

CHAPTER 298

AN ACT to amend 52.35, 52.355 and 52.36 (2) and (3) of the statutes, relating to paternity proceedings and related matters.

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

SECTION 1. 52.35 and 52.355 of the statutes are amended to read:

52.35 Upon the trial of the proceedings the *main* issue shall be whether the defendant is or is not the father of complainant's child, *but if the child was born to the complainant while she was the lawful wife of a specified man there shall first be determined the prior issue of whether the husband was not the father of such child.* The trial shall be by jury, if either party demands a jury, otherwise by the court; provided that such demand shall be made in writing at the time when the defendant is bound over for trial or within 20 days thereafter, and any neglect to make such demand shall be a waiver of the right to trial by jury. The court may in its discretion order a trial by jury of any issue of fact unless waived by the parties. As provided in s. 270.27, the court may, and when requested by either party, before the introduction of any testimony in his behalf, shall direct the jury to find a special verdict *as to any of the issues hereinabove set forth.* If the mother is dead or becomes insane or cannot be found within the jurisdiction or fails to prosecute, the proceeding does not abate, but the child shall be substituted as complainant and the case prosecuted as provided in s. 52.23. The testimony of the mother taken at the preliminary hearing may in any such case be read in evidence insofar as it is competent, relevant and material. The judge may at his discretion exclude the public from attendance at such trial.

52.355 The complainant shall have the burden of proving the issues involved by clear and satisfactory *preponderance of the evidence * * **; provided that if the child whose paternity is at issue was born to the complainant while she was the lawful wife of a specified man the complainant shall then have the burden ** * ** of proving ** * ** that the husband is not the father of such child *as required in s. 328.39.*

SECTION 2. 52.36 (2) and (3) of the statutes are amended to read:

52.36 (2) When the court determines that a blood test is relevant to any proceeding under sub. (1) or s. 325.23 the court shall, upon request of any party, order that such test be made by a duly qualified physician or physicians, each of whom has specialized in the field of clinical pathology ** * ** or who possess a certificate of qualification as a certified pathologist issued by the American board of pathology. In cases where definite exclusion is established by the first such test the court, if requested, shall order a second such test to be performed by an independent physician who possesses the same qualifications as the first, as set forth above. The court may order that the testimony of such physician or physicians be taken by deposition prior to the trial and they shall be subject to cross-examination by any person involved in the controversy. All arrangements for such tests shall be made by the party requesting the same and any failure on the part of said party to have said tests performed prior to the date of trial shall be deemed a waiver of said party's right to such tests unless good cause is shown to the contrary. The physician's fees for such tests shall be

advanced by the county; and any physician's fees for blood tests advanced by the county shall be taxed as costs pursuant to s. 271.04 as necessary fees of officers allowed by law.

(3) Whenever the results of said tests exclude the defendant as the father of the child the same shall be conclusive evidence of such fact and the court shall dismiss said action * * * . *Whenever the results of said tests exclude any male witness the same shall be conclusive evidence of such fact.* * * * Such tests shall be receivable in evidence only in cases where definite exclusion of any person is established. If any party refuses to submit to such test such fact shall be disclosed upon trial.

Approved August 13, 1959.
