

2015 DRAFTING REQUEST

Bill

Received: 1/11/2016 Received By: phurley
For: Legislative Council -law rev com Same as LRB: -3401
May Contact: By/Representing:
Subject: Dom. Rel. - paternity Drafter: phurley
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Pre Topic:

No specific pre topic given

Topic:

Eliminate appointment of guardian ad litem when statute of limitations has run for paternity

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	phurley 1/11/2016	aernstr 1/11/2016	_____	lparisi 1/11/2016	mbarman 1/11/2016	

FE Sent For:

*None
Needed*

<END>



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-3401/1

PJH:ahc

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2015 BILL

today
by 3

1 AN ACT *to repeal* 767.407 (1) (c) and 767.407 (1) (d); and *to amend* 767.80 (1)
2 (i), 767.82 (1) (b), 767.83 (1), 803.01 (3) (b) 2., 814.61 (1) (c) 1., 814.61 (7) (c),
3 977.05 (4) (i) 7. and 977.05 (6) (b) 1. of the statutes; **relating to:** appointing a
4 guardian ad litem in certain cases where a paternity action is barred by a
5 statute of limitations (suggested as remedial legislation by the Department of
6 Children and Families).

Analysis by the Legislative Reference Bureau

This bill eliminates the ability of a person responsible for enforcing a support action to request a court to appoint a guardian ad litem to bring a paternity action on behalf of a minor if the paternity of the minor has not been acknowledged and an action to determine paternity is barred by a statute of limitations.

For further information, see the NOTES provided by the Law Revision Committee of the Joint Legislative Council.

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the Department of Children and Families and introduced by the

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Law Revision Committee under s. 13.83 (1) (c) 4. and 5., stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

1 **SECTION 1.** 767.407 (1) (c) of the statutes is repealed.

NOTE: Repeals the statute that permits the appointment of a guardian ad litem in situations where the state is barred by a statute of limitations from commencing a paternity action.

2 **SECTION 2.** 767.407 (1) (d) of the statutes is repealed.

NOTE: Repeals the statute that directs a guardian ad litem appointed under s. 767.407 (1) (c), stats., to bring an action or motion for the determination of the child's paternity.

3 **SECTION 3.** 767.80 (1) (i) of the statutes is amended to read:

4 767.80 (1) (i) A guardian ad litem appointed for the child under s. 48.235,
5 ~~767.407 (1) (e)~~, or 938.235.

6 **SECTION 4.** 767.82 (1) (b) of the statutes is amended to read:

7 767.82 (1) (b) The court shall appoint a guardian ad litem for the child if s.
8 767.407 (1) (a) ~~or (e)~~ applies or if the court has concern that the child's best interest
9 is not being represented.

10 **SECTION 5.** 767.83 (1) of the statutes is amended to read:

11 767.83 (1) **GENERALLY.** At the pretrial hearing, at the trial, and in any other
12 proceedings in any paternity action, any party may be represented by counsel. If the
13 male respondent is indigent and the state is the petitioner under s. 767.80 (1) (g), or
14 the petitioner is represented by a government attorney as provided in s. 767.80 (6),
15 ~~or the action is commenced on behalf of the child by an attorney appointed under s.~~
16 ~~767.407 (1) (e)~~, counsel shall be appointed for the respondent as provided in ch. 977,
17 subject to the limitations under sub. (2m), unless the respondent knowingly and
18 voluntarily waives the appointment of counsel.

19 **SECTION 6.** 803.01 (3) (b) 2. of the statutes is amended to read:

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1 803.01 (3) (b) 2. When the plaintiff is a minor 14 years of age or over, the
2 guardian ad litem shall be appointed upon the plaintiff's application ~~or upon the~~
3 ~~state's application under s. 767.407 (1) (e);~~ or if the plaintiff is under that age or is
4 adjudicated incompetent or alleged to be incompetent, upon application of the
5 plaintiff's guardian or of a relative or friend ~~or upon application of the state under~~
6 ~~s. 767.407 (1) (e).~~ If the application is made by a relative, a friend, or the state, notice
7 thereof must first be given to the guardian if the plaintiff has one in this state; if the
8 plaintiff has none, then to the person with whom the minor or individual adjudicated
9 incompetent resides or who has the minor or individual adjudicated incompetent in
10 custody.

11 **SECTION 7.** 814.61 (1) (c) 1. of the statutes is amended to read:

12 814.61 (1) (c) 1. An action to determine paternity brought by the state or its
13 delegate under s. 767.80 (1) (g) or (h) ~~or commenced on behalf of the child by an~~
14 ~~attorney appointed under s. 767.407 (1) (e).~~

15 **SECTION 8.** 814.61 (7) (c) of the statutes is amended to read:

16 814.61 (7) (c) Paragraphs (a) and (b) do not apply to a petition or motion filed
17 by the state or its delegate in connection with an action to determine paternity under
18 s. 767.80 (1) (g), ~~to a petition or motion filed by an attorney appointed under s.~~
19 ~~767.407 (1) (e) in connection with an action to determine paternity when the~~
20 ~~circumstances specified in s. 767.407 (1) (e) 1. or 2. apply~~ or to a petition or motion
21 filed in an action under ch. 769.

22 **SECTION 9.** 977.05 (4) (i) 7. of the statutes is amended to read:

23 977.05 (4) (i) 7. Cases involving paternity determinations, as specified under
24 s. 767.83, in which the state is the petitioner under s. 767.80 (1) (g) ~~or in which the~~

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SECTION 9

1 ~~action is commenced on behalf of the child by an attorney appointed under s. 767.407~~
2 ~~(1) (c).~~

3 **SECTION 10.** 977.05 (6) (b) 1. of the statutes is amended to read:

4 977.05 **(6)** (b) 1. The action is not brought by the state, or its delegate under s.
5 59.53 (6) (a) ~~or an attorney appointed under s. 767.407 (1) (c).~~

NOTE: SECTIONS 3 to 10 delete cross-references to reflect the change made by
SECTION 1.

6 (END)

Barman, Mike

From: Bender-Olson, Katie
Sent: Monday, January 11, 2016 1:50 PM
To: LRB.Legal
Subject: Draft Review: LRB -4361/1

Please Jacket LRB -4361/1 for the SENATE.