

1989 Senate Bill 253

Date of enactment: **April 12, 1990**
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1989 WISCONSIN ACT 212

AN ACT *to renumber* 767.23 (3); *to amend* 46.10 (1), 767.02 (1) (i), 767.08 (3), 767.21 (1), 767.263, 767.265 (1), 767.265 (2h) and (2r), 767.265 (6) (a) and (b), 767.32 (1), 767.45 (1) (intro.) and (c), 767.45 (5m), 767.465 (3) (c), 767.47 (8), 767.475 (2), 767.51 (3), 767.51 (5) (d), 767.65 (38), 818.05, 891.41 (title), 948.22 (1) (a) and (c) and 948.22 (4) (a) and (b) and (5); *to repeal and recreate* 891.41 (2); and *to create* 767.025, 767.23 (3) (b), 767.25 (1m) (hs), 767.253, 767.45 (6p), 767.65 (11) (c), 767.65 (38) (c) and 891.405 of the statutes, **relating to:** child support and paternity.

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

SECTION 1. 46.10 (1) of the statutes is amended to read:

46.10 (1) Liability and the collection and enforcement of such liability for the care, maintenance, services and supplies specified in this section is governed exclusively by this section, except in cases of child support ordered by a court under ch. 48 or 767.

SECTION 2. 767.02 (1) (i) of the statutes is amended to read:

767.02 (1) (i) To enforce or modify a judgment or order in an action affecting the family granted in this state or elsewhere. ~~If a petition, motion or order to show cause requesting enforcement or modification of a judgment in an action affecting the family 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 or party bringing the motion or order to show cause shall send a copy of the petition, motion or order to show cause and summons to the clerk of the court in which the judgment was rendered. If a question arises as to which court should exercise jurisdiction, a conference involving both judges, all counsel and guardians ad litem may be convened under s. 807.13 (3) to resolve the question. The petitioner shall send a copy of any order rendered pursuant to this petition, motion or order to show cause to the~~

~~clerk of the court in which the original judgment was rendered.~~

SECTION 3. 767.025 of the statutes is created to read:
767.025 Filing procedures for enforcement or modification of judgments or orders in actions affecting the family. The following filing procedures shall apply to all enforcement or modification petitions, motions or orders to show cause filed for actions affecting the family under s. 767.02 (1) (i):

(1) Except as provided in sub. (2), if a petition, motion or order to show cause requesting enforcement or modification of a judgment or order in an action affecting the family 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 or party bringing the motion or order to show cause shall send a copy of the petition, motion or order to show cause and summons to the clerk of the court in which the judgment was rendered. If a question arises as to which court should exercise jurisdiction, a conference involving both judges, all counsel and guardians ad litem may be convened under s. 807.13 (3) to resolve the question. The petitioner shall send a copy of any order rendered pursuant to this petition, motion or order to show cause to the clerk of the court in which the original judgment or order was rendered.

(2) (a) If the petition, motion or order to show cause is for enforcement or modification of a child support,

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family support or maintenance order, the petition, motion or order to show cause shall be filed in the county in which the original judgment or order was rendered or in the county where the minor children reside unless any of the following applies:

1. All parties, including the state or its delegate if support, support arrearages, costs or expenses are assigned under ch. 49, stipulate to filing in another county.

2. The court in the county which rendered the original judgment or order orders, upon good cause shown, the enforcement or modification petition, motion or order to show cause to be filed in another county.

(b) If the parties have stipulated to filing in another county under par. (a) 1., the petitioner or party bringing the motion or order to show cause shall send a copy of the petition, motion or order to show cause and the summons to the clerk of court in the county in which the original judgment or order was rendered.

(c) If the court in the county which rendered the original judgment or order orders the petition, motion or order to show cause to be filed in another county under par. (a) 2., the petitioner or party bringing the motion or order to show cause shall attach a copy of the order when filing the petition, motion or order to show cause in the other county.

(3) If an enforcement or modification petition, motion or order to show cause is filed in a county other than the county in which the original judgment or order was rendered under sub. (2) (a), the clerk of court from the court that rendered the original judgment or order shall send a copy of any payment records associated with the original judgment or order of child support, family support or maintenance to the clerk of court in the county in which the petition, motion or order to show cause is filed.

SECTION 4. 767.08 (3) of the statutes is amended to read:

767.08 (3) If the state or any subdivision thereof furnishes public aid to a spouse or dependent child for support and maintenance and the spouse, person with legal custody or nonlegally responsible relative fails or refuses to institute an appropriate court action under this chapter to provide for the same, the person in charge of county welfare activities, the county child support program designee under s. 59.07 (97) or the state department of health and social services is a real party in interest under s. 767.075 and shall initiate an action under this section, for the purpose of obtaining support and maintenance. ~~In counties having a population of 500,000 or more, counsel employed by the county department under s. 46.215, the county child support program designee under s. 59.07 (97) or the department of health and social services shall represent the director or department thereof in any such action and may petition the court to be appointed as guardian ad litem for any minor or incompetent children. Any attorney employed by the state or any subdivision~~

~~thereof may initiate an action under this section.~~ The title of the action shall be "In re the support or maintenance of A.B. (Child)".

SECTION 5. 767.21 (1) of the statutes is amended to read:

767.21 (1) ACTIONS IN COURTS OF OTHER STATES. Full faith and credit shall be given in all courts of this state to a judgment in any action affecting the family, except an action relating to child custody, by a court of competent jurisdiction in another state, territory or possession of the United States, when both spouses personally appear or when the respondent has been personally served. Full faith and credit shall also be given in all courts of this state to the amount of arrearages owed for nonpayment or late payment of a child support, family support or maintenance payment under an order issued by a court of competent jurisdiction in another state, territory or possession of the United States. A court in this state may not adjust the amount of arrearages owed except as provided in s. 767.32 (1m).

SECTION 6. 767.23 (3) of the statutes is renumbered 767.23 (3) (a).

SECTION 7. 767.23 (3) (b) of the statutes is created to read:

767.23 (3) (b) Upon making any order for dismissal of an action affecting the family or for vacation of a judgment granted in any such order, the court shall, prior to or in its order of dismissal or vacation, also preserve the right of the state or a political subdivision of the state to collect any arrearages, by an action under this chapter or under ch. 785, owed to the state if either party in the case was a recipient of aid under ch. 49.

SECTION 8. 767.25 (1m) (hs) of the statutes is created to read:

767.25 (1m) (hs) The earning capacity of each parent, based on each parent's education, training and work experience and the availability of work in or near the parent's community.

SECTION 9. 767.253 of the statutes is created to read:

767.253 Seek-work orders. In an action for modification of a child support order under s. 767.32 or an action in which an order for child support is required under s. 767.25 (1) or 767.51 (3), the court may order either or both parents of the child to seek employment or participate in an employment or training program.

SECTION 10. 767.263 of the statutes is amended to read:

767.263 (title) Notice of change of employer; change of address; change in ability to pay. Each order for child support, family support or maintenance payments shall include an order that the payer and payee notify the clerk of court of any change of employer or change of address within 10 days of such change. Each order for child support, family support or maintenance payments shall also include an order that the payer notify the clerk of court, within 10 days, of any change of

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employer and of any substantial change in the amount of his or her income such that his or her ability to pay child support, family support or maintenance is affected. The order shall also include a statement that clarifies that notification of any substantial change in the amount of the payer's income will not result in a change of the order unless a revision of the order is sought.

SECTION 11. 767.265 (1) of the statutes, as affected by 1987 Wisconsin Act 332 and 1989 Wisconsin Act 31, is amended to read:

767.265 (1) Each order for child support under s. 767.23 ~~or~~, 767.25 ~~or~~ 767.51 (3), for maintenance payments under s. 767.23 or 767.26, for family support under s. 767.261, for costs ordered under s. 767.51 (3), for support by a spouse under s. 767.02 (1) (f) or for maintenance payments under s. 767.02 (1) (g), each court-approved stipulation for child support under s. 767.10 and each order for child or spousal support entered under s. 948.22 (7) constitutes an assignment of all commissions, earnings, salaries, wages, pension benefits, benefits under ch. 102 or 108, lottery prizes that are payable in instalments and other money due or to be due in the future to the clerk of the court where the action is filed. The assignment ~~requires withholding sufficient to meet the payments required of the party shall be for an amount sufficient to ensure payment~~ under the order or stipulation, ~~including and to pay any arrearages due at a periodic rate not to exceed 50% of the amount of support due under the order or stipulation so long as the addition of the amount toward arrearages does not leave the party at an income below the poverty line established under 42 USC 9902 (2).~~

SECTION 12. 767.265 (2h) and (2r) of the statutes are amended to read:

767.265 (2h) If a court-ordered assignment does not require immediately effective withholding and a payer fails to make a required maintenance, child support, spousal support or family support payment within 10 days after its due date, or if the court or family court commissioner receives notice of assignment for withholding required under similar laws of another state, within 20 days after the payment's due date or within 10 days after receipt of notice for withholding under laws of another state the court or family court commissioner shall cause the assignment to go into effect and shall send a notice by ~~certified or registered~~ regular mail to the last-known address of the payer. The notice shall inform the payer that an assignment ~~shall go into effect 10 days after the date on which the notice was sent. The and that the~~ payer may, within that a 10-day period, by motion request a hearing on the issue of whether the assignment should take remain in effect, ~~in which case the assignment shall be held in abeyance pending the outcome of the hearing.~~ The court or 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 the assignment is not proper because of a mistake of fact, the court or family court commissioner may direct that the assignment ~~not take effect~~ be withdrawn. If the payer does not request a hearing ~~or the court or family court commissioner finds the assignment is proper,~~ the court or family court commissioner shall send notice of the assignment to the person from whom the payer receives or will receive money. Either party may, within 15 working days after the date of the decision by a family court commissioner under this section, seek review of the decision by the court with jurisdiction over the action.

(2r) Upon entry of each order for child support, maintenance, family support or support by a spouse and upon approval of each stipulation for child support, unless the court finds that income withholding is likely to cause the payer irreparable harm, the court shall provide notice of the assignment by ~~personal service or certified or registered~~ regular mail to the ~~last-known~~ address of the person from whom the payer receives or will receive money. If the clerk of court does not receive the money from the person notified, the court shall provide notice of the assignment to any other person from whom the payer receives or will receive money. Notice under this subsection may be a notice of the court, a copy of the executed assignment or a copy of that part of the court order directing payment.

SECTION 13. 767.265 (6) (a) and (b) of the statutes, as affected by 1989 Wisconsin Act 31, are amended to read:

767.265 (6) (a) Except as provided in sub. (3m), if the person from whom the payer receives money fails to withhold the money or send the money to the clerk of court after receipt of notice as provided in this section, the person may be ~~fined not more than \$100 for each payment not withheld or sent or may be~~ proceeded against under the principal action under ch. 785 for contempt of court ~~and may be required to pay to the clerk of the court the amount assigned.~~

(b) If an employer who receives an assignment under this section fails to notify the clerk of court within 10 days after an employe is terminated or otherwise temporarily or permanently leaves employment, the employer may be ~~fined not more than \$100 or may be~~ proceeded against under the principal action under ch. 785 for contempt of court.

SECTION 14. 767.32 (1) of the statutes is amended to read:

767.32 (1) After a judgment providing for child support under s. 767.25 or 767.51, maintenance payments under s. 767.26 or family support payments under s. 767.261, or for the appointment of trustees under s. 767.31 the court may, from time to time, on the petition, motion or order to show cause of either of the parties, or upon the petition, motion or order to show cause of the department of health and social services, a county depart-

ment under s. 46.215, 46.22 or 46.23 or a child support program designee under s. 59.07 (97) if an assignment has been made under s. 49.19 (4) (h) or 49.45 (19) or if either party or their minor children receives aid under ch. 49, and upon notice to the family court commissioner, revise and alter such judgment respecting the amount of such maintenance or child support and the payment thereof, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any judgment respecting any of the matters which such court might have made in the original action, except that a judgment which waives maintenance payments for either party shall not thereafter be revised or altered in that respect nor shall the provisions of a judgment with respect to final division of property be subject to revision or modification. Any change in child support because of alleged change in circumstances shall take into consideration each parent's earning capacity and total economic circumstances. A consideration of a parent's earning capacity under this subsection shall be based on each parent's education, training and work experience and the availability of work in or near the parent's community. In any action under this section, receipt of aid to families with dependent children under s. 49.19 or a substantial change in the cost of living by either party or as measured by the federal bureau of labor statistics may be sufficient to justify a revision of judgment, except that a change in an obligor's cost of living is not in itself sufficient if payments are expressed as a percentage of income.

SECTION 15. 767.45 (1) (intro.) and (c) of the statutes are amended to read:

767.45 (1) (intro.) The following persons may bring an action or motion for the purpose of determining the paternity of a child or for the purpose of rebutting the presumption of paternity under s. 891.405 or 891.41:

(c) A man presumed to be the child's father under s. 891.405 or 891.41.

SECTION 16. 767.45 (5m) of the statutes is amended to read:

767.45 (5m) Except as provided under s. 767.458 (3), unless a man is either presumed the child's father under s. 891.41 ~~(1) or (2)~~ 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, legal custody or physical placement 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, legal custody or physical placement rights for a man who is neither presumed the child's father under s. 891.41 ~~(1) or (2)~~ 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 16m. 767.45 (6p) of the statutes is created to read:

767.45 (6p) The attorney designated under sub. (6) (a) shall give priority to those cases brought under this section in which the attorney has good reason to believe that a man presumed to be the father of the child has acknowledged paternity under s. 69.15 (3) (b) 1. or 3.

SECTION 17. 767.465 (3) (c) of the statutes is amended to read:

767.465 (3) (c) Within one year after the judgment upon motion or petition, except that a respondent may not reopen more than one default judgment on a particular case under this paragraph.

SECTION 18. 767.47 (8) of the statutes is amended to read:

767.47 (8) The party bringing an action for the purpose of determining paternity or for the purpose of declaring the nonexistence of paternity presumed under s. 891.405 or 891.41 shall have the burden of proving the issues involved by clear and satisfactory preponderance of the evidence.

SECTION 19. 767.475 (2) of the statutes is amended to read:

767.475 (2) Presumption of paternity shall be as provided in ss. 891.39, 891.405 and 891.41.

SECTION 20. 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 legal custody and guardianship of the child, periods of physical placement, 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 ~~(4)~~ the mother shall have sole legal custody of the child. The court shall 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. 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 21. 767.51 (5) (d) of the statutes is amended to read:

767.51 (5) (d) The earning ~~ability of the parents~~ capacity of each parent, based on each parent's education, training and work experience and based on the availability of work in or near the parent's community.

SECTION 22. 767.65 (11) (c) of the statutes is created to read:

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767.65 (11) (c) The time for service of process under this section may be extended to the date on which the respondent was actually served, if a showing of due diligence in attempting to serve the respondent is made.

SECTION 23. 767.65 (38) of the statutes, as affected by 1989 Wisconsin Act 31, is amended to read:

767.65 (38) (title) OFFICIAL TO REPRESENT OBLIGEE'S INTEREST. (a) If this state is acting either as a rendering or a registering state, the attorney responsible for support enforcement under s. 59.458 (1), upon the request of the court, shall ~~represent~~ provide the services specified under s. 767.075 (1) to the obligee in proceedings under subs. (36) to (40).

(b) If the attorney responsible for support enforcement under s. 59.458 (1) neglects or refuses to ~~represent~~ provide the services specified under s. 767.075 (1) to the obligee, the department of justice may undertake the ~~representation~~ provision of those services.

SECTION 24. 767.65 (38) (c) of the statutes is created to read:

767.65 (38) (c) Any person providing services under this subsection shall be deemed to represent only the interest of the state. Any services provided by an attorney under this subsection do not create an attorney-client relationship with any other party.

SECTION 25. 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 or to any action under ch. 767 brought by the state or its designee.

SECTION 26. 891.405 of the statutes is created to read:

891.405 Presumption of paternity based on acknowledgement. A man is presumed to be the natural father of a child if he and the mother have acknowledged paternity under s. 69.15 (3) (b) 1 or 3 and no other man is presumed to be the father under s. 891.41.

SECTION 27. 891.41 (title) of the statutes is amended to read:

891.41 (title) Presumption of paternity based on marriage of the parties.

SECTION 28. 891.41 (2) of the statutes is repealed and recreated to read:

891.41 (2) He and the child's natural mother were married to each other after the child was born but he and the child's natural mother had a relationship with one another during the period of time within which the child was conceived and no other man has been adjudicated to be the father or presumed to be the father of the child under sub. (1).

SECTION 29. 948.22 (1) (a) and (c) of the statutes, as affected by 1987 Wisconsin Act 332, are amended to read:

948.22 (1) (a) "Child support" means an amount which a person is ordered to provide for support of a child by a court of competent jurisdiction in this state or in another state, territory or possession of the United States, or, if not ordered, an amount that a person is legally obligated to provide under s. 49.90, 767.25 or 767.51.

(c) "Spousal support" means an amount which a person is ordered to provide for support of a spouse or former spouse by a court of competent jurisdiction in this state or in another state, territory or possession of the United States, or, if not ordered, an amount that a person is legally obligated to provide under s. 49.90 or 767.26.

SECTION 30. 948.22 (4) (a) and (b) and (5) of the statutes, as affected by 1987 Wisconsin Act 332 and 1989 Wisconsin Act 31, are amended to read:

948.22 (4) (a) For a person subject to a court order requiring child, grandchild or spousal support payments, when the person knows or reasonably should have known that he or she is required to pay support under an order, failure to pay any ~~the~~ child, grandchild or spousal support payment required under the order.

(b) For a person not subject to a court order requiring child, grandchild or spousal support payments, when the person knows or reasonably should have known that he or she has a dependent, failure to provide support equal to at least the amount set forth under s. 49.19 (11) (a) or causing a spouse, grandchild or child to become a dependent person, or continue to be a dependent person, as defined in s. 49.01 (2).

(5) Under this section, it is not a defense that child, grandchild or spousal support is provided wholly or partially by any other person or entity.

SECTION 31. Initial applicability. (1) CIRCUIT COURTS. (a) *Enforcement or modification of judgments in actions affecting the family.* The treatment of section 767.025 of the statutes first applies to enforcement or modification petitions, motions or orders to show cause filed in actions affecting the family on the effective date of this paragraph.

SECTION 32. Effective date. This act takes effect on January 1, 1990, or on the day after publication, whichever is later.
