



SENATE BILL 123

SECTION 166

1 **SECTION 166.** 767.329 of the statutes is renumbered 767.461 and amended to
2 read:

3 **767.461 Revisions agreed to by stipulation.** If after an initial order is
4 entered under s. ~~767.24~~, 767.41 the parties agree to a modification in an order of
5 physical placement or legal custody and file a stipulation with the court that specifies
6 the agreed upon modification, the court shall incorporate the terms of the stipulation
7 into a revised order of physical placement or legal custody unless the court finds that
8 the modification is not in the best interest of the child.

NOTE: Provides an exception to the requirement that the court incorporate the terms of a stipulation to modify physical placement or legal custody into the revised order: unless the court finds the modification is not in the best interest of the child. The exception is based on a court of appeals decision holding that acceptance of a stipulation is not mandatory and that the trial court is not prohibited from examining the best interests of the child. [*Paternity of S.A.*, 165 Wis. 2d 530, 478 N.W.2d 21 (Ct. App. 1991).]

9 **SECTION 167.** 767.33 of the statutes is renumbered 767.553, and 767.553 (1) (c),
10 (2), (3), (4) (a) (intro.), (b), (c) (intro.) and (d) and (5), as renumbered, are amended
11 to read:

12 767.553 (1) (c) In the order the court ~~or circuit court commissioner~~ shall specify
13 what information the parties must exchange to determine whether the payer's
14 income has changed, and shall specify the manner and timing of the information
15 exchange.

16 (2) FORM FOR STIPULATING. If the court ~~or circuit court commissioner~~ provides
17 for an annual adjustment, the court ~~or circuit court commissioner~~ shall make
18 available to the parties, including the state if the state is a real party in interest
19 under s. ~~767.075 (1)~~ 767.205 (2) (a), a form approved by the court ~~or circuit court~~
20 ~~commissioner~~ for the parties to use in stipulating to an adjustment of the amount of
21 child or family support and to modification of any applicable income-withholding

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1 order. The form shall include an order, to be signed by ~~a judge or circuit court~~
2 ~~commissioner~~ the court, for approval of the stipulation of the parties.

3 (3) INCOME CHANGES. (a) If the payer's income changes from the amount found
4 by the court ~~or circuit court commissioner~~ or stipulated to by the parties for the
5 current child or family support order, the parties may implement an adjustment
6 under this section by stipulating, on the form under sub. (2), to the changed income
7 amount and the adjusted child or family support amount, subject to sub. (1) (b).

8 (b) The stipulation form ~~must~~ shall be signed by all parties, including the state
9 if the state is a real party in interest under s. ~~767.075 (1)~~ 767.205 (2) (a), and filed
10 with the court. If the stipulation is approved, the order shall be signed by ~~a judge~~
11 ~~or circuit court commissioner~~ the court and implemented in the same manner as an
12 order for a revision under s. ~~767.32~~ 767.59. An adjustment under this subsection
13 shall be is effective as of the date on which the order is signed by the ~~judge or circuit~~
14 ~~court commissioner~~.

15 (4) (a) (intro.) Any party, including the state if the state is a real party in
16 interest under s. ~~767.075 (1)~~ 767.205 (2) (a), may file a motion, petition, or order to
17 show cause for implementation of an annual adjustment under this section if any of
18 the following applies:

19 (b) If the court ~~or circuit court commissioner~~ determines after a hearing that
20 an adjustment should be made, the court ~~or circuit court commissioner~~ shall enter
21 an order adjusting the child or family support payments by the amount determined
22 by the court ~~or circuit court commissioner~~, subject to sub. (1) (b). An adjustment
23 under this subsection may not take effect before the date on which the party
24 responding to the motion, petition, or order to show cause received notice of the action
25 under this subsection.

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1 (c) (intro.) Notwithstanding par. (b), the court ~~or circuit court commissioner~~
2 may direct that all or part of the adjustment not take effect until such time as the
3 court ~~or circuit court commissioner~~ directs, if any of the following applies:

4 (d) If in an action under this subsection the court ~~or circuit court commissioner~~
5 determines that a party has unreasonably failed to provide the information required
6 under sub. (1) (c) or to provide the information on a timely basis, or unreasonably
7 failed or refused to sign a stipulation for an annual adjustment, the court ~~or circuit~~
8 ~~court commissioner~~ may award to the aggrieved party actual costs, including service
9 costs, any costs attributable to time missed from employment, the cost of travel to
10 and from court, and reasonable attorney fees.

11 (5) (a) Nothing in this section affects a party's right to file at any time a motion,
12 petition, or order to show cause under s. ~~767.32~~ 767.59 for revision of a judgment or
13 order with respect to an amount of child or family support.

14 **SECTION 168.** 767.34 (2) (title) of the statutes is created to read:

15 767.34 (2) (title) LIMITATIONS ON COURT APPROVAL.

16 **SECTION 169.** 767.37 (title) of the statutes is renumbered 767.251 (title) and
17 amended to read:

18 **767.251 (title) Effect Content, preparation, and approval of judgment.**

19 **SECTION 170.** 767.37 (1) (a) of the statutes is renumbered 767.251 and amended
20 to read:

21 767.251 (1) CONTENT. In ~~any~~ an action affecting the family, if the court orders
22 maintenance payments or other allowances for a party or children or retains
23 jurisdiction in ~~such~~ those matters, the written judgment shall include a ~~provision~~
24 statement that disobedience of the court order ~~with respect to the same~~ is punishable
25 under ch. 785 by commitment to the county jail or house of correction until ~~such~~ the

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1 judgment is complied with and the costs and expenses of the proceedings are paid or
2 until the party committed is otherwise discharged, according to law. ~~The written~~
3 ~~judgment in any action affecting the family shall include the social security numbers~~
4 ~~of the parties and of any child of the parties~~ Final written agreements and
5 stipulations of the parties shall, unless set forth in the judgment, be appended to the
6 judgment and incorporated by reference.

7 (2) PREPARATION. The findings of fact and, conclusions of law, and the written
8 judgment shall be drafted by the attorney for the moving party petitioner unless the
9 court otherwise directs, and shall be submitted to the court and filed with the clerk
10 of the court within 30 days after judgment is granted; ~~but if the respondent has been~~
11 ~~represented by counsel, the,~~

12 (3) APPROVAL. The draft findings, conclusions, and judgment shall first be
13 submitted to respondent's counsel for approval and if the circuit court commissioner
14 has appeared at the trial of the action, such papers shall also be sent to the circuit
15 court commissioner for approval be approved by all counsel appearing, including a
16 guardian ad litem and county child support enforcement agency attorney, and any
17 other person designated by the court or local rule. After any necessary approvals are
18 obtained, the findings of fact, conclusions of law, and judgment shall be submitted
19 to the court. ~~Final stipulations of the parties may be appended to the judgment and~~
20 ~~incorporated by reference therein.~~

NOTE: 1. Subdivided into 3 subsections.

2. The last sentence, which is stricken, is revised and relocated to sub. (1). Final written agreements and stipulations now must be appended to the judgment (unless set forth in the judgment) and incorporated by reference.

3. Clarifies responsibility for preparation and approval of the draft findings, conclusions, and judgment.

21 **SECTION 171.** 767.37 (1) (c) of the statutes is renumbered 767.36 and amended
22 to read:

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1 **767.36 Copies of judgment to parties.** At the time of filing any a judgment
2 for an annulment, divorce, or legal separation, the attorney for the moving party who
3 ~~prepared the judgment shall present~~ furnish to the clerk of court 2 true copies thereof
4 of the judgment, including any attachments to the judgment referenced in the
5 judgment, in addition to the original judgment, ~~and until such.~~ Until the copies are
6 presented, the clerk may refuse to accept such the judgment for filing. After the
7 judgment is filed, the clerk shall mail a copy ~~forthwith~~ promptly to each party to the
8 action at the last-known address, and the mailing shall be shown in the court record
9 ~~shall show such mailing.~~

NOTE: Clarifies: (1) the party who prepared the judgment is to provide copies to the clerk; and (2) the copies are to include any attachments referenced in the judgment.

10 **SECTION 172.** 767.37 (2) of the statutes is renumbered 767.35 (6) and amended
11 to read:

12 **767.35 (6) VACATING OR MODIFYING DIVORCE JUDGMENT AS IT AFFECTS MARITAL**
13 **STATUS.** So far as a judgment of divorce affects the marital status of the parties, the
14 court ~~has the power to~~ may vacate or modify the judgment for sufficient cause shown,
15 upon its own motion, or upon the application of both parties to the action, at any time
16 within 6 months from the granting of such the judgment. ~~No such judgment shall~~
17 ~~be vacated or modified without service of notice of motion on the office of family court~~
18 ~~commissioner. The court may direct a circuit court commissioner or appoint some~~
19 ~~other attorney, to bring appropriate proceedings for the vacation of the judgment.~~
20 ~~The compensation of the circuit court commissioner when not on a salaried basis or~~
21 ~~other attorney for performing such services shall be at the rate of \$50 per day, which~~
22 ~~shall be paid out of the county treasury upon order of the presiding judge and the~~
23 ~~certificate of the clerk of the court. If the judgment is vacated it shall restore the~~

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1 parties to the marital relation that existed before the granting of such the judgment.
2 ~~If after vacation of the judgment either of the parties brings an action in this state~~
3 ~~for divorce against the other the court may order the petitioner in such action to~~
4 ~~reimburse the county the amount paid by it to the circuit court commissioner or other~~
5 ~~attorney in connection with such vacation proceedings. Whenever~~ If a judgment of
6 divorce is set aside under this subsection, the court shall order the record in the
7 action impounded without regard to s. 767.19; and thereafter neither 767.13. After
8 the record is impounded, the record ~~nor any part of the record shall~~ may not be offered
9 or admitted in whole or in part into evidence in any action or proceeding except by
10 special order of the court of jurisdiction upon good cause shown in any paternity
11 proceedings under this chapter or by special order of any a court of record upon a
12 showing of necessity to clear title to real estate.

NOTE: Deletes, as obsolete, provisions relating to the court option to direct a circuit court commissioner or appoint an attorney to bring an action for vacating a divorce judgment under this section.

13 **SECTION 173.** 767.37 (3) of the statutes is renumbered 767.35 (3) and amended
14 to read:

15 767.35 (3) WHEN DIVORCE JUDGMENT EFFECTIVE. ~~When a~~ A judgment of divorce
16 is ~~granted it shall be effective immediately except as provided in s. 765.03 (2). Every~~
17 ~~judge who grants~~ when granted. A court granting a judgment of divorce shall inform
18 the parties appearing in court that the judgment is effective ~~immediately except as~~
19 ~~provided in s. 765.03 (2)~~ when granted but that it is unlawful under s. 765.03 (2) for
20 a party to marry again until 6 months after the judgment is granted.

NOTE: Clarifies what the court is required to inform the parties concerning the limitation on remarrying under s. 765.03 (2).

21 **SECTION 174.** 767.38 of the statutes is renumbered 767.35 (7) and amended to
22 read:

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1 767.35 (7) ~~JUDGMENT~~ DIVORCE JUDGMENT REVOKED ON REMARRIAGE OF PARTIES.
2 When a judgment of divorce has been granted and the parties ~~shall afterwards~~
3 ~~subsequently~~ intermarry, the court, upon their joint application and upon
4 satisfactory proof of ~~such~~ the marriage, shall revoke all judgments and any orders
5 ~~which that~~ will not affect the right of 3rd persons and. If the judgment is revoked,
6 the court shall order the record impounded without regard to s. 767.19 ~~767.13~~, and
7 neither the record ~~nor any part of the record shall~~ may not be offered or admitted,
8 in whole or in part, into evidence in any action or proceeding except by special order
9 of the court of jurisdiction upon good cause shown in ~~any a~~ paternity ~~proceedings~~
10 proceeding under this chapter or by special order of ~~any a~~ court of record upon a
11 showing of necessity to clear title to real estate.

12 **SECTION 175.** 767.39 (title) of the statutes is repealed.

13 **SECTION 176.** 767.39 (1) of the statutes is renumbered 767.273 and amended
14 to read:

15 **767.273 Allowances pending appeal.** In actions an action affecting the
16 family pending in ~~an~~ appellate court, ~~no~~ an allowance for suit money, counsel fees,
17 or disbursements in the court, ~~nor~~ or for temporary maintenance or support
18 payments to the spouse or the children during the pendency of the appeal will may
19 be made ~~in the~~ by the proper trial court upon motion made and decided after entry
20 of the order or judgment appealed from and prior to the return of the record to
21 appellate court. If the allowance is ordered before the appeal is taken, the order shall
22 be conditioned upon the taking of the appeal and is not effective until the record is
23 transmitted to appellate court.

NOTE: Incorporates the substance of current s. 767.39 (2), stats., which is repealed.

24 **SECTION 177.** 767.39 (2) of the statutes is repealed.

NOTE: Restated in renumbered s. 767.273. See SEC. 176 of the bill.

1 **SECTION 178.** 767.40 of the statutes is renumbered 785.07 and amended to
2 read:

3 **785.07 Contempt ~~proceedings orders imposing confinement.~~ All A**
4 contempt ~~orders in which~~ order imposing confinement is ~~imposed~~ shall be issued by
5 a judge.

NOTE: Relocated to current ch. 785, stats., contempt of court. The provision has
been interpreted as applying to contempt proceedings generally, not just those arising
from an action affecting the family.

6 **SECTION 179.** Subchapter V (title) of chapter 767 [precedes 767.401] of the
7 statutes is created to read:

8 **CHAPTER 767**

9 SUBCHAPTER V

10 CHILD CUSTODY, PLACEMENT,

11 AND VISITATION

12 **SECTION 180.** 767.401 (1) (title) and (2) (title) of the statutes are created to read:
13 767.401 (1) (title) PROGRAMS: EFFECTS OF DISSOLUTION ON CHILDREN; PARENTING
14 SKILLS.

15 (2) (title) CLASSES ON PARENTING.

16 **SECTION 181.** 767.405 (1) (intro.) of the statutes is created to read:
17 767.405 (1) DEFINITIONS. (intro.) In this section:

18 **SECTION 182.** 767.42 of the statutes is repealed.

NOTE: Repealed as obsolete. The section, which apparently is not currently in use,
allows a county to seize and sell property for the support of a spouse or child if a person
abandons and fails to support the spouse or child.

19 **SECTION 183.** 767.43 (1) (title), (1m) (title), (2) (title), (2m) (title), (3) (title), (3c)
20 (title), (3m) (title), (5) (title) and (6) (title) of the statutes are created to read:
21 767.43 (1) (title) PETITION; WHO MAY FILE.

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1 **(1m)** (title) EXCEPTION; HOMICIDE CONVICTION.

2 **(2)** (title) WISHES OF THE CHILD.

3 **(2m)** (title) WHEN SPECIAL GRANDPARENT PROVISION APPLICABLE.

4 **(3)** (title) SPECIAL GRANDPARENT VISITATION PROVISION.

5 **(3c)** (title) ACTION IN WHICH PETITION FILED; ALTERNATIVES.

6 **(3m)** (title) PRETRIAL HEARING; RECOMMENDATION.

7 **(5)** (title) INTERFERENCE WITH VISITATION RIGHTS.

8 **(6)** (title) MODIFICATION OF ORDER IF HOMICIDE CONVICTION.

9 **SECTION 184.** 767.45 of the statutes is renumbered 767.80, and 767.80 (1)
10 (intro.), (c), (d), (g), (i) and (k), (5) (b), (5m), (6) (a) and (c), (6m), (6r) (a) 2. c. and (7),
11 as renumbered, are amended to read:

12 767.80 (1) WHO MAY BRING ACTION OR FILE MOTION. (intro.) The following persons
13 may bring an action or file a motion, including an action or motion for declaratory
14 judgment, for the purpose of determining the paternity of a child or for the purpose
15 of rebutting the presumption of paternity under s. 891.405 or 891.41 (1):

16 (c) Unless s. ~~767.62~~ 767.805 (1) applies, a ~~man~~ male presumed to be the child's
17 father under s. 891.405 or 891.41 (1).

18 (d) A ~~man~~ male alleged or alleging himself to be the father of the child.

19 (g) This state whenever the circumstances specified in s. ~~767.075 (1)~~ 767.205
20 (2) (a) apply, including the delegates of the state as specified in sub. (6).

21 (i) A guardian ad litem appointed for the child under s. 48.235, ~~767.045~~ 767.407
22 (1) (c), or 938.235.

23 (k) In conjunction with the filing of a petition for visitation with respect to the
24 child under s. ~~767.245~~ 767.43 (3), a parent of a person who has filed a declaration of
25 paternal interest under s. 48.025 with respect to the child or a parent of a person who,

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1 before April 1, 1998, signed and filed a statement acknowledging paternity under s.
2 69.15 (3) (b) 3. with respect to the child.

3 (5) (b) An action under this section may be joined with any other action for child
4 support and ~~shall be~~ is governed by the procedures specified in s. ~~767.05~~ 767.205
5 relating to child support, except that the title of the action shall be “In re the
6 paternity of A.B.” The petition shall state the name and date of birth of the child if
7 born or that the mother is pregnant if the child is unborn, the name of any alleged
8 father, whether or not an action by any of the parties to determine the paternity of
9 the child or rebut the presumption of paternity to the child has at any time been
10 commenced, or is pending before any ~~judge or circuit court commissioner~~ court, in
11 this state or elsewhere. If a paternity judgment has been rendered, or if a paternity
12 action has been dismissed, the petition shall state the court ~~which~~ that rendered the
13 judgment or dismissed the action, and the date and the place the judgment was
14 granted if known. The petition shall also give notice of a party’s right to request a
15 genetic test under s. 49.225 or ~~767.48~~ 767.84.

16 (5m) APPLICABLE PROCEDURE; EXCEPTIONS. Except as provided in ss. ~~767.458 (3),~~
17 ~~767.465 (2) and (2m), 767.477, 767.62~~ 767.805, 767.863 (3), 767.85, 767.893 (2) and
18 (2m), and 769.401, unless a ~~man~~ male is presumed the child’s father under s. 891.41
19 (1), is adjudicated the child’s father either under s. ~~767.51~~ 767.89 or by final order
20 or judgment of a court of competent jurisdiction in another state, or has
21 acknowledged himself to be the child’s father under s. ~~767.62~~ 767.805 (1) or a
22 substantially similar law of another state, no order or temporary order may be
23 entered for child support, legal custody, or physical placement until the ~~man~~ male is
24 adjudicated the father using the procedure set forth in ss. ~~767.45 to 767.60~~ this
25 subchapter, except s. 767.805. Except as provided in ss. ~~767.477, 767.62~~ 767.805,

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1 767.85, and 769.401, the exclusive procedure for establishment of child support
2 obligations, legal custody, or physical placement rights for a ~~man~~ male who is not
3 presumed the child's father under s. 891.41 (1), adjudicated the father, or
4 acknowledged under s. ~~767.62~~ 767.805 (1) or a substantially similar law of another
5 state to be the father is by an action under ~~ss. 767.45 to 767.60~~ this subchapter, except
6 s. 767.805, or under s. 769.701. No person may waive the use of this procedure. If
7 a presumption under s. 891.41 (1) exists, a party denying paternity has the burden
8 of rebutting the presumption.

9 (6) (a) The attorney responsible for support enforcement under s. 59.53 (6) (a)
10 shall provide the representation for the state as specified under s. ~~767.075 (1)~~
11 767.205 (2) (a) in cases brought under this section.

12 (c) The attorney under s. 59.53 (6) (a) or any state attorney acting under par.
13 (b) may not represent the state as specified under s. ~~767.075 (1)~~ 767.205 (2) (a) in an
14 action under this section and at the same time act as guardian ad litem for the child
15 or the alleged child of the party.

16 (6m) WHEN ACTION MUST BE COMMENCED. The attorney designated under sub.
17 (6) (a) shall commence an action under this section on behalf of the state within 6
18 months after receiving notification under s. 69.03 (15) that no father is named on the
19 birth certificate of a child who is a resident of the county if paternity has not been
20 acknowledged under s. ~~767.62~~ 767.805 (1) or a substantially similar law of another
21 state or adjudicated, except in situations under s. 69.14 (1) (g) and (h) and as provided
22 by the department by rule.

23 (6r) (a) 2. c. That the ~~man~~ male designated in s. 48.299 (6) (a) or 938.299 (6)
24 (a) has previously been excluded as the father of the child.

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1 (7) CLERK TO PROVIDE DOCUMENT. The clerk of court shall provide without
2 charge, to each person bringing an action under this section, except to the state under
3 sub. (1) (g) or (6m), a document setting forth the percentage standard established by
4 the department under s. 49.22 (9) and listing the factors which that a court may
5 consider under s. ~~767.25~~ 767.511 (1m).

6 **SECTION 185.** 767.455 (title) and (1) to (4) of the statutes are renumbered
7 767.813 (title) and (1) to (4).

8 **SECTION 186.** 767.455 (5) of the statutes is renumbered 767.813 (5) and
9 amended to read:

10 767.813 (5) FORM FORMS. The summons shall be in substantially one of the
11 following ~~form~~ forms:

12 (a) Mother as petitioner.

13 STATE OF WISCONSIN,

CIRCUIT COURT:COUNTY

14 In re the Paternity of A. B.
15

16 STATE OF WISCONSIN

17 and

18 C. D. (Mother-Petitioner)

19 Address

20 City, State Zip Code

File No. ...

21 , Petitioners

22 vs.

S U M M O N S

23 E. F.

24 Address

.... (Case Classification Type):.... (Code No.)

25 City, State Zip Code

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SECTION 186

1 , Respondent

2
3 _____
4 THE STATE OF WISCONSIN, To the Respondent:

5 1. You have been sued. claims that you are the father of the child, born
6 on (date), in (city) (county) (state). You must appear to answer this claim of
7 paternity. Your court appearance is:

8 Date:

9 Time:

10 Room:

11 Judge or Circuit Court Commissioner:

12 Address:

13 2. If you do not appear, the court will enter a default judgment finding you to
14 be the father. ~~A default judgment will take effect 30 days after it is served on or~~
15 ~~mailed to you, unless within those 30 days you present to the court evidence of good~~
16 ~~cause for failure to appear.~~

17 3. If you plan to be represented by an attorney, you should contact the attorney
18 prior to the court appearance listed above. If you are unable to afford an attorney,
19 the court will appoint one for you only upon the blood genetic tests showing that you
20 are not excluded as the father and the probability of your being the father is less than
21 ~~99.0%. Appearance is not required if you complete the attached waiver of first~~
22 ~~appearance statement and send it to the court at least 10 days prior to the date of~~
23 ~~your scheduled appearance in this summons 99.0 percent.~~

24 4. You are also notified that interference with the custody of a child is
25 punishable by a fine of up to \$10,000 and imprisonment for up to 5 years. Section
948.31, stats.

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1 5. The County Clerk of Circuit Court is an equal opportunity service
 2 provider. If you need assistance to access services in the courts or need material in
 3 an alternate format, please call

4 Dated:, (year)

5 Signed:.....

6 G. H., Clerk of Circuit Court

7 or

8 Petitioner's Attorney

9 State Bar No.:

10 Address:

11 City, State Zip Code:

12 Phone No.:

NOTE: Revises the current summons form for a mother-petitioner in a paternity action to reflect changes in the bill making default judgments effective immediately and eliminating the waiver of first appearance in paternity actions. The revised form (and the new forms created in SEC. 243) add a provision indicating that the clerk of circuit court is an equal opportunity service provider.

13 **SECTION 187.** 767.455 (5g) of the statutes is repealed.

NOTE: Replaced by the provision created by SEC. 244 of the bill.

14 **SECTION 188.** 767.455 (5r) of the statutes is repealed.

NOTE: The paternity reform committee recommended eliminating the waiver of first appearance in paternity actions, thus requiring a first appearance in every case that comes to court. Only voluntary acknowledgments will not have a first appearance. The committee suggested this change: (1) because the current system is "cumbersome, including extra and unnecessary court appearances"; and (2) to "reduce fraud, which can occur since we do not know with assurance who signed the waiver as most are not notarized".

This change is made in the bill by repealing current ss. 767.455 (5r), 767.457 (2) and 767.465 (2m) (b), relating to waiver of first appearance.

15 **SECTION 189.** 767.455 (5w) of the statutes is repealed.

NOTE: Repeals current s. 767.455 (5w), stats., which specifies that the current statutory summons form does not apply to "a man alleging himself to be the father of the child". A separate summons form for an alleged father as petitioner is created by SEC. 243 in this bill.

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SECTION 190

1 **SECTION 190.** 767.455 (6) of the statutes is renumbered 767.813 (6) and
2 amended to read:

3 767.813 (6) **DOCUMENT.** The summons served on the respondent shall be
4 accompanied by a document, provided without charge by the clerk of court, setting
5 forth the percentage standard established by the department under s. 49.22 (9) and
6 listing the factors ~~which~~ that a court may consider under s. ~~767.25~~ 767.511 (1m).

7 **SECTION 191.** 767.456 of the statutes is renumbered 767.815.

8 **SECTION 192.** 767.457 (title) of the statutes is repealed.

9 **SECTION 193.** 767.457 (1) of the statutes is renumbered 767.86 and amended
10 to read:

11 **767.86 Time of first appearance.** The first appearance under s. 767.458
12 767.863 may not be held ~~any sooner than~~ until 30 days after service or receipt of the
13 summons and petition unless the parties agree ~~that the first appearance may be held~~
14 ~~sooner to an earlier date.~~ sooner to an earlier date.

15 **SECTION 194.** 767.457 (2) of the statutes is repealed.

NOTE: This SECTION, which repeals s. 767.457 (2), and SECS. 188 and 204 eliminate
the waiver of first appearance in paternity cases. See the note to SEC. 188 in this bill.

16 **SECTION 195.** 767.458 (title) of the statutes is renumbered 767.863 (title).

17 **SECTION 196.** 767.458 (1) (intro.) of the statutes is renumbered 767.863 (1) and
18 amended to read:

19 767.863 (1) **NOTICE TO PARTIES.** ~~At the first court appearance where~~ If the
20 respondent is present at a hearing prior to the determination of paternity, the court
21 shall, at least one time at one such hearing, inform the parties of the following: items
22 in s. 767.813 (5g).

23 **SECTION 197.** 767.458 (1) (a) to (e) of the statutes are repealed.

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SECTION 197

NOTE: Repeals s. 767.458 (1) (a) to (e), stats., which set forth the items the court must inform the parties of at the first court appearance where the respondent is present. This provision is no longer necessary because the bill amends current s. 767.458 (1) (intro.) (renumbered s. 767.863 (1) in this bill) to cross-reference the items listed in s. 767.455 (5g) (renumbered s. 767.813 (5g) in this bill). See SEC. 196, above.

1 **SECTION 198.** 767.458 (1m) to (3) of the statutes are renumbered 767.863 (1m)
2 to (3), and 767.863 (1m) and (2), as renumbered, are amended to read:

3 **767.863 (1m)** PATERNITY ALLEGATION BY MALE OTHER THAN HUSBAND; WHEN
4 DETERMINATION NOT IN BEST INTEREST OF CHILD. In an action to establish the paternity
5 of a child who was born to a woman while she was married, ~~where a man~~ if a male
6 other than the woman's husband alleges that he, not the husband, is the child's
7 father, a party may allege that a judicial determination that a ~~man~~ male other than
8 the husband is the father is not in the best interest of the child. If the court or a ~~circuit~~
9 ~~or~~ supplemental court commissioner under s. 757.675 (2) (g) determines that a
10 judicial determination of whether a ~~man~~ male other than the husband is the father
11 is not in the best interest of the child, no genetic tests may be ordered and the action
12 shall be dismissed.

13 **(2) ORDER FOR TESTS.** ~~At If at~~ the first appearance, if it appears from a sufficient
14 petition or affidavit of the child's mother or an alleged father, or from sworn
15 testimony of the child's mother or an alleged father, that there is probable cause to
16 believe that any of the males named has had sexual intercourse with the mother
17 during a possible time of the child's conception, ~~the court may, or upon the request~~
18 ~~of any party shall, order~~ any of the named persons to submit to genetic tests. The
19 tests shall be conducted in accordance with s. ~~767.48~~ 767.84. The court is not
20 required to order a person who has undergone a genetic test under s. 49.225 to submit
21 to another genetic test under this subsection unless a party requests additional tests
22 under s. ~~767.48~~ 767.84 (2).

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SECTION 199

1 **SECTION 199.** 767.459 (title) of the statutes is renumbered 767.865 (title) and
2 amended to read:

3 **767.865 (title) ~~Appearance on behalf of deceased~~ Deceased respondent.**

4 **SECTION 200.** 767.459 of the statutes is renumbered 767.865 (1) (a) and
5 amended to read:.

6 767.865 (1) (a) The personal representative or ~~an attorney, if there is no~~
7 personal representative, a guardian ad litem in accordance with par. (b) may appear
8 for a deceased respondent ~~who is the alleged father~~ whenever an appearance by the
9 respondent is required. The summons and petition shall be served on the personal
10 representative of and guardian ad litem for the deceased respondent under s.
11 767.813 (3).

NOTE: See the note to SEC. 257 of this bill.

12 **SECTION 201.** 767.46 of the statutes is renumbered 767.88, and 767.88 (1), as
13 renumbered, is amended to read:

14 767.88 (1) PROCEDURE: EVIDENCE. A pretrial hearing shall be held before the
15 court or a ~~circuit or~~ supplemental court commissioner under s. 757.675 (2) (g). A
16 record or minutes of the proceeding shall be kept. At the pretrial hearing the parties
17 may present and cross-examine witnesses, request genetic tests, and present other
18 evidence relevant to the determination of paternity.

19 **SECTION 202.** 767.463 of the statutes is renumbered 767.855 and amended to
20 read:

21 **767.855 Dismissal if adjudication not in child's best interest.** Except as
22 provided in s. ~~767.458~~ 767.863 (1m), at any time in an action to establish the
23 paternity of a child, upon the motion of a party or guardian ad litem, the court or
24 ~~circuit or~~ supplemental court commissioner under s. 757.675 (2) (g) may, with respect

SENATE BILL 123

SECTION 202

1 to a ~~man~~ male, refuse to order genetic tests, if genetic tests have not yet been taken,
2 and dismiss the action if the court or ~~circuit or~~ supplemental court commissioner
3 determines that a judicial determination of whether the ~~man~~ male is the father of
4 the child is not in the best interest of the child.

5 **SECTION 203.** 767.465 (title), (1), (1m), (2) and (2m) (title) and (a) of the statutes
6 are renumbered 767.893 (title), (1), (1m), (2) and (2m) (title) and (a), and 767.893
7 (1m), (2) (a) and (b) and (2m) (a), as renumbered, are amended to read:

8 **767.893 (1m) JUDGMENT WHEN MOTHER FAILS TO APPEAR.** Notwithstanding sub.
9 (1), a court may enter an order adjudicating the alleged father, or ~~man~~ male alleging
10 that he is the father, to be the father of the child under s. ~~767.51~~ 767.89 if the mother
11 of the child fails to appear at the first appearance, ~~unless the first appearance is not~~
12 ~~required under s. 767.457 (2)~~, scheduled genetic test, pretrial hearing, or trial if
13 sufficient evidence exists to establish the ~~man~~ male as the father of the child.

14 **(2) (a)** Except as provided in sub. (2m), if a respondent is the alleged father and
15 fails to appear at the first appearance, ~~unless the first appearance is not required~~
16 ~~under s. 767.457 (2)~~, scheduled court-ordered genetic test, pretrial hearing, or trial,
17 the court shall enter an order adjudicating the respondent to be the father and
18 appropriate orders for support, legal custody, and physical placement. The orders
19 shall be either served on the respondent or mailed by regular, registered, or certified
20 mail, to the last-known address of the respondent. ~~The orders shall take effect 30~~
21 ~~days after service or 30 days after the date on which the orders were mailed unless,~~
22 ~~within that time, the respondent presents to the court or a circuit or supplemental~~
23 ~~court commissioner under s. 757.675 (2) (g) evidence of good cause for failure to~~
24 ~~appear or failure to have undergone a court-ordered genetic test.~~

SENATE BILL 123**SECTION 203**

NOTE: Amended to delete language requiring a delay in the effective date of default judgment orders in paternity actions. The paternity reform committee recommended that default judgments in paternity cases take effect immediately.

1 (b) A default judgment may not be entered under par. (a) if there is more than
2 one person alleged in the petition to be the father, unless ~~only~~ any of the following
3 applies:

4 1. Only one of those persons fails to appear and all of the other male
5 respondents have been excluded as the father.

NOTE: See SEC. 262 in this bill for subd. 2.

6 (2m) (a) At any time after service of the summons and petition, a respondent
7 who is the alleged father may, with or without appearance in court and subject to the
8 approval of the court, in writing acknowledge that he has read and understands the
9 notice under s. ~~767.455~~ 767.813 (5g) and stipulate that he is the father of the child
10 and for child support payments, legal custody, and physical placement. The court
11 may not approve a stipulation for child support unless it provides for payment of
12 child support determined in a manner consistent with s. ~~767.25~~ 767.511 or ~~767.51~~
13 767.89.

14 **SECTION 204.** ~~767.465~~ (2m) (b) of the statutes is repealed.

NOTE: Repeals s. ~~767.465~~ (2m) (b), relating to waiver of first appearance. See the
note to SEC. 188 in this bill.

15 **SECTION 205.** ~~767.465~~ (2m) (c), (3) and (4) of the statutes are renumbered
16 ~~767.893~~ (2m) (c), (3) and (4).

17 **SECTION 206.** ~~767.466~~ of the statutes is renumbered ~~767.895~~.

18 **SECTION 207.** ~~767.47~~ of the statutes is renumbered ~~767.87~~, and ~~767.87~~ (1) (c),
19 (1m) (d) and (3), as renumbered, are amended to read:

20 ~~767.87~~ (1) (c) Genetic test results under ~~ss. s. 49.225, 767.48~~ 767.84, or 885.23.

21 (1m) (d) Prior to the entry of the judgment under s. ~~767.51~~ 767.89.

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SECTION 207

1 **(3) EVIDENCE OF IDENTIFIED MALE NOT UNDER JURISDICTION.** Except as provided
2 in s. ~~767.48~~ 767.84 (4), in an action against an alleged father, evidence offered by him
3 with respect to an identified ~~man~~ male who is not subject to the jurisdiction of the
4 court concerning that ~~man's~~ male's sexual intercourse with the mother at or about
5 the presumptive time of conception of the child is admissible in evidence only after
6 the alleged father has undergone genetic tests and made the results available to the
7 court.

8 **SECTION 208.** 767.475 of the statutes is renumbered 767.82, and 767.82 (1) (b),
9 (2m) and (7m), as renumbered, are amended to read:

10 767.82 (1) (b) The court shall appoint a guardian ad litem for the child if s.
11 ~~767.045~~ 767.407 (1) (a) or (c) applies or if the court has concern that the child's best
12 interest is not being represented.

13 **(2m) CUSTODY PENDING COURT ORDER.** If there is no presumption of paternity
14 under s. 891.41 (1) or if paternity is acknowledged under s. 767.805 (1), the mother
15 shall have sole legal custody of the child until the court orders otherwise.

NOTE: Creates language specifying that if paternity is acknowledged under s.
767.805 (1) [renumbered from s. 767.62 (1)], the mother has sole legal custody of the child
until the court orders otherwise. Current law is silent on legal custody where paternity
is acknowledged and the court has not ordered otherwise.

16 **(7m) WHEN ACTION HAS PRIORITY.** The court shall give priority to an action
17 brought under s. ~~767.45~~ whenever 767.80 if the petition under s. ~~767.45~~ 767.80 (5)
18 indicates that the matter was referred under s. 48.299 (6) (a) or 938.299 (6) (a) by a
19 court assigned to exercise jurisdiction under chs. 48 and 938.

20 **SECTION 209.** 767.477 of the statutes is renumbered 767.85, and 767.85 (2), as
21 renumbered, is amended to read:

22 767.85 (2) **CONSIDERATIONS.** Before making any temporary order under sub. (1),
23 the court shall consider those factors that the court is required to consider when

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SECTION 209

1 granting a final judgment on the same subject matter. If the court makes a
2 temporary child support order that deviates from the amount of support that would
3 be required by using the percentage standard established by the department under
4 s. 49.22 (9), the court shall comply with the requirements of s. ~~767.25~~ 767.511 (1n).

5 **SECTION 210.** 767.48 (title) of the statutes is renumbered 767.84 (title).

6 **SECTION 211.** 767.48 (1) (a) of the statutes is renumbered 767.84 (1) (a) 1. and
7 amended to read:

8 **767.84 (1) (a) 1.** ~~The~~ Except as provided in subd. 2., the court ~~may, and upon~~
9 ~~request of a party shall,~~ require the child, mother, any male for whom there is
10 probable cause to believe that he had sexual intercourse with the mother during a
11 possible time of the child's conception, or any male witness who testifies or will testify
12 about his sexual relations with the mother at a possible time of conception to submit
13 to genetic tests. Probable cause of sexual intercourse during a possible time of
14 conception may be established by a sufficient petition or affidavit of the child's
15 mother or an alleged father, filed with the court, or after an examination under oath
16 of a party or witness, when the court determines ~~such~~ that an examination is
17 necessary. The court is not required to order a person who has undergone a genetic
18 test under s. 49.225 to submit to another test under this ~~paragraph~~ subdivision
19 unless a party requests additional tests under sub. (2).

NOTE: Requires genetic tests in every case except defaults, voluntary
acknowledgements, and some deceased father cases. Based on a recommendation of the
paternity reform committee. The reform committee cited as its reason for the change:

"To reduce the number of paternity cases being reopened. Some
cases are reopened after 15 or more years. Such reopenings are very
expensive for the courts and very detrimental to children."

See also SEC. 250 of this bill.

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1 ~~SECTION 212. 767.48 (1) (b) and (1m) to (7) of the statutes are renumbered~~
2 767.84 (1) (b) and (1m) to (7), and 767.84 (4) and (5) (b), as renumbered, are amended
3 to read:

4 767.84 (4) TESTS EXCLUDING PATERNITY; REFUSAL TO SUBMIT TO TEST. Whenever
5 the results of genetic tests exclude Genetic test results excluding an alleged father
6 as the father of the child, ~~this evidence shall be~~ are conclusive evidence of
7 nonpaternity and the court shall dismiss any paternity action with respect to that
8 alleged father. ~~Whenever the results of genetic tests exclude~~ Genetic test results
9 excluding any male witness from possible paternity, the tests shall be are conclusive
10 evidence of nonpaternity of the male witness. Testimony relating to sexual
11 intercourse or possible sexual intercourse of the mother with any person excluded as
12 a possible father, as a result of a genetic test, is inadmissible as evidence. ~~If any party~~
13 ~~refuses~~ Refusal of a party to submit to a genetic test, ~~this fact shall be disclosed to~~
14 the fact finder. Refusal to submit to a genetic test ordered by the court is a contempt
15 of the court for failure to produce evidence under s. ~~767.47~~ 767.87 (5). If the action
16 was brought by the child's mother but she refuses to submit herself or the child to
17 genetic tests, the action shall be dismissed.

18 (5) (b) If 2 or more identical series of genetic tests are performed upon the same
19 person, regardless of whether the tests were ordered under this section or s. 49.225
20 or ~~767.458~~ 767.863 (2), the court shall require the person requesting the 2nd or
21 subsequent series of tests to pay for it the series in advance, unless the court finds
22 that the person is indigent.

23 ~~SECTION 213. 767.481 (8) of the statutes is created to read:~~

24 767.481 (8) NOT APPLICABLE TO PATERNITY ACTIONS. This section does not apply
25 to paternity actions under subch. IX.

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SECTION 213

NOTE: New sub. (8) codifies a court of appeals decision clarifying that s. 767.327, stats., does not apply to paternity actions. [In re the Paternity of Kaila, 241 Wis. 2d 50, 622 N.W.2d 770 (Ct. App. 2000).] In that case, the court, citing a recent law journal article, noted:

“Wisconsin Stat. s. 767.51 (6) expressly applies Wis. Stat. 767.325 to paternity actions and not s. 767.327. This omission of s. 767.327 from paternity actions was not accidental:

When the 1995 amendment [1995 Wisconsin Act 70] was being drafted, adding removal to s. 767.51 (6) was included in the initial drafts. It was removed, however, prior to the final draft. This decision was not without a debate. Those in favor of inclusion argued that removal statutes were designed with the best interest of the child as the primary objective The other side of the issue argued that inclusion of paternity would be confusing and unnecessary. Many paternity mothers are relatively unsophisticated, whereas many of the respondents have little interest in their children. For those men seriously interested in their relationship with the child, the general modification statute, [s. 767.325, stats.], provides ample opportunity to contest a move.

Judith Hartig-Osanka and Gregg Herman, *Removal After Kerkvliet*, Wisconsin Journal of Family Law, Vol. 20 at 33 (Apr. 2000). Thus, the legislature did not intend s. 767.327, stats., to apply to paternity actions.”.

1 SECTION 214. ~~767.50 of the statutes is renumbered 767.883, and 767.883 (1),~~
2 ~~as renumbered, is amended to read.~~ INSERT 5-17

3 767.883 (1) TWO PARTS. The trial shall be divided into 2 parts. ~~The, the first~~
4 ~~part shall deal dealing~~ with the determination of paternity. ~~The and the 2nd part~~
5 ~~shall deal dealing~~ with child support, legal custody, periods of physical placement,
6 and related issues. ~~At the first part of the trial, the~~ The main issue at the first part
7 shall be whether the alleged or presumed father is or is not the father of the mother’s
8 child, but if the child was born to the mother while she was the lawful wife of a
9 specified man ~~there shall first be determined, as provided in s. 891.39, male~~ the prior
10 issue of whether the husband was not the father of the child shall be determined first,
11 as provided under s. 891.39. The first part of the trial shall be by jury only if the
12 defendant verbally requests a jury trial either at the initial appearance or pretrial
13 hearing or requests a jury trial in writing prior to the pretrial hearing. The court may
14 direct, and, if requested by either party, before the introduction of any testimony in

SENATE BILL 123**SECTION 214**

1 the party's behalf, shall direct the jury, ~~in cases where there is a jury,~~ to find a special
2 verdict as to any of the issues specified in this section, except that the court shall
3 make all of the findings enumerated in s. ~~767.51~~ 767.89 (2) to (4). If the mother is
4 dead, becomes insane, cannot be found within the jurisdiction, or fails to commence
5 or pursue the action, the proceeding does not abate if any of the persons under s.
6 ~~767.45~~ 767.80 (1) makes a motion to continue. The testimony of the mother taken
7 at the pretrial hearing may in any such case be read in evidence if it is competent,
8 relevant, and material. The issues of child support, custody and visitation, and
9 related issues shall be determined by the court either immediately after the first part
10 of the trial or at a later hearing before the court.

11 **SECTION 215.** Subchapter VI (title) of chapter 767 [precedes 767.501] of the
12 statutes is created to read:

CHAPTER 767**SUBCHAPTER VI****SUPPORT AND MAINTENANCE**

13
14
15
16 **SECTION 216.** 767.501 (1) (title) and (2) (title) of the statutes are created to read:

17 767.501 (1) (title) DEFINITIONS.

18 (2) (title) WHO MAY COMMENCE; SUPPORT DETERMINATION.

19 **SECTION 217.** 767.501 (4) of the statutes is created to read:

20 767.501 (4) LEGAL CUSTODY AND PHYSICAL PLACEMENT. Upon request of a party
21 to an action under this section, the court may make orders concerning the legal
22 custody and physical placement of any minor child of the parties in accordance with
23 s. 767.41.

NOTE: Expressly authorizes a request for and determination of legal custody and physical placement in conjunction with an action to compel support and maintenance under renumbered s. 767.501 (former s. 767.08). See, also, SEC. 96 of this bill.

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SECTION 218

1 **SECTION 218.** 767.51 of the statutes is renumbered 767.89, and 767.89 (2), (3)
2 (b), (c) and (f), (4) (a) (intro.) and (6), as renumbered, are amended to read:

3 **767.89 (2) REPORT TO STATE REGISTRAR.** The clerk of court or county child support
4 agency under s. 59.53 (5) shall file with the state registrar, within 30 days after the
5 entry of a judgment or order determining paternity, a report showing the names,
6 dates, and birth places of the child and the father, the social security numbers of the
7 mother, father, and child, and the maiden name of the mother on a form designated
8 by the state registrar, along with the fee set forth in s. 69.22 (5), which the clerk of
9 court or county child support agency shall collect.

NOTE: This is a technical change. 2001 Wisconsin Act 16 amended s. 69.15 (1) (b),
stats., to permit the state registrar to change information on a birth certificate if, among
other things, for a paternity action, a clerk of court or county child support agency sends
certain information to the state registrar. Prior law referred only to a clerk of court
providing such information. The bill amends s. 767.89 (2) [renumbered from s. 767.51 (2),
stats.] to incorporate that change, which was inadvertently not made in Act 16.

10 **(3) (b)** Orders for the legal custody of and periods of physical placement with
11 the child, determined in accordance with s. ~~767.24~~ 767.41.

12 (c) An order requiring either or both of the parents to contribute to the support
13 of any child of the parties who is less than 18 years old, or any child of the parties who
14 is less than 19 years old if the child is pursuing an accredited course of instruction
15 leading to the acquisition of a high school diploma or its equivalent, determined in
16 accordance with s. ~~767.25~~ 767.511.

17 (f) An order requiring either or both parties to pay or contribute to the costs of
18 the guardian ad litem fees, genetic tests as provided in s. ~~767.48~~ 767.84 (5), and other
19 costs.

20 **(4) (a) (intro.)** Subject to par. (b), liability for past support of the child ~~shall be~~
21 is limited to support for the period after the day on which the petition in the action

SENATE BILL 123**SECTION 218**

1 under s. ~~767.45~~ 767.80 is filed, unless a party shows, to the satisfaction of the court,
2 all of the following:

3 **(6) OTHER APPLICABLE PROVISIONS.** Sections ~~767.24, 767.245, 767.263, 767.265,~~
4 ~~767.267, 767.29, 767.293, 767.30, 767.305, 767.31, 767.32 and 767.325~~ 767.41,
5 767.43, 767.451, 767.57, 767.58, 767.59, 767.71, 767.75, 767.76, 767.77, and 767.78,
6 where applicable, shall apply to a judgment or order under this section.

7 **SECTION 219.** 767.511 (1) (c), (1g) (title), (1j) (title), (1m) (title), (1n) (title), (2)
8 (title), (3) (title) and (4) (title) of the statutes are created to read:

9 767.511 (1) (c) In addition to ordering child support for a child under par. (a),
10 assign as a support obligation responsibility for, and direct the manner of payment
11 of, the child's health care expenses under s. 767.513.

NOTE: Health care expenses for a child are now dealt with in a section separate from the general child support section. (This bill renumbers current s. 767.25 (4m) and makes it a separate section; see SEC. 104 of the bill.) The above provision, which is located in the general child support section (renumbered s. 767.511), is intended to clarify that an order regarding health care expenses is to be considered a support obligation. In addition, it is intended to clarify that statutory cross-references to child support under s. 767.511 include a child's health care expenses under s. 767.513.

12 **(1g) (title) CONSIDERATION OF FINANCIAL INFORMATION.**

13 **(1j) (title) PERCENTAGE STANDARD GENERALLY REQUIRED.**

14 **(1m) (title) DEVIATION FROM STANDARD; FACTORS.**

15 **(1n) (title) DEVIATION FROM STANDARD; RECORD.**

16 **(2) (title) SEPARATE FUND OR TRUST.**

17 **(3) (title) EFFECT OF PHYSICAL PLACEMENT VIOLATION.**

18 **(4) (title) AGE OF CHILD ELIGIBLE FOR SUPPORT.**

19 **SECTION 220.** 767.513 (title), (4) (title) and (5) (title) of the statutes are created
20 to read:

21 **767.513 (title) Child health care expenses.**

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SECTION 220

1 (4) (title) HEALTH BENEFIT PLAN; EMPLOYER OBLIGATION.

2 (5) (title) RECOVERY BY STATE OF 3RD PARTY PAYMENTS.

3 SECTION 221. 767.52 of the statutes is renumbered 767.83, and 767.83 (1), (2m)
4 and (3), as renumbered, are amended to read:

5 767.83 (1) GENERALLY. At the pretrial hearing, at the trial, and in any further
6 other proceedings in any paternity action, any party may be represented by counsel.
7 If the male respondent is indigent and the state is the petitioner under s. 767.45
8 767.80 (1) (g), the petitioner is represented by a government attorney as provided in
9 s. ~~767.45~~ 767.80 (6), or the action is commenced on behalf of the child by an attorney
10 appointed under s. ~~767.045~~ 767.407 (1) (c), counsel shall be appointed for the
11 respondent as provided in ch. 977, and subject to the limitations under sub. (2m),
12 unless the respondent knowingly and voluntarily waives the appointment of counsel.

13 (2m) WHEN APPOINTED REPRESENTATION PROVIDED. Representation by an
14 attorney appointed under sub. (1) shall be provided only after the results of any
15 genetic tests have been completed and only if all of the results fail to show that the
16 alleged father is excluded and fail to give rise to the rebuttable presumption under
17 s. ~~767.48~~ 767.84 (1m) that the alleged father is the father of the child.

18 (3) APPEARANCE BY STATE'S ATTORNEY NOT AFFECTED. This section does not
19 prevent an attorney responsible for support enforcement under s. 59.53 (6) (a) or any
20 other attorney employed under s. 49.22 or 59.53 (5) from appearing in any paternity
21 action as provided under s. ~~767.45~~ 767.80 (6).

22 SECTION 222. 767.53 of the statutes is renumbered 767.853, and 767.853 (3)
23 (intro.), as renumbered, is amended to read:

24 767.853 (3) PAST PROCEEDINGS. (intro.) Subject to s. ~~767.19~~ 767.13, a record of
25 a past proceeding is open to public inspection if all of the following apply:

SENATE BILL 123**SECTION 223**

1 **SECTION 223.** 767.55 (title), (2) (title) and (3) (title) of the statutes are created
2 to read:

3 **767.55 (title) Child support: employment-related orders.**

4 **(2) (title) NONCUSTODIAL PARENT.**

5 **(3) (title) ABSENT PARENT.**

6 **SECTION 224.** 767.553 (1) (title), (4) (title) and (5) (title) of the statutes are
7 created to read:

8 767.553 **(1) (title) WHEN ADJUSTMENT MAY BE ORDERED.**

9 **(4) (title) IMPLEMENTATION; WHEN EFFECTIVE.**

10 **(5) (title) REVISION OR REMEDIAL SANCTIONS.**

11 **SECTION 225.** 767.57 (1) (title), (1e) (title) and (4) (title) of the statutes are
12 created to read:

13 767.57 **(1) (title) PAYMENT TO DEPARTMENT.**

14 **(1e) (title) RECEIVING AND DISBURSING FEE.**

15 **(4) (title) PROCEDURE FOR CERTAIN CHILD RECIPIENTS.**

16 **SECTION 226.** 767.58 (2) (title) of the statutes is created to read:

17 767.58 **(2) (title) INFORMATION FOR CHILD SUPPORT AGENCY.**

18 **SECTION 227.** 767.59 (1k) of the statutes is created to read:

19 767.59 **(1k) MAINTENANCE: CHANGE IN COST OF LIVING.** In an action under this
20 section to revise maintenance payments, a substantial change in the cost of living for
21 either party or as measured by the federal bureau of labor statistics may be sufficient
22 to support a revision of the amount of maintenance, except that a change in an
23 obligor's cost of living is not by itself sufficient if payments are expressed as a
24 percentage of income.

NOTE: Restates the last sentence of current s. 767.32 (1) (a).

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SECTION 228

1 **SECTION 228.** 767.59 (2) (title) of the statutes is created to read:

2 767.59 (2) (title) PERCENTAGE STANDARD REQUIRED; EXCEPTIONS.

3 **SECTION 229.** 767.60 of the statutes is renumbered 767.803 and amended to
4 read:

5 **767.803 Determination of marital children.** ~~In any case where~~ If the father
6 and mother of ~~any a~~ nonmarital child ~~shall~~ enter into a lawful marriage or a marriage
7 which appears and they believe is lawful, except where the parental rights of the
8 mother were terminated ~~prior thereto, that~~ before either of these circumstances, the
9 child ~~shall thereby become~~ becomes a marital child, ~~shall be~~ is entitled to a change
10 in birth certificate under s. 69.15 (3) (b), and shall enjoy all of the rights and
11 privileges of a marital child as if he or she had been born during the marriage of the
12 parents; ~~and this.~~ This section shall be taken to apply applies to all cases ~~prior to~~
13 before, on, or after its effective date, as well as those subsequent thereto but no estate
14 already vested shall be divested by this section and ss. 765.05 to 765.24 and 852.05.
15 The ~~issue~~ children of all marriages declared void under the law ~~shall, nevertheless,~~
16 be are nevertheless marital issue children.

17 **SECTION 230.** Subchapter VII (title) of chapter 767 [precedes 767.61] of the
18 statutes is created to read:

19 **CHAPTER 767**

20 **SUBCHAPTER VII**

21 **PROPERTY DIVISION**

22 **SECTION 231.** 767.61 (2) (title) and (3) (title) of the statutes are created to read:

23 767.61 (2) (title) PROPERTY SUBJECT TO DIVISION.

24 (3) (title) PRESUMPTION OF EQUAL DIVISION.

25 **SECTION 232.** 767.61 (4), (5) and (6) of the statutes are created to read:

SENATE BILL 123**SECTION 232**

1 767.61 (4) SEPARATE FUND OR TRUST OPTION. In dividing the property of the
2 parties under this section, the court may protect and promote the best interests of
3 a child of the parties described under s. 767.511 (4) by setting aside a portion of the
4 property in a separate fund or trust for the support, maintenance, education, and
5 general welfare of the child.

6 (5) RELATED PROVISIONS OF JUDGMENT. In a judgment described under sub. (1),
7 the court shall do all of the following:

8 (a) Direct that title to the property of the parties be transferred as necessary,
9 in accordance with the division of property set forth in the judgment.

10 (b) Include all of the following in the judgment:

11 1. Notification that it may be necessary for the parties to take additional
12 actions in order to transfer interests in their property in accordance with the division
13 of property set forth in the judgment, including such interests as interests in real
14 property, interests in retirement benefits, and contractual interests.

15 2. Notification that the judgment does not necessarily affect the ability of a
16 creditor to proceed against a party or against that party's property even though the
17 party is not responsible for the debt under the terms of the judgment.

18 3. Notification that an instrument executed by a party before the judgment
19 naming the other party as a beneficiary is not necessarily affected by the judgment
20 and it may be necessary to revise the instrument if a change in beneficiary is desired.

21 (6) RECORDING JUDGMENT AFFECTING REAL PROPERTY SUFFICIENT. A certified copy
22 of the portion of the judgment affecting title to real property, or a deed consistent with
23 the judgment, shall be recorded in the office of the register of deeds of the county in
24 which the real property is located.

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SECTION 232

NOTE: 1. Subsection (4) restates the last sentence of current s. 767.255 (1), stats. See SEC. 109 of this bill. The current provision only refers to a "minor child". However, the obligation for child support extends to 18 year olds who are in high school or its equivalent (current s. 767.25 (4), stats.). Therefore, the separate trust or fund option is extended to cover that situation as well as minor children.

2. Subsection (5) (a) is intended to replace current language in s. 767.255 (1), stats., requiring the court when dividing property to "divest and transfer the title of any such property accordingly". The revised language, more accurately reflecting current practice, requires the court to direct that title to be transferred as necessary, in accordance with the property division.

3. Subsection (5) (b) is new. It is intended to alert parties that additional action on their part may be necessary in order to implement the provisions of the judgment, that a property division judgment generally is not binding on creditors, and that additional action may be necessary to change prior beneficiary designations.

4. Subsection (6) clarifies that a deed consistent with the judgment may be recorded in lieu of the judgment. It replaces the following provision in current s. 767.255 (1), stats.: "A certified copy of the portion of the judgment that affects title to real estate shall be recorded in the office of the register of deeds of the county in which the lands so affected are situated."

1 **SECTION 233.** 767.62 of the statutes is renumbered 767.805, and 767.805 (2) (b),
2 (3) (b), (4) (intro.), (a) and (b), (5) (b) and (6) (b), as renumbered, are amended to read:

3 767.805 (2) (b) If a statement acknowledging paternity is timely rescinded as
4 provided in s. 69.15 (3m), a court ~~or circuit court commissioner~~ may not enter an
5 order specified in sub. (4) with respect to the man male who signed the statement as
6 the father of the child unless the man male is adjudicated the child's father using the
7 procedures set forth in ~~ss. 767.45 to 767.60~~ this subchapter, except for this section.

8 (3) (b) Except as provided in s. ~~767.045~~ 767.407, in an action specified in par.
9 (a) the court ~~or a circuit court commissioner~~ may appoint a guardian ad litem for the
10 child and shall appoint a guardian ad litem for a party who is a minor, unless the
11 minor party is represented by an attorney.

12 (4) **ORDERS WHEN PATERNITY ACKNOWLEDGED.** (intro.) In an action under sub. (3)
13 (a), if the persons who signed and filed the statement acknowledging paternity as
14 parents of the child had notice of the hearing, the court ~~or circuit court commissioner~~
15 shall make an order that contains all of the following provisions:

1 (a) Orders for the legal custody of and periods of physical placement with the
2 child, determined in accordance with s. ~~767.24~~ 767.41.

3 (b) An order requiring either or both of the parents to contribute to the support
4 of any child of the parties who is less than 18 years old, or any child of the parties who
5 is less than 19 years old if the child is pursuing an accredited course of instruction
6 leading to the acquisition of a high school diploma or its equivalent, determined in
7 accordance with s. ~~767.25~~ 767.511.

8 (5) (b) If a court in a proceeding under par. (a) determines that the ~~man~~ male
9 is not the father of the child, the court shall vacate any order entered under sub. (4)
10 with respect to the ~~man~~ male. The court or the county child support agency under
11 s. 59.53 (5) shall notify the state registrar, in the manner provided in s. 69.15 (1) (b),
12 to remove the ~~man's~~ male's name as the father of the child from the child's birth
13 certificate. No paternity action may thereafter be brought against the ~~man~~ male
14 with respect to the child.

15 (6) (b) Parties who signed and filed a statement acknowledging paternity
16 before April 1, 1998, may sign and file a new statement that fulfills the requirements
17 under par. (a). ~~Such a~~ The new statement supersedes any statement previously filed
18 with the state registrar and has the effects specified in this section.

19 **SECTION 234.** Subchapter VIII (title) of chapter 767 [precedes 767.70] of the
20 statutes is created to read:

21 **CHAPTER 767**

22 **SUBCHAPTER VIII**

23 **ENFORCEMENT**

24 **SECTION 235.** 767.71 of the statutes is created to read:

SENATE BILL 123**SECTION 235**

1 **767.71 Reconciling percentage–expressed support orders.** (1) REQUEST
2 FOR DETERMINATION. (a) In this section, “support order” means an order for child
3 support under this chapter or s. 948.22 (7), an order for family support under this
4 chapter, or a stipulation approved by the court for child support under this chapter.

5 (b) If a support order is or has been expressed as a percentage of parental
6 income, a party, including the state or a county child support agency under s. 59.53
7 (5) if the state is a real party in interest under s. 767.205 (2) (a), may request a
8 determination under this section of the amount due under the order. The court may
9 determine the amount due and, if ordered by the court, the county child support
10 agency shall reconcile the amount due with payments actually made to determine
11 if an arrearage exists.

12 (2) NOTICE AND AFFIDAVIT. (a) The party seeking the determination under this
13 section shall file with the court a notice of reconciliation of account and a supporting
14 affidavit. No later than 3 business days after filing, the party seeking the
15 determination shall serve the notice and affidavit on all other parties, including the
16 child support agency if the state is a real party in interest, by sending the notice and
17 affidavit by regular mail to the last–known address provided under s. 767.58 (2),
18 pursuant to s. 767.70.

19 (b) The notice of reconciliation of account shall include all of the following:

- 20 1. The period of time for which the reconciliation is sought.
- 21 2. A statement that, unless a party requests a hearing no later than 20 business
22 days after the date of the notice, the court may enter an order determining the
23 amount due under the percentage–expressed order and may enter a repayment order
24 that applies if the reconciliation of the amount due with payments made results in
25 an arrearage.

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1 3. The mailing address to which the request for a hearing must be delivered or
2 mailed to schedule a hearing under sub. (3).

3 (c) The supporting affidavit shall state the facts supporting a reasonable basis
4 for determining the payer's income during the period of time for which the
5 reconciliation is sought.

6 **(3) IF HEARING HELD.** (a) Within 10 business days after receiving a timely
7 request for a hearing, the court shall set the matter for hearing. The court shall send
8 notice of the date, time, and location of the hearing to the parties by regular mail at
9 their last-known addresses.

10 (b) At the hearing, the court may establish the appropriate charge under the
11 percentage order by determining the amount of the payer's income that is subject to
12 the percentage-expressed order during the period for which reconciliation is sought
13 and applying the ordered percentage to that amount. The court may enter a
14 repayment order that becomes effective if the reconciliation of the amount due with
15 payments made results in an arrearage.

16 **(4) IF NO HEARING.** If no party requests a hearing, the court shall review the
17 supporting affidavit within 60 days of filing. If the court finds that the affidavit
18 contains a reasonable basis for determining the payer's income during the period for
19 which reconciliation is sought, the court may enter an order determining the amount
20 due under the percentage-expressed order and may enter a repayment order that
21 becomes effective if the reconciliation of the amount due with payments made results
22 in an arrearage. The court shall send the order to the parties by regular mail to their
23 last-known addresses.

24 **(5) ENFORCEMENT.** Any arrearage that exists as a result of the reconciliation of
25 the amount due with payments made may be enforced under ch. 49 or this chapter.

SENATE BILL 123**SECTION 235**

NOTE: Recreates current s. 767.293:

(a) For improved clarity.

(b) To relieve courts and court commissioners from determining the amount of any arrearage that may exist. Instead, that determination is made by the county child support agency, which is in a better position to make the often difficult calculations necessary to reconcile charges against payments made.

1 **SECTION 236.** 767.73 (1) (title), (4) (title) and (5) (title) of the statutes are
2 created to read:

3 767.73 (1) (title) AUTHORITY TO SUSPEND.

4 (4) (title) APPLICATION TO PAST ARREARAGES.

5 (5) (title) RELATIONSHIP TO OTHER REMEDIES.

6 **SECTION 237.** 767.75 (title), (2m) (title), (3m) (title), (6m) (title), (7) (title) and
7 (7m) (title) of the statutes are created to read:

8 **767.75** (title) **Assignment of income for payment obligations.**

9 (2m) (title) UNPAID RECEIVING AND DISBURSING FEES; ASSIGNMENT.

10 (3m) (title) ASSIGNMENT OF UNEMPLOYMENT COMPENSATION BENEFITS.

11 (6m) (title) CONVERSION OF CERTAIN SUPPORT ORDERS TO FIXED AMOUNT.

12 (7) (title) RECEIPT OF MORE THAN ONE NOTICE OF ASSIGNMENT.

13 (7m) (title) CHANGE IN PAYROLL PERIOD.

14 **SECTION 238.** 767.76 (2) (title), (3) (title), (4) (title) and (6) (title) of the statutes
15 are created to read:

16 767.76 (2) (title) TRANSFER OF FUNDS BY FINANCIAL INSTITUTIONS.

17 (3) (title) PRIORITY OF TRANSFER AUTHORIZATION.

18 (4) (title) REVOCATION OF TRANSFER AUTHORIZATION.

19 (6) (title) LIABILITY IMMUNITY.

20 **SECTION 239.** 767.77 (4) (title) of the statutes is created to read:

21 767.77 (4) (title) INFORMATION ON BOAT OWNERSHIP.