

### 2001 DRAFTING REQUEST

#### Bill

Received: 12/04/2001

Received By: kahlepj

Wanted: As time permits

Identical to LRB:

For: Sheldon Wasserman (608) 266-7671

By/Representing: Joe Hoey

This file may be shown to any legislator: NO

Drafter: kahlepj

May Contact:

Addl. Drafters:

Subject: Dom. Rel. - paternity

Extra Copies:

Submit via email: YES

Requester's email: Rep.Wasserman@legis.state.wi.us

Carbon copy (CC:) to:

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#### Pre Topic:

No specific pre topic given

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#### Topic:

Remove ability of court to deny a paternity determination on the basis of the best interest of the child

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#### Instructions:

See Attached

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#### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kahlepj 12/26/2001	rschluet 01/17/2002					
/1			jfrantze 01/17/2002		lrb_docadmin 01/17/2002	lrb_docadmin 02/08/2002	

FE Sent For: \_\_\_\_\_

*none needed*

<END>

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1?	kahlepj	<i>[Signature]</i>	<i>He 1/17</i>	<i>Self</i>			
		<i>1-8-2</i>		<i>1/17</i>			

FE Sent For:

*1/17 jld*

<END>

**Kahler, Pam**

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**From:** Hoeyx, Joseph  
**Sent:** Monday, December 17, 2001 9:57 AM  
**To:** Kahler, Pam  
**Subject:** RE: Paternity draft

Pam,

Sheldon is only concerned with a person who is presumed to be the father who wants to rebut that presumption. Hope that answers your question - if not, let me know.

Thanks,  
Joey

-----Original Message-----

**From:** Kahler, Pam  
**Sent:** Tuesday, December 11, 2001 5:00 PM  
**To:** Hoeyx, Joseph  
**Subject:** Paternity draft

Joe:

Since you spoke with Gordon and not me about this draft, I just wanted to make sure that I have the instructions right. My understanding is that you want a person who is presumed to be the father (because he is married to the child's mother) to be able to rebut that presumption, and you want to get rid of the possibility that someone could make a motion that the rebuttal of the presumption is not in the child's best interest. Right? That would implicate ss. 767.458 (1m) and 767.463. My question to you is, do you want this limited to persons who are presumed to be the father? In other words, what if the alleged father, or person alleging himself to be the father, is not married to the mother (the mother is not married to anyone) but someone makes a motion that determining whether the man is the father would not be in the child's best interest because he is really a creep, like a convicted child molester. Do you still want to remove the ability to make that motion?

Let me know if my understanding of the request is correct and, if so, whether you want to limit the change to presumed fathers or have it apply to anyone. Thanks!

Pam

Wasserman

Joe Hooy

Current law - husband of mother is presumed father

891.41

Husband wants to contest -- prove child is not his,

but must show that would be in child's best

interest (?) 767.463?

717.458 (1m)?

both

= Wants to remove best interest standard so that

husband can always contest -- should not have to

pay for child who is not his

Limit to situations where there is a presumption under

891.41?

the child until the court orders otherwise.

891.41 Presumption of paternity based on marriage of the parties.

891.405

**891.405 Presumption of paternity based on acknowledgment.** 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 (1).

891.41

**891.41 Presumption of paternity based on marriage of the parties.**

891.41(1)

(1) (intro.) A man is presumed to be the natural father of a child if any of the following applies:

891.41(1)(a)

(a) He and the child's natural mother are or have been married to each other and the child is conceived or born after marriage and before the granting of a decree of legal separation, annulment or divorce between the parties.

891.41(1)(b)

(b) 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 par. (a).

891.41(2)

(2) In a legal action or proceeding, a presumption under sub. (1) is rebutted by results of a genetic test, as defined in s. 767.001 (1m), that show that a man other than the man presumed to be the father under sub. (1) is not excluded as the father of the child and that the statistical probability of the man's parentage is 99.0% or higher, even if the man presumed to be the father under sub. (1) is unavailable to submit to genetic tests, as defined in s. 767.001 (1m).

891.41 - ANNOT.

**History:** 1979 c. 352; 1983 a. 447; 1985 a. 315 s. 22; 1987 a. 413; 1989 a. 212; 1997 a. 191.

891.41 - ANNOT.

*The presumption that the mother's husband is the child's father does not violate a putative father's due process rights. Michael H. v. Gerald D. 491 U.S. 110, 105 L. Ed. 2d 91 (1989).*

891.41 - ANNOT.

*If a child is conceived subsequent to the entry of a decree of legal separation, there is no presumption of paternity. Schoenfeld v. Apfel, 237 F.3d 788 (2001).*

938.396(2)(g)

(g) Upon request of a court having jurisdiction over actions affecting the family, an attorney responsible for support enforcement under s. 59.53 (6) (a) or a party to a paternity proceeding under ss. 767.45 to 767.60,





State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-4355

PJK.....

65 + jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

genetic

1 AN ACT relating to: prohibiting the dismissal, in a child's best interest, of an  
2 action to rebut a presumption of paternity.

**Analysis by the Legislative Reference Bureau**

Under current law, a man who is married to a woman when she has a child is presumed to be the father of the child. The man may bring an action to rebut that presumption. The presumption is rebutted if the results of genetic tests show that another man is not excluded as the father of the child and that the probability that the other man is the father is 99% or higher. Current law also provides that in a paternity action a judge or family court commissioner may refuse to order genetic tests and dismiss the action if, upon the motion of a party or guardian ad litem, the judge or family court commissioner determines that it is not in the child's best interest to determine whether a man is the child's father or that a man other than the mother's husband is the father.

This bill provides that, regardless of a child's best interest, a judge or family court commissioner may not refuse to order genetic tests and dismiss a paternity action if the man who is presumed to be the father of the child because he is the mother's husband desires to rebut the presumption that he is the father.

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

3 SECTION 1. 767.458 (1m) of the statutes is amended to read:

1           767.458 (1m) In an action to establish the paternity of a child who was born  
 2 to a woman while she was married, where a man other than the woman's husband  
 3 alleges that he, not the husband, is the child's father, a party may allege that a  
 4 judicial determination that a man other than the husband is the father is not in the  
 5 best interest of the child. If the court or court commissioner under s. 757.69 (3) (g)  
 6 determines that a judicial determination of whether a man other than the husband  
 7 is the father is not in the best interest of the child, no genetic tests may be ordered  
 8 and the action shall be dismissed. This subsection does not apply if the husband  
 9 desires to rebut the presumption under s. 891.41 (1) that he is the father of the child.

History: 1979 a. 349, 1983 a. 447 s. 34, Stats. 1983 s. 767.457, 1987 a. 27 ss. 2126a, 2127d, 2127e, Stats. 1987 s. 767.458, 1987 a. 403, 413, 1993 a. 16, 481, 1995 a. 100, 1997 a. 191.

10           SECTION 2. 767.463 of the statutes is amended to read:

11           **767.463 Dismissal if adjudication not in child's best interest.** Except as  
 12 provided in s. 767.458 (1m), at any time in an action to establish the paternity of  
 13 a child, upon the motion of a party or guardian ad litem, the court or court  
 14 commissioner under s. 757.69 (3) (g) may, with respect to a man, refuse to order  
 15 genetic tests, if genetic tests have not yet been taken, and dismiss the action if the  
 16 court or court commissioner determines that a judicial determination of whether the  
 17 man is the father of the child is not in the best interest of the child. This section does  
 18 not apply in an action in which a man who is presumed to be the father of the child  
 19 under s. 891.41 (1) desires to rebut the presumption.

20           ~~History: 1997 a. 191.~~

(END)

*plain*

*plain*

11  
12

Except as

provided in s. 767.458 (1m), at

**Emery, Lynn**

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**From:** Emery, Lynn  
**Sent:** Wednesday, January 23, 2002 1:21 PM  
**To:** Hoeyx, Joseph  
**Subject:** LRB-4355/1 (attached as requested)

Lynn Emery

Lynn Emery - Program Asst. (PH. 608-266-3561)  
(E-Mail: [lynn.emery@legis.state.wi.us](mailto:lynn.emery@legis.state.wi.us)) (FAX: 608-264-6948)

Legislative Reference Bureau - Legal Section - Front Office  
100 N. Hamilton Street - 5th Floor  
Madison, WI 53703

**Emery,,Lynn**

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**From:** Hoeyx, Joseph  
**Sent:** Friday, February 08, 2002 12:15 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB-4355/1 Topic: Remove ability of court to deny a paternity determination on the basis of the best interest of the child

It has been requested by <Hoeyx, Joseph> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB-4355/1 Topic: Remove ability of court to deny a paternity determination on the basis of the best interest of the child