

1983 Senate Bill 244

Date of enactment: **May 10, 1984**
Date of publication: **May 17, 1984**

1983 Wisconsin Act 447

AN ACT *to repeal* 49.10 (12) (b) and 893.88 (1); *to renumber and amend* 767.456, 767.465 (2), 891.41 (1) and 893.88 (2); *to amend* 45.35 (5m) (b), 46.001, 46.03 (7) (a) and (b), 46.22 (5) (g) (intro.), 48.02 (13), 48.025 (1), 48.41 (2) (c), 48.415 (6) (a) (intro.), 48.42 (2) (b) (intro.) and (4) (b) 2 and 3, 48.422 (6) (a), 48.432 (1) (a) 2.b, 48.435, 48.48 (1)

and (11), 48.57 (1) (a), 48.89 (1) (a), 48.91 (2) (a), 49.10 (2) (a) and (b), 49.19 (4) (h) 1.a, 49.45 (19) (a) 1, 52.05 (1) and (6), 52.055 (1), 69.29 (2), 69.30 (1) (intro.) and (e), 69.33 (1) to (4), 69.336, 765.24, 767.145 (2), 767.245 (6), 767.45 (1) (c), (3) and (5), 767.455 (4), 767.46 (1), (2) (intro.) and (5), 767.47 (1) (a), (2) and (5), 767.475 (4) and (5), 767.48 (1), (4) and (5), 767.50, 767.51 (2), 767.51 (3), 767.51 (5) (intro.), 767.51 (6), 767.53, 767.60, 786.36, 814.61 (1) (a) and (7), 818.02 (1) (f) and (2), 818.05, 851.13, 851.51 (2) (b), 852.05, 885.06, 885.10, 891.39 (title), (2) and (3), 891.40 (2), 908.03 (11) and (19), 908.045 (5) (a) and 946.71 (4); and *to create* 767.23 (1) (am), 767.45 (5m), 767.456, 767.465 (2) (a) and (b), 767.48 (5) (b) and 990.01 (19m) and (23m) of the statutes, relating to the procedure for determining and recording paternity, changing terminology concerning “legitimate” and “out of wedlock” children, and making miscellaneous changes relating to parentage.

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

SECTION 1. 45.35 (5m) (b) of the statutes is amended to read:

45.35 (5m) (b) Any child of the veteran under 18 years of age, or if in full attendance at a recognized school of instruction, or of any age if incapable of self-support by reason of mental or physical disability. “Child” as used in this section means any natural child, any legally adopted child, any stepchild or child if a member of the veteran’s household or any nonmarital child ~~born out of wedlock~~ if the veteran acknowledges paternity or the same has been otherwise established.

SECTION 2. 46.001 of the statutes is amended to read:

46.001 Purposes of chapter. The purposes of this chapter are to conserve human resources in Wisconsin; to provide a just and humane program of services to children in need of protection or services and nonmarital children ~~born out of wedlock~~; to prevent dependency, mental illness, developmental disability, mental infirmity, delinquency, crime and other forms of social maladjustment by a continuous attack on causes; to provide effective aid and services to all persons in need thereof and to assist such persons to achieve or regain self-dependence at the earliest possible date; to provide a just, humane and efficient program for the rehabilitation of juvenile delinquents and other offenders; to avoid duplication and waste of effort and money on the part of public and private agencies; and to coordinate and integrate a social welfare program.

SECTION 3. 46.03 (7) (a) and (b) of the statutes are amended to read:

46.03 (7) (a) Promote the enforcement of laws for the protection of developmentally disabled children, delinquent children, children in need of protection or services and nonmarital children ~~born out of wedlock~~; and to this end cooperate with courts assigned to exercise jurisdiction under ch. 48 and licensed child welfare agencies and institutions (public and private) and take the initiative in all matters involving the interests of such children where adequate provision therefor has not already been made, including the establishment and enforcement of standards for services provided under ss. 48.34 and 48.345 (1) and (5).

(b) When notified of the birth or expected birth of a child ~~born~~ who is or is likely to be born out of wedlock a nonmarital child, see to it (through advice and assistance to the mother or independently) that the interests of the child are safeguarded, that steps are taken to establish its paternity and that there is secured for the child (as near as possible) the care, support and education that would be given if legitimate he or she were a marital child.

SECTION 4. 46.22 (5) (g) (intro.) of the statutes is amended to read:

46.22 (5) (g) (intro.) To administer child welfare services including services to children who are mentally retarded, dependent, neglected, delinquent, or ~~born out of wedlock nonmarital~~, and to other children who are in need of such services. In administering child welfare services the county agency shall be governed by the following:

SECTION 5. 48.02 (13) of the statutes is amended to read:

48.02 (13) "Parent" means either a biological parent, a husband who has consented to the artificial insemination of his wife under s. 891.40, or a parent by adoption. If the child is ~~born out of wedlock but not subsequently legitimated or a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60~~, "parent" includes a person adjudged in a judicial proceeding to be the biological father. "Parent" does not include any person whose parental rights have been terminated.

SECTION 6. 48.025 (1) of the statutes is amended to read:

48.025 (1) Any person claiming to be the father of a nonmarital child born out of wedlock and who is not subsequently legitimated or adopted or whose parents do not subsequently intermarry under s. 767.60 may, in accordance with procedures under this section, file with the department a declaration of his interest in matters affecting such child.

SECTION 7. 48.41 (2) (c) of the statutes is amended to read:

48.41 (2) (c) A person who may be ~~the father of a child born out of wedlock~~, but who has not been adjudicated ~~to be the father~~, as, the father of a nonmarital child may consent to the termination of any parental rights that he may have as provided in par. (a) or (b) or by signing a written, notarized statement which recites that he has been informed of and understands the effect of an order to terminate parental rights and that he voluntarily disclaims any rights that he may have to the child, including the right to notice of proceedings under this subchapter.

SECTION 8. 48.415 (6) (a) (intro.) of the statutes is amended to read:

48.415 (6) (a) (intro.) Failure to assume parental responsibility may be established by a showing that a child ~~has been born out of wedlock, not subsequently legitimated or is a nonmarital child who has not been adopted or whose parents have not subsequently intermarried under s. 767.60~~, that paternity was not adjudicated prior to the filing of the petition for termination of parental rights and:

SECTION 9. 48.42 (2) (b) (intro.) and (4) (b) 2 and 3 of the statutes are amended to read:

48.42 (2) (b) (intro.) If the child ~~was born out of wedlock, and is a nonmarital child who is not subsequently legitimated or adopted or whose parents do not subsequently intermarry under s. 767.60~~ and paternity has not been established:

(4) (b) 2. If the child is ~~born out of wedlock and not legitimated or a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60~~ and paternity has not been adjudicated, the court may, as provided in s. 48.422 (6) (b), order publication of a notice under subd. 4.

3. At the time the petition is filed, the petitioner may move the court for an order waiving the requirement of constructive notice to a person who, although his identity is unknown, may be the father of a nonmarital child born out of wedlock.

SECTION 10. 48.422 (6) (a) of the statutes is amended to read:

48.422 (6) (a) If the child ~~was born out of wedlock and not legitimated or is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60~~ and paternity has not been established, the court shall hear testimony concerning the paternity of the child. Based on the testimony, the court shall determine whether all interested parties who are known have been notified under s. 48.42 (2). If not, the court shall adjourn the hearing and order appropriate notice to be given.

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SECTION 11. 48.432 (1) (a) 2. b of the statutes is amended to read:

48.432 (1) (a) 2. b. If there is no adjudicated father, the husband of the mother at the time of the ~~child's conception, birth or subsequent legitimation~~ child is conceived or born, or when the parents intermarry under s. 767.60.

SECTION 12. 48.435 of the statutes is amended to read:

48.435 Custody of children. The mother of a nonmarital ~~child born out of wedlock~~ has legal custody of the child unless the court grants legal custody to another person or transfers legal custody to an agency.

SECTION 13. 48.48 (1) and (11) of the statutes are amended to read:

48.48 (1) To promote the enforcement of the laws relating to delinquent children, nonmarital ~~children born out of wedlock~~ and children in need of protection or services including developmentally disabled children and to take the initiative in all matters involving the interests of such children where adequate provision therefor is not made. This duty shall be discharged in cooperation with the courts, county agencies, licensed child welfare agencies and with parents and other individuals interested in the welfare of children.

(11) When notified of the birth or expected birth of a child ~~born~~ who is or is or likely to be ~~born out of wedlock~~ a nonmarital child, to see that the interests of the child are safeguarded, that steps are taken to establish ~~its~~ the child's paternity and that there is secured for the child, if possible, the care, support and education ~~it~~ the child would receive if legitimate ~~he or she~~ were a marital child.

SECTION 14. 48.57 (1) (a) of the statutes is amended to read:

48.57 (1) (a) To investigate the conditions surrounding delinquent children, nonmarital ~~children born out of wedlock~~ and children in need of protection or services including developmentally disabled children within the county and to take every reasonable action within its power to secure for them the full benefit of all laws enacted for their benefit. Unless provided by another agency, county agencies shall offer social services to the caretaker of any child who is referred to the agencies as coming within the conditions specified in this paragraph. This duty shall be discharged in cooperation with the court and with the public officers or boards legally responsible for the administration and enforcement of these laws;

SECTION 15. 48.89 (1) (a) of the statutes is amended to read:

48.89 (1) (a) A nonmarital ~~child born out of wedlock and who is~~ not subsequently legitimated or adopted or whose parents do not subsequently intermarry under s. 767.60;

SECTION 16. 48.91 (2) (a) of the statutes is amended to read:

48.91 (2) (a) In an adoption proceeding for a nonmarital ~~child born out of wedlock and who is~~ not subsequently legitimated or adopted or whose parents do not subsequently intermarry under s. 767.60, the court shall establish whether the rights of any persons who have filed declarations of paternal interest under s. 48.025 have been determined or whether paternity has been adjudicated in this state or in another jurisdiction. If the court finds that no such determination has been made, the court shall proceed, prior to any action on the petition for adoption, to attempt to ascertain the paternity of the child and the rights of any person who has filed a declaration under s. 48.025.

SECTION 17. 49.10 (2) (a) and (b) of the statutes are amended to read:

49.10 (2) (a) ~~Legitimate minor~~ Minor marital children have the settlement status of their father if living, or of the mother if their father is deceased, or if their mother has acquired settlement in her own right under sub. (1) and has actual custody of the children; if the parents are divorced, the children have the settlement status of the parent who has legal custody awarded by a court of competent jurisdiction. If no award of legal

custody is made, the children have the settlement status of the parent having actual custody but if custody is awarded to other than a parent, such children have no settlement.

(b) ~~Children who are not legitimate~~ Nonmarital children have the settlement of their mother. If her settlement is lost, theirs is lost.

SECTION 18. 49.10 (12) (b) of the statutes is repealed.

SECTION 19. 49.19 (4) (h) 1. a of the statutes, as affected by 1983 Wisconsin Act 27, is amended to read:

49.19 (4) (h) 1. a. As a condition of eligibility for assistance under this section, the person charged with the care and custody of the dependent child or children shall fully cooperate in efforts directed at establishing the paternity of a nonmarital child ~~born out of wedlock~~ and obtaining support payments or any other payments or property to which that person and the dependent child or children may have rights. Such cooperation shall be in accordance with federal law, rules and regulations applicable to paternity establishment and collection of support payments.

SECTION 20. 49.45 (19) (a) 1 of the statutes is amended to read:

49.45 (19) (a) 1. Fully cooperate in efforts directed at establishing the paternity of a nonmarital child ~~born out of wedlock~~ and obtaining support payments or any other payments or property to which the person and the dependent child or children may have rights. This cooperation shall be in accordance with federal law and regulations applying to paternity establishment and collection of support payments.

SECTION 21. 52.05 (1) and (6) of the statutes are amended to read:

52.05 (1) PENALTY. Any person who deserts or wilfully neglects or refuses to provide for the support and maintenance of his or her spouse or marital or nonmarital child under 18 years (~~legitimate or born out of wedlock~~) in destitute or necessitous circumstances shall be fined not more than \$500 or imprisoned not more than 2 years or both. It is a defense to criminal liability that the person has just cause to desert, wilfully neglect or refuse to provide support and maintenance. The parent of any nonmarital child ~~born out of wedlock~~ who has made provision for the support of such child by giving bond, or by an agreement approved by a court under s. 767.45 (2), on which such parent is not in default, ~~shall is~~ not be subject to this section.

(6) RULES OF EVIDENCE. No other or greater evidence shall be required to prove the marriage of the husband and wife, or that the defendant is the father or mother of the child or children, whether ~~legitimate or born out of wedlock~~ marital or nonmarital, than is or shall be required to prove such facts in a civil action. In no prosecution under this section shall any existing statute or rule of law prohibiting the disclosure of confidential communications between husband and wife apply, and both husband and wife shall be competent and compellable witnesses to testify against each other to any and all relevant matters, including the fact of the marriage and the parentage of the child or children, but neither shall be compelled to give evidence incriminating himself or herself. Proof of the desertion of the spouse, child or children in destitute or necessitous circumstances or of neglect or refusal to provide for the support and maintenance of the spouse, child or children shall be prima facie evidence that such desertion, neglect or refusal is wilful. Substantial failure by any person to provide for such support or maintenance prior to the date when complaint is made under this section shall be prima facie evidence of intent hereunder.

SECTION 22. 52.055 (1) of the statutes is amended to read:

52.055 (1) Any parent who intentionally neglects or refuses to provide for the necessary and adequate support of his or her marital or nonmarital child under 18 years (~~legitimate or born out of wedlock~~), or any person who, without just cause, intentionally neglects or refuses to provide for the necessary and adequate maintenance of his or her spouse, shall be guilty of a misdemeanor and may be fined not more than \$100 or impris-

oned not more than 3 months in the county jail or both. The parent of any nonmarital child ~~born out of wedlock~~ who has made provision for the support of such child by giving bond, or by an agreement approved by a court under s. 767.45 (2), on which such parent is not in default, shall not be subject to this section. Substantial failure by the parent or person to provide for the support or maintenance for more than 21 consecutive days immediately prior to the date when complaint is made under this section shall be prima facie evidence of intent hereunder; but this provision shall not preclude a prosecution hereunder for failure to support for a lesser time. Substantial failure by the parent or person to comply with any part of a court order under ch. 767 for support of any such child under the age of 18 years or for such maintenance of his or her spouse shall be prima facie evidence of a violation of this section for prosecution under this section.

SECTION 23. 69.29 (2) of the statutes is amended to read:

69.29 (2) The standard short form certificate of birth shall contain only the following information: The name of the person whom it concerns as originally recorded, or as subsequently changed pursuant to law, the sex of the person, the date on which the person was born, the name of the town, village or city, and county in which the person was born, and the date when the record was filed. No court order shall be required for the issuance of this certificate, whether for ~~legitimate births or~~ marital or nonmarital births ~~out of wedlock~~.

SECTION 24. 69.30 (1) (intro.) and (e) of the statutes are amended to read:

69.30 (1) (intro.) The physician, midwife or other medical professional in attendance upon any birth shall file a certificate of birth, properly and completely filled out, giving all the particulars required by this subchapter, with the register of deeds of the county in which the birth occurred within 5 days after birth, except that in cities the certificate shall be filed with the health officer. All charges for professional services rendered by the physician, midwife or medical professional in attendance upon a birth shall be unlawful if the birth certificate is not properly filled out and reported as provided in this subsection. In counties having a population of 500,000 or more, the register of deeds and the city health officer shall, within 10 days after the filing of an original birth certificate, make an exact copy of the birth certificate if the parents of the child born were residents of any town or village in the county, and shall transmit the copies to the town or village clerk for a charge of 25 cents per copy, payable by the town or village treasurer. All certificates for nonmarital births ~~out of wedlock subsequent to October 1, 1907~~, shall be kept in a separate file and shall be subject to public inspection only upon court order, except for obtaining proof of heirship and except as provided in this subsection. A copy of a birth certificate (standard long form) of a nonmarital child ~~born out of wedlock and who is not subsequently legitimated or adopted or whose parents do not subsequently intermarry under s. 767.60~~ shall be furnished only under one of the following conditions:

(e) The state registrar may authorize the inspection or transfer of uncertified copies of records for statistical processing or for inclusion of nonmarital children ~~born out of wedlock~~ under public health programs.

SECTION 25. 69.33 (1) to (4) of the statutes are amended to read:

69.33 (1) The state registrar shall file a new birth certificate filled out and signed by the registrar or the registrar's authorized representative whenever the state registrar receives notification from the clerk of the court under s. 48.94 that a child born in this state has been adopted and whenever the state registrar receives notification from any party that the father and mother of a nonmarital child ~~born out of wedlock~~ in this state have married under s. 767.60. In this new certificate reference shall be made to this section by number only. In all other respects the certificate shall be the same as other birth certificates and shall contain nothing else to differentiate it from other birth certificates. The place of birth and the date of birth shall be taken from the original certificate, or, in the absence of an original certificate, a delayed registration under s. 69.22 shall be estab-

lished if the child is more than one year old. If the child was born outside of the United States, a new certificate shall be issued and the actual place of birth shall be given whether or not the natural parents were U.S. citizens, but if they were not, the certificate shall not be issued until proof of naturalization of the child has been furnished to the registrar.

(2) In cases of adoption all the names and statistical particulars entered on a new certificate shall refer to the adoptive parents. ~~The question of legitimacy shall be answered in the affirmative~~ child shall be designated a marital child.

(3) ~~In cases of legitimation~~ If the parents of a nonmarital child subsequently intermarry under s. 767.60, the names and statistical particulars shall be entered as of the date of birth but as though the parents were married at that time. The question of legitimacy shall be answered in the affirmative child shall be designated a marital child.

(4) All other items not affected by the adoption or ~~legitimation~~ subsequent intermarriage of the parents under s. 767.60 shall be copied as on the original certificate including the date of filing.

SECTION 26. 69.336 of the statutes is amended to read:

69.336 Correction of birth records through court proceedings. (1) If any court under s. 891.39 adjudges a child born to a married woman to be ~~born out of wedlock~~ nonmarital, the clerk of court shall report the facts to the state registrar, who shall issue a new birth certificate showing the correct facts as found by the court, and shall dispose of the original, with the court's report attached, as provided in s. 69.33 (5). Local registrars shall be notified as provided in s. 69.33 (6).

(2) If the certificate originally filed is substantially incorrect, the person whose birth is recorded or the parent or guardian may petition any court of record in the county of the registrant's residence or, if a nonresident, the county of the registrant's birth, for a determination of the true facts. The court may take testimony and shall direct the clerk of court to report to the state registrar wherein the original certificate is incorrect and what are the true facts, so far as can be determined. No finding may be required as to paternity if the birth was ~~out of wedlock~~ nonmarital. The state registrar shall proceed under s. 69.33 (5).

SECTION 27. 765.24 of the statutes is amended to read:

765.24 Removal of impediments to subsequent marriage. If a person during the lifetime of a husband or wife with whom the marriage is in force, enters into a subsequent marriage contract in accordance with s. 765.16, and the parties thereto live together thereafter as husband and wife, and such subsequent marriage contract was entered into by one of the parties in good faith, in the full belief that the former husband or wife was dead, or that the former marriage had been annulled, or dissolved by a divorce, or without knowledge of such former marriage, they shall, after the impediment to their marriage has been removed by the death or divorce of the other party to such former marriage, if they continue to live together as husband and wife in good faith on the part of one of them, be held to have been legally married from and after the removal of such impediment and the issue of such subsequent marriage shall be considered as the ~~legitimate~~ marital issue of both parents.

SECTION 28. 767.145 (2) of the statutes is amended to read:

767.145 (2) ~~Extension~~ Except as provided in s. 767.456, 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 29. 767.23 (1) (am) of the statutes is created to read:

767.23 (1) (am) Granting visitation rights to a party specified in s. 767.245.

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SECTION 30. 767.245 (6) of the statutes is amended to read:

767.245 (6) Whenever the court grants visitation rights to a parent, it shall order the child's custodian to ~~obtain written approval of~~ provide to the parent having visitation rights or permission of the court in order 60 days' notice of the custodian's intention to establish legal residence outside this state or to remove the child from this state for a period of time exceeding 90 days. Such court permission may be granted only after notice to the parent having visitation rights and after opportunity for hearing. Upon motion by the parent having visitation rights and a finding by the court that it is against the best interests of the child for the custodian to so remove the child from this state, the court may deny permission to the custodian. Violation of a court order under this subsection may be deemed a change of circumstances under s. 767.32, allowing the court to modify the judgment with respect to custody, child support and visitation rights so as to permit withholding of a portion of the support payments to defray the added expense to the parent with visitation rights of exercising such rights or to modify a custody order.

SECTION 31. 767.45 (1) (c), (3) and (5) of the statutes are amended to read:

767.45 (1) (c) A man presumed to be the child's father under s. ~~891.39~~ 891.41.

(3) If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth. ~~However, except that service of process, service and filing of pleadings, the first appearance and the taking of depositions to preserve testimony may be done before the birth of the child.~~

(5) An action under this section may be joined with any other action for child support and shall be governed by the procedures specified in s. 767.05 relating to child support, except that the title of the action shall be "In re the paternity of A.B." The petition shall state the name and date of birth of the child if born or that the mother is pregnant if the child is unborn, the name of any alleged father, whether or not an action by any of the parties to determine the paternity of the child or rebut the presumption of paternity to the child has at any time been commenced, or is pending before any judge or court commissioner, in this state or elsewhere. If a paternity judgment has been rendered, or if a paternity action has been dismissed, the petition shall state the court which rendered the judgment or dismissed the action, and the date and the place the judgment was granted if known. The petition shall also give notice of a party's right to request a blood test under s. 767.48.

SECTION 32. 767.45 (5m) of the statutes is created to read:

767.45 (5m) Unless a man is either presumed the child's father under s. 891.41 (1) or (2) (b) or adjudicated the child's father either under s. 767.51 or by final order or judgment of a court of competent jurisdiction in another state, no order or temporary order may be entered for child support, custody or visitation until the man is adjudicated the father using the procedure set forth in ss. 767.45 to 767.60. The exclusive procedure for establishment of child support obligations, child custody or visitation rights for a man who is neither presumed the child's father under s. 891.41 (1) or (2) (b) nor adjudicated the father is by an action under ss. 767.45 to 767.60. No person may waive the use of this procedure. If a presumption under s. 891.41 exists, a party denying paternity has the burden of rebutting the presumption.

SECTION 33. 767.455 (4) of the statutes is amended to read:

767.455 (4) SERVICE. The summons and petition shall be served in the manner provided in s. 801.11 (1) (a) or (b) or by ~~certified~~ registered mail with return receipt signed by the respondent.

SECTION 34. 767.456 of the statutes is renumbered 767.457, and 767.457 (1), as renumbered, is amended to read:

767.457 (1) A judgment of paternity lawfully designates the child as the child of the respondent, granting parental rights to the respondent, creating the right of inheritance for the child, obligating the respondent to pay support until the child reaches the age of 18, and making failure to pay support punishable by imprisonment as a civil contempt of the court;

SECTION 35. 767.456 of the statutes is created to read:

767.456 Enlargement of time in a paternity proceeding. The time for service of summons and petition under s. 801.02 (1) in a paternity proceeding may be extended as provided in either sub. (1) or (2):

(1) Upon the petitioner's demonstration of good cause, the court may without notice order one additional 60-day extension for service of the summons and petition.

(2) The time for service may be extended until the date the summons and petition are actually served, if both of the following apply:

(a) There are reasonable grounds to believe that before the time for service under s. 801.02 (1) or sub. (1) expired the respondent knew that the mother was pregnant and that the respondent may be the father.

(b) Due diligence was exercised in attempting to serve the respondent, before he was actually served.

SECTION 36. 767.46 (1), (2) (intro.) and (5) of the statutes are amended to read:

767.46 (1) A pretrial hearing shall be held before the court or family court commissioner. A record of the proceeding shall be kept, in accordance with s. 757.55 (2). At the pretrial hearing the parties may present and cross-examine witnesses, request blood tests and present other evidence relevant to the determination of paternity.

(2) (intro.) On the basis of the information produced at the pretrial hearing, the judge or family court commissioner conducting the hearing shall evaluate the probability of determining the existence or nonexistence of paternity in a trial and whether a judicial determination of paternity would be in the best interest of the child, and shall so advise the parties. On the basis of the evaluation, the judge or family court commissioner may make an appropriate recommendation for settlement shall be made to the parties, which, This recommendation may include any of the following:

(5) ~~If a respondent or the guardian ad litem refuses to accept the final recommendation for support or any party refuses to accept any other final recommendation, the action shall be set for trial.~~

SECTION 37. 767.465 (2) of the statutes is renumbered 767.465 (2) (intro.) and amended to read:

767.465 (2) **WHEN RESPONDENT FAILS TO APPEAR.** (intro.) If the respondent has been personally served and fails to appear ~~and plead~~ on the return date specified in the summons, ~~on the date set for the pretrial hearing or on the date set for the trial~~, the court or family court commissioner may ~~issue an order for the arrest of the respondent under s. 818.02 (1) (f) and, if there are reasonable grounds to believe that the respondent is outside the state or if the respondent has not been apprehended within 6 months after the issuance of the order, the court or family court commissioner may enter a judgment upon the petition upon due proof by~~ enter judgment and appropriate orders for support and custody, if the petitioner of proves the facts alleged in the petition. However, the court may not make such a judgment where service has been obtained by publication. Upon finding that the respondent is the father of the child the court may make appropriate orders for support and custody of the child. at a hearing, notice of which was sent to the respondent, and if either of the following applies:

SECTION 38. 767.465 (2) (a) and (b) of the statutes are created to read:

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767.465 (2) (a) There are reasonable grounds to believe the respondent is outside of the state and more than 6 months have elapsed since the return date.

(b) An order for arrest under s. 818.02 (1) (f) has been entered and the respondent has not been apprehended within 6 months after entry of that order.

SECTION 39. 767.47 (1) (a), (2) and (5) of the statutes are amended to read:

767.47 (1) (a) Evidence of sexual intercourse between the mother and alleged father at any possible time of conception or evidence of a relationship between the mother and alleged father at any time.

(2) Testimony relating to sexual relations or possible sexual relations of the mother any time other than the ~~probable~~ possible time of conception of the child is inadmissible in evidence, unless offered by the mother.

(5) Except as provided in sub. (6), upon refusal of any witness, including a party, to testify under oath or produce evidence, the court or family court commissioner may order the witness to testify under oath and produce evidence concerning all relevant facts. The refusal of a witness, including a witness who has immunity under sub. (4), to obey an order to testify or produce evidence is a ~~civil~~ contempt of the court.

SECTION 40. 767.475 (4) and (5) of the statutes are amended to read:

767.475 (4) Discovery shall be conducted as provided in ch. 804, except that no discovery may be obtained ~~from the mother of the child after the close of the pretrial hearing~~ later than 30 days before the trial. No discovery may solicit information relating to the sexual relations ~~or possible sexual relations~~ of the mother occurring at any time other than the probable time of conception.

(5) The statute of limitations for commencing actions concerning paternity is as provided in s. 893.88 (1), ~~except that an action brought on behalf of or by the child is as provided in s. 893.88 (2).~~

SECTION 41. 767.48 (1), (4) and (5) of the statutes are amended to read:

767.48 (1) The court or family court commissioner may, and upon request of a party shall, require the child, mother, alleged father, or any male witness who testifies or will testify about his sexual relations with the mother at a possible time of conception to submit to blood tests. The tests shall be performed by an expert qualified as an examiner of genetic markers present on blood cells and components, appointed by the court. A report completed and certified by the court-appointed expert stating blood test results and the statistical probability of the alleged father's paternity based upon the blood tests is admissible as evidence without expert testimony and may be entered into the record at the trial or pretrial hearing if, at least 10 days before the trial or pretrial hearing, the party offering the report files it with the court and notifies all other parties of that filing.

(4) Whenever the results of the blood tests exclude the alleged father as the father of the child this evidence shall be conclusive evidence of nonpaternity and the court shall dismiss the action. Whenever the results of the tests exclude any male witness from possible paternity the tests shall be conclusive evidence of nonpaternity of the male witness. If any party refuses to submit to the blood test this fact shall be disclosed to the fact finder. This refusal is a contempt of the court for failure to produce evidence under s. 767.47 (5). If the action was brought by the child's mother but she refuses to submit herself or the child to blood tests, the action shall be dismissed.

(5) The fees and costs for blood tests performed upon any person listed under sub. (1) shall be paid for by the county ~~but at~~ except as follows:

(a) At the close of the proceeding the court may order either or both parties to reimburse the county if the court finds that they have sufficient resources to pay the costs of the blood tests.

SECTION 42. 767.48 (5) (b) of the statutes is created to read:

767.48 (5) (b) If 2 or more identical series of blood tests are performed upon the same person, the court may require the person requesting the 2nd or subsequent series of tests to pay for it in advance.

SECTION 43. 767.50 of the statutes, as affected by 1983 Wisconsin Act 27, is amended to read:

767.50 Trial. The trial shall be divided into 2 parts. The first part shall deal with the determination of paternity and the initial establishment of support. The 2nd part shall deal with custody, visitation and related issues. At the first part of the trial, the main issue shall be whether the alleged or presumed father is or is not the father of the mother's child, but if the child was born to the mother while she was the lawful wife of a specified man there shall first be determined, as provided in s. 891.39, the prior issue of whether the husband was not the father of the child. The trial shall be by jury, unless the defendant waives the right to trial by jury in writing or by statement in open court, on the record, with the approval of the court and the complainant. The court may direct, and if requested by either party, before the introduction of any testimony in the party's behalf, shall direct the jury to find a special verdict as to any of the issues specified in this section except that the court shall make all the findings enumerated in s. 767.51 (2) to (5). If the mother is dead, becomes insane, cannot be found within the jurisdiction or fails to commence or pursue the action, the proceeding does not abate if any of the persons under s. 767.45 (1) makes a motion to continue. The testimony of the mother taken at the pretrial hearing may in any such case be read in evidence if it is competent, relevant and material. ~~The judge may exclude the public from attendance at the trial.~~

SECTION 44. 767.51 (2) of the statutes, as affected by 1983 Wisconsin Act 27, is amended to read:

767.51 (2) ~~The~~ If the judgment or order of the court is at variance with the child's birth certificate, the judge shall order the clerk of court to file with the state registrar a report showing the name, date names, dates and place of birth birth places of the child, the name, date and place of birth of the father and the maiden name of the mother on a form designated by the state registrar. ~~The clerk of court shall collect a \$10 fee and transmit this fee to the state registrar, who shall issue a new certificate as provided in s. 69.336 (1), along with the fee set forth in s. 69.24 (1) (e), which the clerk of court shall collect.~~

SECTION 45. 767.51 (3) of the statutes is amended to read:

767.51 (3) The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. Unless the court orders otherwise, if there is no presumption of paternity under s. 891.41 (1) the mother shall have legal custody of the child. The judgment or order shall specifically assign responsibility for payment of the child's medical expenses. The judgment or order may direct the father to pay or contribute to the reasonable expenses of the mother's pregnancy and confinement during pregnancy and may direct either party to pay or contribute to the costs of blood tests, attorney fees and other costs. Contributions to the costs of blood tests shall be paid to the county which paid for the blood tests.

SECTION 46. 767.51 (5) (intro.) of the statutes, as affected by 1983 Wisconsin Act 27, is amended to read:

767.51 (5) (intro.) Except as provided in sub. (5m), in determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all the guidelines for determination of child support established by the department of health and social services, and any relevant facts, including but not limited to:

SECTION 47. 767.51 (6) of the statutes is amended to read:

767.51 (6) Sections 767.24, 767.245, 767.263, 767.265, 767.29, 767.30, 767.305, 767.31 and 767.32, where applicable, shall apply to a judgment or order under this section.

SECTION 48. 767.53 of the statutes is amended to read:

767.53 Paternity hearings and records; confidentiality. Any ~~court appearance, hearing, discovery proceeding or trial~~ relating to paternity determination shall be ~~held in closed court without admittance of to~~ any person other than those necessary to the action or proceeding. Any record of the proceedings shall be placed in a closed file, except that access to the record of any pending or past proceeding involving the paternity of the same child shall be allowed to the child's parents, the parties and their attorneys or their authorized representatives.

SECTION 49. 767.60 of the statutes is amended to read:

767.60 (title) Determination of marital children. In any case where the father and mother of any ~~nonmarital child or children born out of wedlock~~ shall ~~lawfully intermarry enter into a lawful marriage or a marriage which appears and they believe is lawful~~, except where the parental rights of the mother were terminated prior thereto, ~~such that child or children shall thereby become legitimated a marital child~~ and enjoy all the rights and privileges of legitimacy a marital child as if ~~they he or she~~ had been born during the ~~wedlock marriage of their the~~ parents; and this section shall be taken to apply to all cases prior to its date, as well as those subsequent thereto but no estate already vested shall be divested by this section and ss. 765.05 to 765.24, 767.60 and 852.05. The issue of all marriages declared void under the law shall, nevertheless, be legitimate marital issue.

SECTION 50. 786.36 of the statutes is amended to read:

786.36 Changing names, court procedure. Any resident of this state, whether a minor or adult, may upon petition to the circuit court of the county where he or she resides and upon filing a copy of the notice, with proof of publication, as required by s. 786.37, if no sufficient cause is shown to the contrary, have his or her name changed or established by order of the court. If the person whose name is to be changed is a minor under the age of 14 years, the petition may be made by: both parents, if living, or the survivor of them; the guardian or person having legal custody of the minor if both parents are dead or if the parental rights have been terminated by judicial proceedings; or the mother, if the minor is ~~born out of wedlock and a nonmarital child who is not subsequently legitimated or adopted or whose parents do not subsequently intermarry under s. 767.60~~, except that the father must also make the petition unless his rights have been legally terminated. The order shall be entered at length upon the records of the court and a duly certified copy of the record shall be filed in the office of the register of deeds of the county, who shall make an entry in a book to be kept by the register. The fee for filing a certified copy is the fee specified under s. 59.57 (6a). If the person whose name is changed or established was born or married in this state, the clerk of the court shall send to the state registrar of vital statistics, on a form designed by the state registrar of vital statistics, an abstract of the record, duly certified, accompanied by the fee prescribed in s. 69.24, which fee the clerk of court shall charge to and collect from the petitioner. The state registrar of vital statistics shall then correct the birth record, marriage record or both, and direct the register of deeds and local registrar to make similar corrections on their records. No person engaged in the practice of any profession for which a license is required by the state may change his or her given name or his or her surname to any other given name or any other surname than that under which the person was originally licensed in the profession in this or any other state, in any instance in which the state board or commission for the particular profession, after a hearing, finds that practicing under the changed name operates to unfairly compete with another practitioner or misleads the public as to identity or otherwise results in detriment to the profession or the public. This prohibition against a change of name by a person engaged in the practice of any profession does not apply to

any person legally qualified to teach in the public schools in this state, nor to a change of name resulting from marriage or divorce, nor to members of any profession for which there exists no state board or commission authorized to issue licenses or pass upon the qualifications of applicants or hear complaints respecting conduct of members of the profession. Any change of name other than as authorized by law is void.

SECTION 51. 814.61 (1) (a) and (7) of the statutes, as affected by 1983 Wisconsin Act 27, are amended to read:

814.61 (1) (a) At the commencement of all civil actions and special proceedings not specified in ss. 814.62 to 814.66, \$45. This includes actions and proceedings commenced by a government unit as defined in s. 108.02 (28), except for any action to determine paternity brought by the state or its delegate under s. 767.45 (1) (g).

(7) REVISION OF JUDGMENT IN ACTION AFFECTING THE FAMILY. Upon the filing of any petition under s. 767.32 (1) or any motion, by either party, for the revision of a judgment in an action affecting the family, \$25. This subsection does not apply to such a petition or motion filed by the state or its delegate in connection with an action to determine paternity under s. 767.45 (1) (g). Of the fees received by the clerk under this subsection, the county treasurer shall pay 50% to the state treasurer for deposit in the general fund and shall retain the balance for the use of the county.

SECTION 52. 818.02 (1) (f) and (2) of the statutes are amended to read:

818.02 (1) (f) In a proceeding to determine paternity, if the court or family court commissioner finds that the petitioner cannot effect service of process upon the respondent despite due diligence on the part of the petitioner or after the respondent is personally served but fails to appear on the return date, on the date set for the pretrial hearing or on the date set for the trial.

(2) ~~But~~ Notwithstanding sub. (1), no female shall be arrested in any action except for a wilful injury to person, character or property, or if sub. (1) (f) applies.

SECTION 53. 818.05 of the statutes is amended to read:

818.05 Bond, liability of plaintiff for support. Before making the order for arrest the court or judge shall require a bond of the plaintiff, with or without sureties, to the effect that if the plaintiff fails to recover, he will pay all costs that may be awarded to the defendant and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the bond, which shall be at least \$100. If the bond be executed by the plaintiff without sureties he shall annex thereto an affidavit that he is a resident and householder or freeholder within the state and worth double the sum specified in the bond above all his debts and liabilities in property in this state not exempt from execution. The plaintiff shall be liable for support of the defendant while he is in jail, as specified in s. 898.14 (1). This section does not apply to an order for arrest in an action to determine paternity.

SECTION 54. 851.13 of the statutes is amended to read:

851.13 Issue. "Issue" means children, grandchildren, great-grandchildren, and lineal descendants of more remote degrees, including those who occupy that relation by reason of adoption under s. 851.51 and nonmarital children who are not legitimate and their lineal descendants to the extent provided by s. 852.05.

SECTION 55. 851.51 (2) (b) of the statutes is amended to read:

851.51 (2) (b) If a natural parent of a ~~legitimate~~ marital child dies and the other natural parent remarries and the child is adopted by the stepparent, the child is treated as the child of the deceased natural parent for purposes of inheritance through that parent and for purposes of any statute conferring rights upon children, issue or relatives of that parent under the law of intestate succession or wills.

SECTION 56. 852.05 of the statutes is amended to read:

852.05 (title) **Status of nonmarital child for purposes of intestate succession.** (1) A nonmarital child ~~who is not legitimate~~ or the child's issue is entitled to take in the same manner as a legitimate marital child by intestate succession from and through his or her mother, and from and through his or her father if the father has either been adjudicated to be the father in a paternity proceeding under ch. 767, or has admitted in open court that he is the father, or has acknowledged himself to be the father in writing signed by him.

(2) Property of a nonmarital child ~~who is not legitimate~~ passes in accordance with s. 852.01 except that the father or his kindred can inherit only if the father has been adjudicated to be the father in a paternity proceeding under ch. 767.

(3) This section does not apply to a child legitimated who becomes a marital child by the subsequent marriage of the child's parents under s. 767.60. The status of a nonmarital child ~~who is not legitimate~~ and who is legally adopted is governed by s. 851.51.

SECTION 57. 885.06 of the statutes is amended to read:

885.06 **Witness' fees, prepayment.** (1) Except when subpoenaed on behalf of the state ~~or on behalf~~, of a municipality in a forfeiture actions action, or of an indigent respondent in a paternity proceeding, no person shall be obliged to attend as a witness in any civil action, matter or proceeding unless his fees are paid or tendered to him for one day's attendance and for travel; provided that tender of witness fees in the form of a check drawn by the state, a political subdivision of the state, a municipal corporation of the state or a department or officer of any of them which is payable to bearer or payable to the order of the person named in such subpoena shall oblige the person named in such subpoena to attend as a witness in accordance with the lawful requirements of such subpoena.

(2) No witness on behalf of the state in any civil action, matter or proceeding, ~~or on behalf of either party~~ in any criminal action or proceeding, ~~on behalf of either party, or~~ on behalf of a municipality in a forfeiture actions action or on behalf of an indigent respondent in a paternity proceeding shall be entitled to any fee in advance, but shall be obliged to attend upon the service of a subpoena as therein lawfully required.

SECTION 58. 885.10 of the statutes is amended to read:

885.10 (title) **Witness for indigent respondent or defendant.** Upon satisfactory proof of the inability of the respondent or defendant to procure the attendance of witnesses for his or her defense, the judge or court commissioner, in any paternity proceeding or criminal action or proceeding to be tried or heard before him or her, may direct the witnesses to be subpoenaed as he or she determines is proper and necessary, upon the respondent's or defendant's oath or affidavit or that of the respondent's or defendant's attorney. Witnesses so subpoenaed shall be paid their fees in the manner that witnesses for the state therein are paid.

SECTION 59. 891.39 (title), (2) and (3) of the statutes are amended to read:

891.39 (title) **Presumption as to whether a child is marital or nonmarital; self-crimination; birth certificates.**

(2) The mother of the child shall not be excused or privileged from testifying fully in any action or proceeding mentioned in sub. (1) in which the legitimacy of such determination of whether the child is a marital or nonmarital child is involved or in issue, when ordered to testify by a court of record or any judge thereof; but she shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which she so testifies or produces evidence, except for perjury committed in giving such testimony.

(3) Whenever any court pursuant to this section shall adjudge a child to ~~have been born out of wedlock~~ be a nonmarital child, the clerk of court shall report the facts to the state registrar, who shall issue a new birth certificate showing the correct facts as found by the court, and shall dispose of the original, with the court's report attached, as provided in s. 69.33 (5). He shall notify local registrars as provided in s. 69.33 (6). If the husband is a party to the action and the court makes a finding as to whether or not the husband is the father of the child, such finding shall be conclusive in all other courts of this state.

SECTION 60. 891.40 (2) of the statutes is amended to read:

891.40 (2) The donor of semen provided to a licensed physician for use in artificial insemination of a ~~married~~ woman other than the donor's wife is not the natural father of a child conceived, bears no liability for the support of the child and has no parental rights with regard to the child.

SECTION 61. 891.41 (1) of the statutes is renumbered 891.41 and amended to read:

891.41 Presumption of paternity. (intro.) A man is presumed to be the natural father of a child if ~~one or more~~ any of the following applies:

(1) He and the child's natural mother are or have been married to each other and the child is conceived or born ~~during the~~ after marriage, and ~~conception or birth takes place prior to the commencement of any action for~~ before the granting of a decree of legal separation, annulment or divorce between the parties; or

(2) He has acknowledged his paternity of the child in a writing filed with the ~~department of health and social services; state registrar~~ under s. 69.334 and:

(a) At the time of conception he and the child's natural mother lived together and neither sub. (1) nor par. (b) applies to any other person; or

(b) After the child's birth he and the child's natural mother ~~marry or attempt to marry each other by a marriage solemnized in apparent compliance with the law~~ enter into a lawful marriage or a marriage which appears and they believe is lawful, and neither sub. (1) nor par. (a) applies to any other person.

SECTION 62a. 893.88 (1) of the statutes is repealed.

SECTION 62b. 893.88 (2) of the statutes is renumbered 893.88 and amended to read:

893.88 Paternity actions. ~~An~~ Notwithstanding s. 990.06, an action for the establishment of the paternity of a child ~~by the child~~ shall be commenced within 19 years of the date of the birth of the child or be barred.

SECTION 63. 908.03 (11) and (19) of the statutes are amended to read:

908.03 (11) RECORDS OF RELIGIOUS ORGANIZATIONS. Statements of births, marriages, divorces, deaths, ~~legitimacy whether a child is marital or nonmarital~~, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(19) REPUTATION CONCERNING PERSONAL OR FAMILY HISTORY. Reputation among members of his family by blood, adoption, or marriage, or among his associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, ~~legitimacy~~, relationship by blood, adoption, or marriage, ancestry, whether the person is a marital or nonmarital child, or other similar fact of this personal or family history.

SECTION 64. 908.045 (5) (a) of the statutes is amended to read:

908.045 (5) (a) A statement concerning the declarant's own birth, adoption, marriage, divorce, ~~legitimacy~~, relationship by blood, adoption or marriage, ancestry, whether the person is a marital or nonmarital child, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (b) a statement concerning the foregoing matters, and death also, of another

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person, if the declarant was related to the other by blood, adoption or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

SECTION 65. 946.71 (4) of the statutes is amended to read:

946.71 (4) Entices away, takes away or withholds for more than 12 hours any child under the age of 14 from the parents, or the child's mother in the case of a nonmarital child ~~born out of wedlock and not subsequently legitimated where parents do not subsequently intermarry under s. 767.60,~~ without the consent of the parents or the mother, unless custody has been granted by court order to the person enticing, taking or withholding the child.

SECTION 66. 990.01 (19m) and (23m) of the statutes are created to read:

990.01 (19m) MARITAL CHILD. "Marital child" means either of the following:

- (a) A child who is conceived or born while his or her parents are lawfully intermarried.
- (b) A nonmarital child who is adopted or whose parents subsequently intermarry under s. 767.60.

(23m) NONMARITAL CHILD. "Nonmarital child" means a child who is neither conceived nor born while his or her parents are lawfully intermarried, who is not adopted and whose parents do not subsequently intermarry under s. 767.60.

SECTION 67. **Terminology changes.** (1) DETERMINING AND RECORDING PATERNITY. Wherever the term "marriage" appears in the following sections of the statutes, the term "the family" is substituted: 48.415 (4) (a), 48.422 (6) (c), 767.05 (6), 801.50 (10m) and 946.715 (1) (b).

SECTION 68. **Initial applicability.** The treatment of section 818.05 of the statutes by this act applies to any arrest order authorized in an action commenced on or after the effective date of this act or commenced before the effective date of this act but not reduced to judgment.
