



1997 SENATE BILL 138

March 26, 1997 - Introduced by Senators WEEDEN, HUELSMAN and BUETTNER, cosponsored by Representatives AINSWORTH, R. YOUNG, ALBERS, KEDZIE, SPRINGER, LA FAVE, TURNER, GUNDERSON, OWENS, M. LEHMAN and HAHN. Referred to Committee on Judiciary, Campaign Finance Reform and Consumer Affairs.

1 **AN ACT** *to repeal* 767.25 (1m) (d) and 767.51 (5) (f); *to renumber* 303.08 (5) (a)
2 and 767.25 (1m) (a); *to renumber and amend* 767.25 (1m) (c); *to amend*
3 20.921 (2) (a), 46.10 (14) (b), 102.27 (2) (a), 303.08 (5) (c), 303.08 (5m), 767.25
4 (1m) (e), 767.25 (2), 767.265 (3h), 767.265 (4), 767.265 (6) (a), 767.265 (6) (b),
5 767.265 (6) (c) and 767.51 (5) (i); *to repeal and recreate* 46.10 (14) (c) 7.; and
6 **to create** 303.08 (5) (ac), 767.23 (1) (m), 767.25 (4g), 767.25 (4p), 767.465 (1m),
7 767.48 (5) (c), 767.51 (3g), 767.51 (3p) and 767.51 (5) (cm) of the statutes;
8 **relating to:** treatment of child care expenses, ordering trusts for the support
9 of children, order of disbursement of wages for Huber law inmates, ordering
10 payment of postmajority support for a child with exceptional educational needs
11 and paternity judgments and blood test costs.

Analysis by the Legislative Reference Bureau

This bill makes a number of miscellaneous changes relating to child support and paternity actions. Under the bill, the court may order either or both parties in a divorce or paternity action to pay for the support of a child who is 19 years of age or older if the child has exceptional educational needs resulting from any of a list of

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specified handicaps and disabilities and is participating in a special educational program. Current law authorizes a court, when ordering child support, to set aside a portion of the support in a separate fund or trust for the support, education and welfare of the child. The bill specifies that a court may set aside support in this manner on its own motion or on the request of a party or the guardian ad litem. The bill requires a court, when ordering child support in a divorce or paternity action, to consider a child's day care expenses and authorizes the court to assign responsibility to one or both parents for payment of those day care expenses that are necessary to permit either parent to work. The court may order that day care expenses be withheld from income if a parent who is assigned responsibility to pay day care expenses fails to make a payment within 10 days after its due date. Responsibility for payment of a child's day care expenses may also be assigned in a temporary order during the pendency of the action. The bill also makes a couple of changes with respect to the factors that a court must consider when deciding whether to order child support that deviates from the amount that would result by using the percentage standard in order to make those factors more consistent among the 3 situations in which the court determines child support (divorce, paternity and substitute care).

The bill makes 2 changes to procedure in paternity actions. Under current law, if the petitioner in a paternity action fails to appear at the pretrial hearing or trial, the court may enter an order dismissing the action. If the alleged father is the respondent and he fails to appear at the first appearance, scheduled genetic test, pretrial hearing or trial, the court may enter an order adjudicating the alleged father to be the father of the child. Under the bill, if the mother of the child fails to appear at the first appearance, scheduled genetic testing, pretrial hearing or trial and there is sufficient evidence to establish the alleged father as the father of the child, the court may enter an order adjudicating the alleged father to be the father of the child. Also under the bill, unless the state is a petitioner, the court may order any or all of the parties in a paternity action to pay for the cost of genetic tests in advance if the court finds that the parties have sufficient resources to pay those costs.

The bill makes a change in the disbursement of wages or other compensation earned by prisoners who are allowed to leave jail for employment purposes ("Huber law" privileges). Prisoners who have Huber law privileges for employment outside of jail must turn over all compensation to the sheriff. Under current law, the sheriff must use the compensation first for the prisoner's board, next, for the prisoner's travel expenses to and from work and then for the support of any dependents of the prisoner. The bill requires the sheriff to pay any child support ordered in an action affecting the family, such as a divorce or a paternity action, first. Next, the sheriff is to pay for the prisoner's board, then for necessary travel expenses and then for support of any dependents of the prisoner, other than support ordered in an action affecting the family.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 20.921 (2) (a) of the statutes is amended to read:

2 20.921 (2) (a) Whenever it becomes necessary in pursuance of any federal or
3 state law or court-ordered assignment of income under s. 46.10 (14) (e), 767.23 (1)
4 (L) or (m), 767.25 (4m) (c) or (4p) (c), 767.265 or 767.51 (3m) (c) or (3p) (c) to make
5 deductions from the salaries of state officers or employes or employes of the
6 University of Wisconsin Hospitals and Clinics Authority, the state agency or
7 authority by which the officers or employes are employed is responsible for making
8 such deductions and paying over the total thereof for the purposes provided by the
9 laws or orders under which they were made.

10 **SECTION 2.** 46.10 (14) (b) of the statutes is amended to read:

11 46.10 (14) (b) Except as provided in par. (c) and subject to par. (cm), liability
12 of a parent specified in sub. (2) or s. 46.03 (18) for the care and maintenance of the
13 parent's minor child who has been placed by a court order under s. 48.355, 48.357,
14 938.183 (2), 938.355 or 938.357 in a residential, nonmedical facility such as a group
15 home, foster home, treatment foster home, child caring institution or juvenile
16 correctional institution shall be determined by the court by using the percentage
17 standard established by the department of industry, labor and job development
18 under s. 49.22 (9) and by applying the percentage standard in the manner
19 established by the department of health and family services under s. 46.247.

20 **SECTION 3.** 46.10 (14) (c) 7. of the statutes is repealed and recreated to read:

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1 46.10 (14) (c) 7. Extraordinary travel expenses incurred in exercising parental
2 visitation with the child.

3 **SECTION 4.** 102.27 (2) (a) of the statutes is amended to read:

4 102.27 (2) (a) A benefit under this chapter is assignable under s. 46.10 (14) (e),
5 767.23 (1) (L) or (m), 767.25 (4m) (c) or (4p) (c), 767.265 (1) or 767.51 (3m) (c) or (3p)
6 (c).

7 **SECTION 5.** 303.08 (5) (a) of the statutes is renumbered 303.08 (5) (am).

8 **SECTION 6.** 303.08 (5) (ac) of the statutes is created to read:

9 303.08 (5) (ac) Payment of child support ordered under ch. 767;

10 **SECTION 7.** 303.08 (5) (c) of the statutes is amended to read:

11 303.08 (5) (c) Support of the prisoner's dependents, if any, other than child
12 support ordered under ch. 767;

13 **SECTION 8.** 303.08 (5m) of the statutes is amended to read:

14 303.08 (5m) A county may receive payments under sub. (5) (a) (am) and (b) or
15 seek reimbursement under s. 302.372, but may not collect for the same expenses
16 twice.

17 **SECTION 9.** 767.23 (1) (m) of the statutes is created to read:

18 767.23 (1) (m) Requiring either party or both parties to execute an assignment
19 of income for payment of a minor child's day care expenses that are necessary to
20 permit either parent to work.

21 **SECTION 10.** 767.25 (1m) (a) of the statutes is renumbered 767.25 (1m) (am).

22 **SECTION 11.** 767.25 (1m) (c) of the statutes is renumbered 767.25 (1m) (ac) and
23 amended to read:

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1 767.25 (1m) (ac) The needs of the child and the standard of living the child
2 would have enjoyed had the marriage not ended in annulment, divorce or legal
3 separation.

4 **SECTION 12.** 767.25 (1m) (d) of the statutes is repealed.

5 **SECTION 13.** 767.25 (1m) (e) of the statutes is amended to read:

6 767.25 (1m) (e) The cost of day care if the custodian works outside the home,
7 or the value of custodial services performed by the custodian if it is appropriate for
8 the custodian ~~remains to remain~~ in the home as a full-time parent.

9 **SECTION 14.** 767.25 (2) of the statutes is amended to read:

10 767.25 (2) The court may, upon request by any party or the guardian ad litem
11 or upon its own motion, protect and promote the best interests of the minor children
12 by setting aside a portion of the child support which ~~either~~ any party is ordered to
13 pay in a separate fund or trust for the support, education and welfare of such
14 children.

15 **SECTION 15.** 767.25 (4g) of the statutes is created to read:

16 767.25 (4g) The court may order either party or both parties to pay for the
17 support of any child of the parties who is 19 years of age or older and who satisfies
18 all of the following:

19 (a) Is a child with exceptional educational needs, as defined in s. 115.76 (3).

20 (b) Is participating in a special education program under subch. V of ch. 115.

21 **SECTION 16.** 767.25 (4p) of the statutes is created to read:

22 767.25 (4p) (a) When ordering child support for a child under sub. (1), the court
23 shall consider and may specifically assign responsibility to one or both parents for
24 and direct the manner of payment of the child's day care expenses that are necessary

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1 to permit either parent to work. A parent may be required to initiate or continue
2 payment of day care expenses for a child under this subsection.

3 (b) In directing the manner of payment of a child's day care expenses, the court
4 shall order that payment be made to one of the following:

5 1. The other parent.

6 2. The day care provider.

7 3. The clerk of court for disbursement to the person for whom the payment has
8 been awarded.

9 (c) If a parent who is ordered to pay child care expenses under this subsection
10 fails to make a required payment within 10 days after its due date, the court may
11 order that payment be withheld from the person's income and assigned for the
12 payment of day care expenses. If the court orders income withholding and
13 assignment for the payment of day care expenses, the court shall direct that payment
14 under the assignment be made to the clerk of court for disbursement to the other
15 parent as provided in s. 767.29 and shall send notice of the assignment and of the
16 opportunity to request a hearing in the manner provided under s. 767.265 (2h). The
17 clerk of court shall keep a record of all moneys received and disbursed by the clerk
18 for day care expenses that are directed to be paid to the clerk.

19 **SECTION 17.** 767.265 (3h) of the statutes is amended to read:

20 767.265 (3h) A person who receives notice of assignment under this section or
21 s. 767.23 (1) (L) or (m), 767.25 (4m) (c) or (4p) (c) or 767.51 (3m) (c) or (3p) (c) or similar
22 laws of another state shall withhold the amount specified in the notice from any
23 money that person pays to the payer later than one week after receipt of notice of
24 assignment. Within 5 days after the day the person pays money to the payer, the
25 person shall send the amount withheld to the clerk of court or support collection

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1 designee, whichever is appropriate, of the jurisdiction providing notice or, in the case
2 of an amount ordered withheld for health care expenses, to the appropriate health
3 care insurer, provider or plan. Except as provided in sub. (3m), for each payment sent
4 to the clerk of court or support collection designee, the person from whom the payer
5 receives money shall receive an amount equal to the person's necessary
6 disbursements, not to exceed \$3, which shall be deducted from the money to be paid
7 to the payer. Section 241.09 does not apply to assignments under this section.

8 **SECTION 18.** 767.265 (4) of the statutes is amended to read:

9 767.265 (4) A withholding assignment or order under this section or s. 767.23
10 (1) (L) or (m), 767.25 (4m) (c) or (4p) (c) or 767.51 (3m) (c) or (3p) (c) has priority over
11 any other assignment, garnishment or similar legal process under state law.

12 **SECTION 19.** 767.265 (6) (a) of the statutes is amended to read:

13 767.265 (6) (a) Except as provided in sub. (3m), if after receipt of notice of
14 assignment the person from whom the payer receives money fails to withhold the
15 money or send the money to the clerk of court or support collection designee or the
16 appropriate health care insurer, provider or plan as provided in this section or s.
17 767.23 (1) (L) or (m), 767.25 (4m) (c) or (4p) (c) or 767.51 (3m) (c) or (3p) (c), the person
18 may be proceeded against under the principal action under ch. 785 for contempt of
19 court or may be proceeded against under ch. 778 and be required to forfeit not less
20 than \$50 nor more than an amount, if the amount exceeds \$50, that is equal to 1%
21 of the amount not withheld or sent.

22 **SECTION 20.** 767.265 (6) (b) of the statutes is amended to read:

23 767.265 (6) (b) If an employer who receives an assignment under this section
24 or s. 767.23 (1) (L) or (m), 767.25 (4m) (c) or (4p) (c) or 767.51 (3m) (c) or (3p) (c) fails
25 to notify the clerk of court or support collection designee, whichever is appropriate,

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1 within 10 days after an employe is terminated or otherwise temporarily or
2 permanently leaves employment, the employer may be proceeded against under the
3 principal action under ch. 785 for contempt of court.

4 **SECTION 21.** 767.265 (6) (c) of the statutes is amended to read:

5 767.265 **(6)** (c) No employer may use an assignment under this section or s.
6 767.23 (1) (L) or (m), 767.25 (4m) (c) or (4p) (c) or 767.51 (3m) (c) or (3p) (c) as a basis
7 for the denial of employment to a person, the discharge of an employe or any
8 disciplinary action against an employe. An employer who denies employment or
9 discharges or disciplines an employe in violation of this paragraph may be fined not
10 more than \$500 and may be required to make full restitution to the aggrieved person,
11 including reinstatement and back pay. Except as provided in this paragraph,
12 restitution shall be in accordance with s. 973.20. An aggrieved person may apply to
13 the district attorney or to the department for enforcement of this paragraph.

14 **SECTION 22.** 767.465 (1m) of the statutes is created to read:

15 767.465 **(1m)** JUDGMENT WHEN MOTHER FAILS TO APPEAR. Notwithstanding sub.
16 (1), a court may enter an order adjudicating the alleged father to be the father of the
17 child under s. 767.51 if the mother of the child fails to appear at the first appearance,
18 unless the first appearance is not required under s. 767.457 (2), scheduled genetic
19 test, pretrial hearing or trial if sufficient evidence exists to establish the alleged
20 father as the father of the child.

21 **SECTION 23.** 767.48 (5) (c) of the statutes is created to read:

22 767.48 **(5)** (c) If the state, including its delegate under s. 767.45 (6) or (6m), is
23 not a petitioner in the action, the court may order any or all of the parties to pay for
24 the fees and costs of the genetic tests in advance if the court finds that the parties
25 have sufficient resources to pay the costs of the tests.

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1 **SECTION 24.** 767.51 (3g) of the statutes is created to read:

2 767.51 **(3g)** The court may order either party or both parties to pay for the
3 support of any child of the parties who is 19 years of age or older and who satisfies
4 all of the following:

5 (a) Is a child with exceptional educational needs, as defined in s. 115.76 (3).

6 (b) Is participating in a special education program under subch. V of ch. 115.

7 **SECTION 25.** 767.51 (3p) of the statutes is created to read:

8 767.51 **(3p)** (a) When ordering child support for a child under sub. (3), the court
9 shall consider and may specifically assign responsibility to one or both parents for
10 and direct the manner of payment of the child's day care expenses that are necessary
11 to permit either parent to work. A parent may be required to initiate or continue
12 payment of day care expenses for a child under this subsection.

13 (b) In directing the manner of payment of a child's day care expenses, the court
14 shall order that payment be made to one of the following:

15 1. The other parent.

16 2. The day care provider.

17 3. The clerk of court for disbursement to the person for whom the payment has
18 been awarded.

19 (c) If a parent who is ordered to pay child care expenses under this subsection
20 fails to make a required payment within 10 days after its due date, the court may
21 order that payment be withheld from the person's income and assigned for the
22 payment of day care expenses. If the court orders income withholding and
23 assignment for the payment of day care expenses, the court shall direct that payment
24 under the assignment be made to the clerk of court for disbursement to the other
25 parent as provided in s. 767.29 and shall send notice of assignment and of the

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1 opportunity to request a hearing in the manner provided under s. 767.265 (2h). The
2 clerk of court shall keep a record of all moneys received and disbursed by the clerk
3 for day care expenses that are directed to be paid to the clerk.

4 **SECTION 26.** 767.51 (5) (cm) of the statutes is created to read:

5 767.51 (5) (cm) The tax consequences to each party.

6 **SECTION 27.** 767.51 (5) (f) of the statutes is repealed.

7 **SECTION 28.** 767.51 (5) (i) of the statutes is amended to read:

8 767.51 (5) (i) The cost of day care if the custodian works outside the home or
9 the value of custodial services contributed by the custodial performed by the
10 custodian if it is appropriate for the custodian to remain in the home as a full-time
11 parent.

12 (END)