor children from the jurisdiction of the court.

- (c) Requiring either party or both parties to pay for the support of minor children.
- (d) Requiring either party to pay for the maintenance of the other party. This maintenance may include the expenses and attorney fees incurred by the other party in bringing or responding to the action affecting marriage.
- (e) Requiring either party to pay family support under s. 767.261.
- (f) Requiring either party to execute an assignment of income under s. 767.265.
- (g) Requiring either party or both parties to pay debts or perform other actions in relation to the persons or property of the parties.
- (h) Prohibiting either party from disposing of assets within the jurisdiction of the court.
- (i) Requiring counseling of either party or both parties.
- (j) Prohibiting either spouse from imposing any restraint on the personal liberty of the other spouse.

SECTION 22. 767.23 (1n) of the statutes is created to read:

767.23 (1n) Before making any temporary order under sub. (1), the court or family court commissioner shall consider those factors which the court is required by this chapter to consider before entering a final judgment on the same subject matter. A temporary order under sub. (1) may be based upon the written stipulation of the parties, subject to the approval of the court or the family court commissioner. Temporary orders made by the family court commissioner may be reviewed by the court as provided in s. 767.13 (1m).

SECTION 23. 767.23 (3) of the statutes, as affected by chapter 32, laws of 1979, is amended to read:

767.23 (3) Upon making any order for dismissal of an action affecting marriage or for substitution of attorneys in an action affecting marriage or for vacation of a judgment theretofore granted in any such action, the court shall prior to or in its order render and grant separate judgment in favor of any attorney who has appeared for a party to such the action and in favor of any guardian ad litem for a party or a child for the amount of fees and disbursements to which such the attorney or guardian ad litem is, in the court's judgment, entitled and against the party responsible therefor.

SECTION 24. 767.24 (title) and (1) (c) and (d) of the statutes, as affected by chapter 32, laws of 1979, are amended to read:

**767.24 (title) Child custody.**

(1) (c) If the interest of any child demands it, and if the court finds ~~either that the parents are unable~~ neither party is able to care for ~~such children~~ the child adequately or ~~are not that neither party is~~ fit and proper persons to have the care and custody of ~~such children~~ the child, the court may declare any such child ~~a dependent to be in need of protection or services and give the care and~~ transfer legal custody of ~~such the~~ child to a relative of the child, as defined in ~~ch. 48 s. 48.02 (15);~~ to a county agency specified in s. 48.56 (1); or to a licensed child welfare agency; ~~or to the department of health and social services.~~ The charges for such care shall be pursuant to the procedure under s. ~~48.27~~ ~~[48.397]~~ 48.36 except as provided in s. 767.29 (3).

(d) The award of legal custody of a child under this section or s. 767.23 (1) (a) shall give to the custodian the rights and responsibilities specified in s. 48.02 (12) and the power and duty to authorize necessary medical, surgical, hospital, dental, institutional or psychiatric care for the child where there is no existing guardian for the child appointed under ch. 48 or 880; and the right to give or withhold consent for the child to marry under s. 765.02 (2), in addition to the consent of the parents or guardian of the child required therein.

SECTION 25. 767.24 (1m) of the statutes, as affected by chapter 32, laws of 1979, is renumbered 767.24 (2) and 767.24 (2) (intro.), as renumbered, is amended to read:

767.24 (2) (intro.) In making a custody determination, the court shall consider all facts in the best interest of the child and shall not prefer one potential custodian over the other on the basis of the sex of the custodian. The court shall consider reports of appropriate professionals where admitted into evidence when custody is contested. ~~The court may consider the wishes of the child as to his or her custodian.~~ The court shall consider the following factors in making its determination:

SECTION 26. 767.24 (2) (am) of the statutes is created to read:

767.24 (2) (am) The wishes of the child as to his or her custody;

SECTION 27. 767.24 (3) of the statutes, as affected by chapter 32, laws of 1979, is repealed and recreated to read:

767.24 (3) Where the judgment determines the custody rights of the parties to their minor children, the judgment shall include notification of the contents of s. 946.715.

SECTION 28. 767.25 (4) and (5) of the statutes are created to read:

767.25 (4) In making an order for child support, the court may order either party or both to pay for the support of any child of the parties who is less than 19 years old and is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent.

(5) Liability for past support shall be limited to the period after commencement of the action.

SECTION 29. 767.255 (intro.) of the statutes, as affected by chapter 32, laws of 1979, is amended to read:

**767.255 Property division.** (intro.) Upon every judgment of annulment, divorce or legal separation, or in rendering a judgment in an action under s. 767.02 (1) (h), the court shall divide the property of the parties and divest and transfer the title of any such property accordingly. A certified copy of the portion of the judgment which affects title to real estate shall be recorded in the office of the register of deeds of the county in which the lands so affected are situated. The court may protect and promote the best interests of the children by setting aside a portion of the property of the parties in a separate fund or trust for the support, maintenance, education and general welfare of any minor children of the parties. Any property ~~inherited shown to have been acquired~~ by either party prior to or during the course of the marriage as a gift, bequest, devise or inheritance or to have been paid for by either party with funds so acquired shall remain the property of such party and may not be subjected to a property division under this section except upon a finding that refusal to divide such property will create a hardship on the other party or on the children of the marriage, and in that event the court may divest the party of such property in a fair and equitable manner. The court shall presume that all other property ~~except inherited property~~ is to be divided equally between the parties, but may alter this distribution without regard to marital misconduct after considering:

SECTION 30. 767.255 (2r) of the statutes is created to read:

767.255 (2r) Whether one of the parties has substantial assets not subject to division by the court.

SECTION 32. 767.26 (1) (intro.), (a) to (h) and (i) of the statutes, as affected by chapter 32, laws of 1979, are renumbered 767.26 (intro.), (1) to (8) and (10), and 767.26 (3), as renumbered, is amended to read:

767.26 (3) The ~~distribution~~ division of property made under s. 767.255.

SECTION 33. 767.26 (9) of the statutes is created to read:

767.26 (9) The contribution by one party to the education, training or increased earning power of the other.

SECTION 34. 767.265 (title) and (1) of the statutes, as affected by chapter 32, laws of 1979, are amended to read:

**767.265 (title) Assignment of income.** (1) Each order for child support under s. 767.23 or 767.25, for maintenance payments under s. 767.23 or 767.26, for family support under s. 767.261, for support by a spouse under s. 767.02 (1) (f) or for maintenance payments under s. 767.02 (1) (g) shall include an order directing the payer to assign such salary commissions, earnings, salaries, wages and other income due or to be due in the future from his or her employer or successor employers to the clerk of the court where ~~judgment was granted~~ the action is filed, as will be sufficient to meet the maintenance payments, child support payments or family support payments imposed by the court for the support of the spouse or minor children or both and to defray arrearages in payments due at the time the assignment takes effect. The wage assignment of income shall take effect upon application of the person receiving payments which states that the payer has failed to make in full a payment as established by the court within 20 days of the date the payment was due, and when the requirement of sub. (2) has been satisfied, or, at the court's discretion of the court or family court commissioner, may take effect immediately.

SECTION 35. 767.265 (1m) of the statutes is created to read:

767.265 (1m) Any spouse who is entitled to a payment of support which has been ordered by the court or family court commissioner under s. 767.23, 767.25, 767.26 or 767.261 may apply to the court or court commissioner for an income assignment under sub. (1). Upon receipt of the application, the court or family court commissioner shall order the payer to execute an income assignment. The court or family court commissioner may order the income assignment to take effect immediately or after the requirements of sub. (2) are satisfied.

SECTION 36. 767.265 (2) of the statutes, as affected by chapter 32, laws of 1979, is amended to read:

767.265 (2) The family court commissioner, upon application of the person receiving payments, shall send a notice by certified mail to the last-known address of any payer who has failed to make a required maintenance payment or child support payment within 20 days of its due date. The notice shall be postmarked no later than 10 days after the date on which the application was filed and shall inform the recipient that the wage an assignment of his or her income shall go into effect 10 days after the date on which the notice was sent. The payer may, within that 10-day period, request a hearing on the issue of whether the wage income assignment should take effect, in which case the wage income assignment shall be held in abeyance pending the outcome of the hearing. The family court commissioner shall hold a hearing requested under this section within 10 working days after the date of the request. If at the hearing the payer establishes that extraordinary circumstances prevented fulfillment of the maintenance payment or child support obligation and that such circumstances are beyond the control of the payer, the family court commissioner may direct that the wage income assignment be delayed not take effect until such time, within 12 months, as another month's payment is missed. If such a delay is granted, the wage income assignment shall, upon application, go into effect if, within the following 12 months, the payer fails to make in full any payment within 20 days of its due date. Either party may, within 15 working days of the date of the decision by the family court commissioner under this section, appeal to the court which issued the original support or maintenance order seek review of the decision by the court with jurisdiction over the action.

SECTION 37. 767.265 (4) of the statutes is created to read:

767.265 (4) In this section, "employer" includes the state and its political subdivisions.

SECTION 39. 767.27 (2) of the statutes, as affected by chapter 32, laws of 1979, is amended to read:

767.27 (2) Disclosure forms required under this section shall be filed ~~no earlier than 60 days prior to final hearing and no later than 30 days prior to such hearing~~ within 90 days after the service of summons or the filing of a joint petition or at such other time as ordered by the court or family court commissioner. Information contained on such forms shall be updated on the record to the date of hearing ~~on the record.~~

SECTION 40. 767.30 of the statutes, as affected by chapter 32, laws of 1979, is amended to read:

**767.30 Enforcement of maintenance payment and child support orders.** In all cases where payments under s. 767.23, child support payments under s. 767.25, maintenance payments under s. 767.26, family support payments under s. 767.261 or ~~attorney's attorney fees~~ under s. 767.262 are ordered, the court may provide that the same shall be paid in such sums and at such times as shall be deemed expedient, and may impose the same as a charge upon any specific real estate of the party liable or may require sufficient security to be given for payment according to the judgment; and upon neglect or refusal to give such security or upon the failure to pay such payments or fees the court may enforce the payment thereof, including past due payments, by execution, under s. 785.02, by money judgment for past due payments, by satisfaction under s. 811.23 out of any property attached under ch. 811 or otherwise as in other cases. No such judgment shall become effectual as a charge upon specific real estate until the judgment or a certified copy thereof is recorded in the office of the register of deeds in the county in which the real estate is situated.

SECTION 41. 767.305 of the statutes, as affected by chapter 32, laws of 1979, is amended to read:

**767.305 Enforcement; contempt proceedings.** In all cases where a party has incurred a financial obligation under s. 767.23, 767.25, 767.255, 767.26, 767.261 or 767.262 and has failed within a reasonable time or as ordered by the court to satisfy such obligation, and where the wage assignment proceeding under s. 767.265 is inapplicable, impractical or unfeasible, the court may on its own initiative, and shall on the application of the receiving party, issue an order requiring the payer to show cause at some reasonable time therein specified why he or she should not be punished for such misconduct as provided in s. 785.02.

SECTION 42. 767.31 of the statutes, as affected by chapter 32, laws of 1979, is amended to read:

**767.31 Trustee may be appointed.** The court may ~~also~~ appoint a trustee, when deemed expedient, to receive any ~~money adjudged to either spouse upon trust payments ordered,~~ to invest ~~the same~~ and pay over the income ~~thereof~~ for the maintenance of the spouse entitled thereto or the support and education of any of the minor children, or to pay over the principal sum in such proportions and at such times as the court directs. The trustee shall give such bond, with such sureties as the court requires, for the faithful performance of his or her trust.

SECTION 43. 767.37 (1) (b) of the statutes, as affected by chapter 32, laws of 1979, is repealed.

SECTION 44. 801.05 (11) of the statutes is amended to read:

801.05 (11) CERTAIN MARITAL ACTIONS. In addition to personal jurisdiction under sub. (1) and s. 801.06, in any action affecting marriage in which a personal claim is asserted against the respondent commenced in the county in which the petitioner resides at the commencement of the action when the respondent resided in this state in marital relationship with the petitioner for not less than 6 consecutive months within the 6 years next preceding the commencement of the action, ~~and after the respondent left the state the petitioner continued to reside in this state,~~ and the respondent is served personally under s. 801.11. The effect of any determination of a child's custody shall not be binding



personally against any parent or guardian unless the parent or guardian has been made personally subject to the jurisdiction of the court in the action as provided under this chapter or has been notified under s. 822.05 as provided in s. 822.12.

SECTION 45. 801.50 (10m) of the statutes is created to read:

801.50 (10m) ACTIONS AFFECTING MARRIAGE. Of an action affecting marriage, the county designated in the petition, if the requirements of s. 767.05 (1m) and (2) are met.

SECTION 46. 891.39 (1) (a) of the statutes is amended to read:

891.39 (1) (a) Whenever it is established in an action or proceeding that a child was born to a woman while she was the lawful wife of a specified man, any party asserting in such action or proceeding that the husband was not the father of the child shall have the burden of proving that assertion by a clear and satisfactory preponderance of the evidence. In all such actions or proceedings the husband and the wife are competent to testify as witnesses to the facts. The court or judge shall in such cases ~~order the child made a party and~~ shall appoint a guardian ad litem to appear for and represent the child whose paternity is questioned.

SECTION 47. 946.71 (2) of the statutes is amended to read:

946.71 (2) Entices away or takes away any child under the age of 18 from the parent or other person having legal custody under an order or judgment in an action for divorce, legal separation, annulment, custody, paternity, guardianship or habeas corpus with intent to take the child out of the state for the purpose of depriving the parent or other person of the custody of the child without the consent of such parent or other person, unless the court which awarded custody has consented that the child be taken out of the state by the person who so takes the child. The fact that joint custody has been awarded to both parents by a court does not preclude a court from finding that one parent has committed a violation of this subsection.

SECTION 48. 946.715 of the statutes is created to read:

**946.715 Interference by parent with parental rights of other parent.** (1) Any parent, or any person acting pursuant to directions from the parent, who does any of the following is guilty of a Class E felony:

- (a) Intentionally conceals a minor child from the child's other parent;
  - (b) After being served with process in an action affecting marriage but prior to the issuance of a temporary or final order determining custody rights to a minor child, takes or entices the child outside of this state for the purpose of depriving the other parent of physical custody as defined in s. 822.02 (9); or
  - (c) After issuance of a temporary or final order specifying joint custody rights, takes or entices a child under the age of 14 from the other parent in violation of the custody order.
- (2) No person violates sub. (1) if the action:
- (a) Is taken to protect the child from imminent physical harm;
  - (b) Is taken by a parent fleeing from imminent physical harm to himself or herself;
  - (c) Is consented to by the other parent; or
  - (d) Is otherwise authorized by law.

SECTION 49. **Application.** This act applies to all actions affecting marriage and to all motions concerning actions affecting marriage which are commenced or filed on or after the effective date of this act, including motions or actions for modification or enforcement of orders entered prior to the effective date of this act.

SECTION 50. **Program responsibilities.** In the list of program responsibilities for the department of health and social services under section 15.191 (intro.) of the statutes, the reference to section "767.24" is deleted.

**SECTION 51. Effective date.** This act shall take effect on the first day of the 3rd month commencing after the date of publication.

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