
Wisconsin Legislative Council

ACT MEMO



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2019 Wisconsin Act 95
[2019 Senate Bill 158]

**Paternity Determinations Based
on Genetic Test Results**

2019 WISCONSIN ACT 95

2019 Wisconsin Act 95 creates a new procedure to establish paternity based on genetic tests and a new legal presumption of paternity. The act also expands the grounds on which a county child support agency may require, by subpoena, that a person submit to genetic tests, and modifies a court's authority to both order genetic tests in and dismiss a paternity action.

Legal Presumption of Paternity

Wisconsin law presumes that a man is a child's father if he and the child's mother are married at the time the child was conceived or born, or if he and the child's mother submit a signed statement acknowledging paternity to the state registrar, referred to as a voluntary acknowledgment of paternity.

The act creates a new legal presumption of paternity. Under the act, a man is presumed to be a child's father if no other man is presumed to be the father, and the man has been conclusively determined from genetic test results to be the father under a new procedure created by the act.

Conclusive Determination of Paternity

Under Wisconsin law, paternity may be established in two ways: by the birth parents of a child submitting a voluntary acknowledgment of paternity to the state registrar; or by a court entering a judgment of paternity in a paternity action.

The act creates an additional method to establish paternity, which has the same legal effect as a judgment of paternity. Under the act, genetic test results constitute a conclusive determination of paternity if all of the following conditions apply:

- Both the child's mother and the male are over 18 years of age.
- The genetic tests were required to be performed by a county child support agency pursuant to the agency's subpoena power.
- The test results show that the male is not excluded as the father and that the statistical probability of the male's parentage is 99.0 percent or higher.
- No other male is presumed to be the father.

If a county child support agency receives genetic test results and the above requirements are satisfied, the agency must notify the mother and male by regular mail at their last-known addresses of the following: the test results; the date on which a report will be filed with the state registrar if no timely objection is received; that an objection may be submitted in writing prior to the date on which the report will be filed with the state registrar; that the state will commence a paternity action if a timely

objection is submitted; and that an action affecting the family may be brought concerning legal custody, child support, or physical placement.

The agency must send the notice at least 15 days prior to the date on which it intends to file the report with the state registrar. If the mother or male timely object, the agency must commence a paternity action on behalf of the state. If neither the mother nor the male timely object, the agency must file the report with the state registrar, which adds the father to the child's birth record and creates a conclusive determination of paternity, effective on the date on which the report was submitted to the state registrar. Subsequently, an action affecting the family may be filed to address the issues of legal custody, child support, or physical placement.

Genetic Tests

Agency Subpoena for Genetic Tests

Wisconsin law authorizes a county child support agency to require, by subpoena, that a child, a child's mother, or the male alleged, or alleging himself, to be the father submit to genetic tests. A subpoena must be based on probable cause to believe that the male had sexual intercourse with the child's mother during a possible time of the child's conception. Such probable cause may be established by a sufficient affidavit of the child's mother or the male alleged, or alleging himself, to be the child's father.

Under the act, probable cause may also be established by a sufficient affidavit of a county child support agency based on information provided by the child's mother.

Court-Ordered Genetic Tests in a Paternity Action

In paternity actions, Wisconsin law allows a court to order genetic testing. The court must order genetic testing upon request of any party. However, the court is not required to order a person who has undergone a genetic test in response to an agency subpoena to submit to another test, unless a party requests independent tests.

The act generally requires a court to order genetic tests, unless any of the following apply:

- A person has undergone a genetic test in response to an agency subpoena, unless a party requests independent tests.
- The respondent is deceased and genetic material is not available without undue hardship.
- The respondent has failed to appear, genetic tests results show that another man is not excluded as the father, and the statistical probability of the other man's parentage is 99.0 percent or higher, so as to create a presumption of the other man's paternity, unless that presumption is rebutted.

Dismissal of Paternity Actions

Under prior law, a court may refuse to order genetic tests, if genetic tests have not yet been taken, and dismiss the action if the court determines that a judicial determination of whether the male is the father of the child is not in the child's best interest. In *Randy A.J. v. Norma I.J.*, 2004 WI 41, the Wisconsin Supreme Court held that this provision precludes a court from dismissing a paternity action if genetic tests have already been performed, even if the court finds that a judicial determination of paternity is not in the child's best interest.

Under the act, if the court determines that a judicial determination of whether a male is the father of the child is not in the child's best interest, the court may dismiss a paternity action, regardless of whether genetic tests have been performed or the results of the tests, if performed.

Effective date: 2019 Wisconsin Act 95 takes effect on August 1, 2020. The act's provisions creating a conclusive determination of paternity based on genetic tests first applies to genetic tests that are performed on August 1, 2020. The act's provisions regarding a court's authority to order genetic tests and to dismiss paternity actions based on the child's best interest first apply to paternity actions commenced on August 1, 2020.

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