



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## **RESEARCH APPENDIX -** **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 09/26/2005 (Per: PJK)



☞ The 2005 drafting file for LRB 05-3460/**all**

has been copied/added to the 2005 drafting file for

# **LRB 05-3726**

☞ The attached 2005 draft was incorporated into the new 2005 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as a appendix, to the new 2005 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

☞ This cover sheet was added to rear of the original 2005 drafting file. The drafting file was then returned, intact, to its folder and filed.

2005 DRAFTING REQUEST

Bill

Received: 08/08/2005

Received By: pkahler

Wanted: As time permits

Identical to LRB:

For: Carol Roessler (608) 266-5300

By/Representing: Jennifer Stegall

This file may be shown to any legislator: NO

Drafter: pkahler

May Contact:

Addl. Drafters:

Subject: Dom. Rel. - paternity

Extra Copies:

Submit via email: YES

Requester's email: Sen.Roessler@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Establishing father's obligation for birth expenses in paternity action

Instructions:

See Attached

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>
/?	pkahler 08/08/2005	kfollett 08/11/2005		_____			
/1	pkahler 09/09/2005	kfollett 09/13/2005	jfrantze 08/11/2005	_____	lemery 08/11/2005		
/2			rschluet 09/13/2005	_____	lnorthro 09/13/2005		

**LRB-3460**

09/13/2005 10:23:04 AM

Page 2

FE Sent For:

<END>

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Establishing father's obligation for birth expenses in paternity action

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/?	pkahler 08/08/2005	kfollett 08/11/2005		_____			
/1		12 kjf 9/13	jfrantze 08/11/2005	_____	lemery 08/11/2005		

FE Sent For:

*[Handwritten signature]*  
9/13 <END>

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/?	pkahler	11 kjf 8/11	J 8/11	J Ks 8/11			

FE Sent For:

<END>

**Kahler, Pam**

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**From:** Stegall, Jennifer  
**Sent:** Friday, August 05, 2005 2:11 PM  
**To:** Kahler, Pam  
**Subject:** Child support draft

**Attachments:** Stegall, Jennifer.vcf; Birth Expense Collection.pdf

Hi Pam,

Here is the memo I referenced on your voicemail. The second page indicates what the court should be required to do. The group we met with thought that you drafted a bill for DHFS to address this birth expense collection issue and therefore thought you would be very familiar with this issue. If this is not your issue, just let me know. Also, please let me know if you need more information.

Thanks,

**Jennifer Stegall**  
**Office of Senator Carol Roessler**  
**608-266-5300/1-888-736-8720**  
**Jennifer.Stegall@legis.state.wi.us**



Stegall,  
Jennifer.vcf (4 KB)



Birth Expense  
Collection.pdf (...)

## Birth Expense Collection

Wis. Stat. § 767.51(3)(e) requires courts, when entering a judgment of paternity, to provide for "an order requiring the father to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth, based on the father's ability to pay or contribute to those expenses."

While the statute sounds somewhat discriminatory - it only speaks to a *father's* contribution toward birth expenses, and not to a mother's obligation - it is not. The mother, as the person who receives the medical care in a pregnancy and delivery, is the person who initially incurs the expenses. She is the only person liable to the care provider to pay for the services she receives. The statute allows a court to require the father to share in this liability to the extent that the father has the ability to do so.

When a mother receives medical assistance from the State of Wisconsin, the statute allows the State, through its child support agencies, to seek a contribution from the father to the State's cost of care for the pregnancy and delivery. Whether the mother has to pay back benefits she receives from medical assistance is not the province of the courts, but the Department of Health and Family Services, pursuant to federal and state law - 42 U.S.C. § 1396a and Wis. Stat. § 49.497. A Wisconsin Court of Appeals case provides a good explanation of this distinction: *In re the Paternity of N.L.M.*, 166 Wis. 2d 306, 479 N.W. 2d 237 (Ct. App. 1991).

Prior to *DHHS v. Thorson*, 04-2267-FT (Wis. Ct. App. 2005), child support agencies would ask the court to determine a reasonable contribution from the father towards the birth expenses. The amount of this contribution was based upon:

- (1) The cost of the care, and
- (2) The portion of that cost the court felt it was reasonable for the father to bear.

Once that portion was determined, the court would decide whether the father should begin making monthly payments against the total due. Frequently no payments would be ordered, as new fathers in these cases tend to be on the lower end of the earnings scale and are facing an obligation to pay current support for their child. The birth expense obligation would not accrue interest, nor would it put the father on the child support lien docket. The only collections would be the interception of any federal or state tax refunds to which the father was entitled. When the father's circumstances changed sufficiently to allow him to begin making monthly payments on the debt, the child support agency would ask the court to set a repayment order.

In *Thorson*, the Court of Appeals interpreted 767.51(3)(e) to say that if the father does not have the ability to make monthly payments on the birth expenses at the time he is found to be the father, then the court cannot impose any obligation for

those birth expenses. The court must find an ability to make current payments in order to set a birth expense obligation.

This creates a problem for both child support agencies and the taxpayers of the State of Wisconsin, in that it has substantially reduced the amount of birth expense orders we are obtaining on current paternity cases.

In 2004, Milwaukee County Child Support collected over \$5.4 million in birth expenses for the State of Wisconsin, 85% of which was paid to the State. The agency retained 15%, or \$810,000 for reimbursement of its costs in its collection work. The loss of a substantial portion of these monies is bad news for both the State's budget and counties' budgets.

The statute should be amended to require the court to:

- (1) Establish the amount of the father's obligation to contribute to birth expenses based upon the cost of the care, and
- (2) Specify whether a monthly payment on those expenses is due based upon the father's ability to pay.

Because of equal protection concerns that may be raised by fathers' groups, (1) may be tweaked to limit the father's liability for repayment to  $\frac{1}{2}$  of the total cost of care incurred.



# RESEARCH APPENDIX - Draft Transfer/Copy Request Form

- Atty's please complete this form and give to Mike Barman

(Request Made By: PK) (Date: 9/26/05)



Please transfer the drafting file for

2003 LRB to the drafting file

for 2005 LRB

The final version of the 2003 draft and the final Request Sheet will be copied on yellow paper, and returned to the original 2003 drafting file. A new cover sheet will be created/included listing the new location of the drafting file "guts".

For research purposes, because the 2003 draft was incorporated into a 2005 draft, the complete drafting file will be transferred, as a separate appendix, to the new 2005 drafting file. This request form will be inserted into the "guts" of the 2005 draft. If introduced, the appendix will be scanned/added to the electronic drafting file folder.

**--- OR ---**

Please copy the drafting file for

2005 LRB 1831 / all (include the version) and place it in the

drafting file for 2005 LRB 3460

For research purposes, because the original 2005 draft was incorporated into another 2005 draft, the original drafting file will be copied on yellow paper (darkened/auto centered/reduced to 90%) and added, as a separate appendix, to the new 2005 drafting file. This request form will be inserted into the "guts" of the new 2005 draft. If introduced the appendix will be scanned/added to the electronic drafting file folder.

The original drafting file will then returned, intact, to its folder and filed. For future reference, a copy of the transfer/copy request form will also be added to the "guts" of the original draft.



State of Wisconsin  
2005 - 2006 LEGISLATURE

3460/1  
LRB-1831/1  
PJK:kfrs-  
lgf

2005 BILL

Regen

1 AN ACT to amend 767.51 (3) (e) of the statutes; relating to: requiring a court  
2 to establish a father's obligation for birth expenses.

the pregnancy and birth

*Analysis by the Legislative Reference Bureau*

Under current law, in a paternity judgment or order the court must include an order that requires the man who is determined to be the father to pay or contribute to the expenses of the mother's pregnancy and the child's birth based on the man's ability to pay. A recent Wisconsin court of appeals decision based on this statute held that, if the father has no present ability to pay, a circuit court has no authority to set an obligation to pay lying-in expenses, even if payments are held in abeyance. This bill modifies the requirement under current law so that in a paternity judgment or order the court must establish the amount of the father's obligation to pay or contribute to ~~these~~ expenses and must specify whether periodic payments are due on the obligation based on the father's ability to pay. *Insert A*

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

3 SECTION 1. 767.51 (3) (e) of the statutes is amended to read:

4 767.51 (3) (e) An order requiring the father establishing the amount of the  
5 father's obligation to pay or contribute to the ~~reasonable~~ expenses of the mother's

↑  
strike

**BILL**

*also*

1

pregnancy and the child's birth. The order shall specify whether periodic payments  
2 are due on the obligation, based on the father's ability to pay or contribute to those  
3 expenses.

2

3

4

**SECTION 2. Initial applicability.**

5

(1) This act first applies to paternity judgments or orders that are granted on  
6 the effective date of this subsection.

6

7

(END)

amount established shall be  
limited to one-half of the total  
actual and reasonable pregnancy and  
birth expenses. The

**2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3460/?ins  
PJK:.....

**INSERT A**

*woff* The bill also limits the amount of the father's obligation that the court may establish to one-half of the total actual and reasonable pregnancy and birth expenses.

**(END OF INSERT A)**



State of Wisconsin  
2005 - 2006 LEGISLATURE

LPS: use 1831/3 text -  
redraft off of it

LRB-3460/2  
PJI:kjf

Pam

PJK:kjf

r m v o t r u m

2005 BILL

SOON  
(in 9-9)

1 **AN ACT to amend 767.51 (3) (e) of the statutes; relating to:** requiring a court  
2 to establish a father's obligation for birth expenses.

*Analysis by the Legislative Reference Bureau*

Under current law, in a paternity judgment or order the court must include an order that requires the man who is determined to be the father to pay or contribute to the expenses of the mother's pregnancy and the child's birth based on the man's ability to pay. A recent Wisconsin court of appeals decision based on this statute held that, if the father has no present ability to pay, a circuit court has no authority to set an obligation to pay lying-in expenses, even if payments are held in abeyance.

This bill modifies the requirement under current law so that in a paternity judgment or order the court must establish the amount of the father's obligation to pay or contribute to the pregnancy and birth expenses and must specify whether periodic payments are due on the obligation based on the father's ability to pay. The bill also limits the amount of the father's obligation that the court may establish to one-half of the total actual and reasonable pregnancy and birth expenses.

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

3 SECTION 1. 767.51 (3) (e) of the statutes is amended to read:  
4 767.51 (3) (e) An order requiring the father establishing the amount of the  
5 father's obligation to pay or contribute to the reasonable expenses of the mother's

**BILL**

1 pregnancy and the child's birth. The amount established shall be limited to one-half  
2 of the total actual and reasonable pregnancy and birth expenses. The order also shall  
3 specify whether periodic payments are due on the obligation, based on the father's  
4 ability to pay or contribute to those expenses.

5 **SECTION 2. Initial applicability.**

6 (1) This act first applies to paternity judgments or orders that are granted on  
7 the effective date of this subsection.

8 (END)





State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-1831/3

FJK:kjf:pg

**2005 ASSEMBLY BILL**

- 1 **AN ACT to renumber and amend 767.51 (3) (e) and 767.62 (4) (d); and to create**  
2 **767.51 (3) (e) 2. and 767.62 (4) (d) 2. of the statutes; relating to: requiring a**  
3 **court to establish a father's obligation for birth expenses.**

***Analysis by the Legislative Reference Bureau***

Under current law, in a paternity judgment or order the court must include an order that requires the man who is determined to be the father to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth based on the man's ability to pay. A recent Wisconsin Court of Appeals decision based on this statute held that, if the father has no present ability to pay, a circuit court has no authority to set an obligation to pay lying-in expenses, even if payments are held in abeyance.

This bill modifies the requirement under current law so that in a judgment or order determining paternity, including one based on a voluntary acknowledgment of paternity, the court must establish the amount of the father's obligation to pay or contribute to those expenses and requires the court to set the father's obligation at one-half of the total actual and reasonable pregnancy and birth expenses. The bill requires the court to specify in the judgment or order whether periodic payments are due on the obligation, based on the father's ability to pay, and provides that, if the court does not require periodic payments because the father does not have the

**ASSEMBLY BILL**

present ability to pay, the court may modify the paternity judgment or order at a later date to require periodic payments if the father has the ability to pay at that time.

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

1           SECTION 1. 767.51 (3) (e) of the statutes is renumbered 767.51 (3) (e) 1. and  
2 amended to read:

3           767.51 (3) (e) 1. An order ~~requiring the father~~ establishing the amount of the  
4 father's obligation to pay or contribute to the reasonable expenses of the mother's  
5 pregnancy and the child's birth. The amount established shall be limited to one-half  
6 of the total actual and reasonable pregnancy and birth expenses. The order also shall  
7 specify whether periodic payments are due on the obligation, based on the father's  
8 ability to pay or contribute to those expenses.

9           SECTION 2. 767.51 (3) (e) 2. of the statutes is created to read:

10          767.51 (3) (e) 2. If the order does not require periodic payments because the  
11 father has no present ability to pay or contribute to the expenses, the court may  
12 modify the judgment or order at a later date to require periodic payments if the father  
13 has the ability to pay at that time.

14          SECTION 3. 767.62 (4) (d) of the statutes is renumbered 767.62 (4) (d) 1. and  
15 amended to read:

16          767.62 (4) (d) 1. An order ~~requiring the father~~ establishing the amount of the  
17 father's obligation to pay or contribute to the reasonable expenses of the mother's  
18 pregnancy and the child's birth. The amount established shall be limited to one-half  
19 of the total actual and reasonable pregnancy and birth expenses. The order also shall  
20 specify whether periodic payments are due on the obligation, based on the father's  
21 ability to pay or contribute to those expenses.







State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-3460/2  
PJK:kjf:rs

## 2005 BILL

1     **AN ACT** *to renumber and amend* 767.51 (3) (e) and 767.62 (4) (d); and *to create*  
2             767.51 (3) (e) 2. and 767.62 (4) (d) 2. of the statutes; **relating to:** requiring a  
3             court to establish a father's obligation for birth expenses.

---

### *Analysis by the Legislative Reference Bureau*

Under current law, in a paternity judgment or order the court must include an order that requires the man who is determined to be the father to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth based on the man's ability to pay. A recent Wisconsin Court of Appeals decision based on this statute held that, if the father has no present ability to pay, a circuit court has no authority to set an obligation to pay lying-in expenses, even if payments are held in abeyance.

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**BILL**

present ability to pay, the court may modify the paternity judgment or order at a later date to require periodic payments if the father has the ability to pay at that time.

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3           767.51 (3) (e) 1. An order ~~requiring the father~~ establishing the amount of the  
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5 pregnancy and the child's birth. The amount established shall be limited to one-half  
6 of the total actual and reasonable pregnancy and birth expenses. The order also shall  
7 specify whether periodic payments are due on the obligation, based on the father's  
8 ability to pay or contribute to those expenses.

9           **SECTION 2.** 767.51 (3) (e) 2. of the statutes is created to read:

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