

1979 Senate Bill 249

Date published: May 21, 1980

CHAPTER 352, Laws of 1979

AN ACT to repeal 52.21 to 52.34, 52.355 to 52.45 and 806.04 (3m); to renumber 765.25; to renumber and amend 52.35 and 767.01; to amend 46.03 (3), 48.02 (13), 49.19 (4) (j), 52.01 (4), 52.03 (1), (3), (4) and (5), 52.05, 52.055, 69.29 (1), 69.33 (1) and (9), 241.09, 757.69 (3) (g), chapter 767 (title), 767.37 (2), 767.38, 852.05 (1), (2), (3), 885.23, 891.395 and 893.195; and to create 46.03 (7) (bm), 69.29 (3), 69.334, 767.01 (2) and (3), 767.02 (1) (k), 767.45 to 767.53, 818.02 (1) (f), 891.40, 891.41,

893.196, 905.04 (4) (g), 977.05 (4) (i) 7 and 977.08 (2) (h) of the statutes, relating to the procedure for determining paternity.

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

SECTION 1. 46.03 (3) of the statutes is amended to read:

46.03 (3) TRUSTEE DUTY. Take and hold in trust (whenever it deems acceptance advantageous) all property transferred to the state to be applied to any specified purpose, use or benefit pertaining to any of the institutions under its control or the inmates thereof, and apply the same in accordance with the trust; and when ordered by the court, act as trustee of funds paid for the support of any child ~~in a proceeding under ss. 52.21 to 52.45~~ if appointed by the court or family court commissioner under s. 767.475 (7).

SECTION 2. 46.03 (7) (bm) of the statutes is created to read:

46.03 (7) (bm) Maintain a file containing records of artificial inseminations under s. 891.40 and records of declarations of paternity under s. 891.41 (1) (b) 1. The department shall release these records only upon an order of the court except that the department may use nonidentifying information concerning artificial inseminations for the purpose of compiling statistics and except that records relating to declarations of paternity may be used without a court order upon the written request of the department pursuant to its program responsibilities under s. 46.25.

SECTION 3. 48.02 (13) of the statutes is amended to read:

48.02 (13) "Parent" means either a biological parent, a husband who has consented to the artificial insemination of his wife under s. 891.40, or a parent by adoption. If the child is born out of wedlock but not subsequently legitimated or adopted, "parent" includes a person adjudged in a judicial proceeding to be the biological father. "Parent" does not include any person whose parental rights have been terminated.

SECTION 4. 49.19 (4) (j) of the statutes is amended to read:

49.19 (4) (j) A putative father of a dependent child may not be considered eligible for aid under this section until he has been adjudicated to be the child's father in a paternity proceeding under ch. 52 767, he has legitimated the child as provided in s. 767.60 or until he has adopted the child under ch. 48.

SECTION 5. 52.01 (4) of the statutes is amended to read:

52.01 (4) The circuit court shall in a summary way hear the allegations and proofs of the parties and by order require maintenance from these relatives, if they have sufficient ability (considering their own future maintenance and making reasonable allowance for the protection of the property and investments from which they derive their living and their care and protection in old age) in the following order: First the husband or wife; then the father; and ~~lastly~~ the mother. The order shall specify a sum which will be sufficient for the support of the dependent person, to be paid weekly or monthly, during a period fixed by the order or until the further order of the court. If the court is satisfied that any such relative is unable wholly to maintain the dependent person, but is able to contribute to the person's support, the court may direct 2 or more of the relatives to maintain the person and prescribe the proportion each shall contribute. If the court is satisfied that these relatives are unable together wholly to maintain the dependent person, but are able to contribute to the person's support, the court shall direct a sum to be paid weekly or monthly by each relative in proportion to ability. Contributions directed by court order, if for less than full support, shall be paid to the department of health and social services and distributed as required by state and federal law. Upon application of any party affected by the order and upon like notice and procedure, the court may modify such an order. Obedience to such an order may be enforced by proceedings for contempt.

SECTION 6. 52.03 (1), (3), (4) and (5) of the statutes are amended to read:

52.03 (1) If a ~~father or mother, being a widow or living separate from her husband,~~ person absconds or is about to abscond from his or her children or a ~~husband from his wife, or if a father, mother or husband~~ spouse, or is about to remove permanently from the municipality in which he or she resides leaving a wife spouse or children, or both, chargeable or likely to become chargeable upon the public for support or neglects or refuses to support or provide for the wife spouse or children, the county or municipality where the wife spouse or children may be, by the official or agency designated to administer public assistance, may apply to the circuit court for any county in which any real or personal property of the ~~father, mother or husband~~ parent or spouse is situated for a warrant to seize the property.

(3) Upon the return the circuit court may inquire into the facts and circumstances and may confirm the seizure or discharge the same. If the seizure is confirmed, the court shall from time to time direct what part of the personal property shall be sold and how much of the proceeds of the sales and the rents and profits of the real estate shall be applied toward the maintenance of the wife spouse or children of the person. All such sales shall be at public auction in accordance with the laws relating to execution sales of personalty and realty as provided in ss. 815.29 and 815.31.

(4) The county or municipality, respectively, shall receive the proceeds of all property so sold and the rents and profits of the real estate of such person and apply the same to the maintenance and support of the wife spouse or children of such person; and they shall account to the court for the moneys so received and for the application thereof from time to time.

(5) If the person whose property has been so seized shall return and support the wife spouse or children so abandoned or give security to the county or municipality, respectively, (to be approved by them) that ~~such wife~~ the spouse or children shall not thereafter be chargeable to such municipality, the court shall discharge such warrant and order the restoration of the property seized by virtue thereof and remaining unappropriated, or the unappropriated proceeds thereof, after deducting the expenses of such proceedings.

SECTION 7. 52.05 of the statutes is amended to read:

52.05 Abandonment; uniform act. (1) PENALTY. Any person who, without just cause, deserts or wilfully neglects or refuses to provide for the support and maintenance of his wife or her spouse or child under 18 years (legitimate or born out of wedlock) in destitute or necessitous circumstances shall be fined not more than \$500, or imprisoned not more than 2 years, or both. The parent of any child born out of wedlock who has made provision for the support of such child by giving bond, or by ~~settlement with the proper officers in accordance with ss. 52.21 to 52.45~~ an agreement approved by a court under s. 767.45 (2), on which such parent is not in default, shall not be subject to this section.

(2) ANY PERSON MAY MAKE COMPLAINT. Proceedings under this section may be instituted upon complaint made under oath or affirmation by the wife spouse or a child, the superintendent or acting superintendent or other officer in charge of public welfare agencies, the secretary of the department or case work supervisor II, or by any other person or organization, against any person guilty of either of the above-named offenses.

(3) ORDER FOR SUPPORT PENDENTE LITE. At any time before trial, upon petition of the complainant and upon notice to the defendant, the court, or a judge thereof in vacation, may enter such temporary order as may seem just, providing for support of the deserted wife spouse or children, or both, pendente lite, and may punish for violation of such order as for contempt.

(4) ORDER FOR SUPPORT IN LIEU OF PENALTY; RECOGNIZANCE. Before the trial, with the consent of the defendant, or at the trial, on entry of a plea of guilty, or after conviction, instead of imposing the penalty ~~hereinbefore~~ provided in this section or in addition thereto, the court in its discretion, having regard to the circumstances, and to the financial ability or earning capacity of the defendant, shall have the power to make an order, which

shall be subject to change by the court from time to time, as circumstances may require, directing the defendant to pay a certain sum weekly, semimonthly, monthly, or as the circumstances may permit, for a period not exceeding 2 years, to the wife spouse or to the guardian, curator or custodian of the said minor child or children, or to an organization or individual approved by the court as trustee; and shall also have the power to release the defendant from custody on probation for the period so fixed, upon his or her entering into a recognizance, with or without surety, in such sum as the court or a judge thereof in vacation may order and approve. The condition of the recognizance shall be such that if the defendant shall make his or her personal appearance in court whenever ordered to do so, and shall further comply with the terms of such the order of support, or of any subsequent modification thereof, then such the recognizance shall be void, otherwise of full force and effect.

(5) SENTENCE. If the court is satisfied by information and due proof under oath, that at any time during the 2-year period the defendant has violated the term of the order, it may forthwith proceed with the trial of the defendant under the original charge, or sentence him or her under the original conviction, or enforce the suspended sentence, or punish for violation of the order as for contempt and sentence the person to confinement in the county jail under s. 56.08, as the case may be. In case of forfeiture of recognizance, and enforcement thereof by execution, the sum recovered may, in the discretion of the court, be paid, in whole or in part, to the wife spouse, or to the guardian, curator, custodian or trustee of the said minor child or children, or to the county department of social services or public welfare.

(6) RULES OF EVIDENCE. No other or greater evidence shall be required to prove the marriage of such the husband and wife, or that the defendant is the father or mother of such the child or children, whether legitimate or illegitimate born out of wedlock, than is or shall be required to prove such facts in a civil action. In no prosecution under this section shall any existing statute or rule of law prohibiting the disclosure of confidential communications between husband and wife apply, and both husband and wife shall be competent and compellable witnesses to testify against each other to any and all relevant matters, including the fact of such the marriage and the parentage of such the child or children, but neither shall be compelled to give evidence incriminating himself or herself. Proof of the desertion of such-wife the spouse, child or children in destitute or necessitous circumstances or of neglect or refusal to provide for the support and maintenance of such wife the spouse, child or children shall be prima facie evidence that such desertion, neglect or refusal is wilful. Substantial failure by said any person to provide for such support or maintenance prior to the date when complaint is made under this section shall be prima facie evidence of intent hereunder.

SECTION 8. 52.055 of the statutes, as affected by chapter 32, laws of 1979, is amended to read:

52.055 Failure to support. (1) Any parent who intentionally neglects or refuses to provide for the necessary and adequate support of his or her child under 18 years (legitimate or born out of wedlock), or any person who, without just cause, intentionally neglects or refuses to provide for the necessary and adequate maintenance of his wife or her spouse, shall be guilty of a misdemeanor and may be fined not more than \$100, or imprisoned not more than 3 months in the county jail, or both. The parent of any child born out of wedlock who has made provision for the support of such child by giving bond, or by settlement with the proper officers in accordance with ss. 52.21 to 52.45 an agreement approved by a court under s. 767.45 (2), on which such parent is not in default, shall not be subject to this section. Substantial failure by said the parent or person to provide for such the support or maintenance for more than 21 consecutive days immediately prior to the date when complaint is made under this section shall be prima facie evidence of intent hereunder; but this provision shall not preclude a prosecution hereunder for failure to support for a lesser time. Substantial failure by said the parent or person to comply with

any part of a court order under ch. 767 for support of any such child under the age of 18 years or for such maintenance of his ~~wife~~ or her spouse shall be prima facie evidence of a violation of this section for prosecution ~~hereunder~~ under this section.

(2) Before the trial, with the consent of the defendant, or at the trial, on entry of a plea of guilty, or after conviction, instead of imposing the penalty in sub. (1) or in addition thereto, the court in its discretion, having regard to the circumstances, and to the financial ability or earning capacity of the defendant, may make an order, which shall be subject to change by the court from time to time as circumstances require, directing the defendant to pay a certain sum weekly, semimonthly, monthly, or as the circumstances permit, for a period not exceeding 2 years, to the ~~wife~~ spouse or to the guardian, curator or custodian of the ~~said~~ minor child or children, or to an organization or individual approved by the court as trustee, and may also release the defendant from custody on probation for the period so fixed, upon his or her entering into a recognizance, with or without surety, in such sum as the court or a judge ~~thereof~~ in vacation orders and approves. The condition of the recognizance shall be ~~such~~ that if the defendant makes personal appearance in court whenever so ordered and further complies with the terms of ~~such~~ the order of support, or of any subsequent modification thereof, then ~~such~~ the recognizance is void, otherwise of full force and effect.

(2m) Upon a showing of need to the court, the court shall order a hearing. At the hearing, the court may make an order directing the father to assign such salary or wages due him or to be due him in the future from his employer or successor employers to the clerk of court where the judgment in any action affecting ~~marriage~~ the family, as designated in s. 767.02, was granted, ~~and after judgment is entered under s. 52.37~~, as will be sufficient to pay the allowances, as adjudged by the court, for the support, maintenance and education of the minor children of the parties. ~~Such~~ The assignment shall be binding upon the employer and successor employers one week after service upon the employer of a true copy of the assignment signed by the employe and annexed to a copy of the order, by personal service or by registered or certified mail until further order of the court. For each payment the employer shall receive \$1 which the employer shall deduct from the money to be paid the employe. Section 241.09 shall not apply to assignments under this section. The employer may not use ~~such~~ the assignment as a basis for the discharge of an employe or for any disciplinary action against the employe. Compliance by an employer with the order operates as a discharge of the employer's liability to the employe as to that portion of the employe's wages so affected.

(3) If the court is satisfied by information and due proof under oath, that any time during the 2-year period the defendant has violated the term of the order, it may forthwith proceed with the trial of the defendant under the original charge, or sentence him or her under the original conviction, or enforce the suspended sentence, or may punish for violation of such order as for contempt and sentence the person to confinement in the county jail under s. 56.08, as the case may be. In case of the forfeiture of recognizance, and enforcement ~~thereof~~ by execution, the sum recovered may, in the discretion of the court, be paid in whole or in part, to the ~~wife~~ spouse, or to the guardian, curator, custodian, trustee of the minor children or to the county department of social services or public welfare.

SECTION 9. 52.21 to 52.34 of the statutes, as affected by chapter 32, laws of 1979, are repealed.

SECTION 10. 52.35 of the statutes, as affected by chapter 34, laws of 1979, is renumbered 767.50 and amended to read:

767.50 (title) Trial. Upon the trial of the proceedings the main issue shall be whether the ~~defendant~~ alleged or presumed father is or is not the father of ~~complainant's~~ the mother's child, but if the child was born to the ~~complainant~~ mother while she was the lawful wife of a specified man there shall first be determined, as provided in s. 891.39, the

prior issue of whether the husband was not the father of ~~such~~ the 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 unless the defendant waives the right to trial by jury in writing or by statement in open court, on the record, with the approval of the court and the complainant.~~ The court may direct, and if requested by either party, before the introduction of any testimony in the party's behalf, shall direct the jury to find a special verdict as to any of the issues specified in this section ~~except that the court shall make all the findings enumerated in s. 767.51 (2) to (5).~~ If the mother is dead, becomes insane, cannot be found within the jurisdiction or fails to ~~prosecute~~ commence or pursue the action, the proceeding does not abate, ~~but the child shall be substituted as complainant and the case prosecuted as provided in s. 52.23 if any of the persons under s. 767.45 (1) makes a motion to continue.~~ The testimony of the mother taken at the ~~preliminary~~ pretrial hearing may in any such case be read in evidence if it is competent, relevant and material. The judge may exclude the public from attendance at the trial.

SECTION 11. 52.355 to 52.45 of the statutes are repealed.

SECTION 12. 69.29 (1) of the statutes is amended to read:

69.29 (1) The certificate of birth shall contain such items as the department determines are necessary and shall agree in the main with the standard form recommended by the U.S. public health service. Whenever a child is born to a woman while she is the lawful wife of a specified man, the certificate of birth for ~~such~~ the child shall list the name of the husband as the father of ~~such~~ the child unless and until the paternity of ~~such~~ the child is proven by ~~clear and satisfactory preponderance of the evidence and in any proceeding under ss. 52.21 to 52.45 such birth record shall not be admissible in evidence ch. 767.~~

SECTION 13. 69.29 (3) of the statutes is created to read:

69.29 (3) If the mother is unmarried at the time of conception or birth, the name of the father shall not be entered on the certificate of birth unless a statement of paternity on a form supplied by the state registrar is completed and signed by the mother and by the person named as the father. The document shall be filed with the state registrar and creates a presumption of paternity under s. 891.41. The state registrar shall correct the certificate as provided in ss. 69.25 (2) and 69.335. Certified copies of the certificate are not subject to the court order requirement of s. 69.30 (1). If the child's surname is to be changed to that of the father, a new birth certificate shall be issued and the old certificate impounded according to the procedures specified in s. 69.33 (5).

SECTION 14. 69.33 (1) of the statutes, as affected by chapter 32, laws of 1979, is amended to read:

69.33 (1) ~~On being advised under s. 48.94 of the adoption of any child whose birth has previously been registered or under s. 245.25 of the legitimation of any child by the marriage of the parents, the~~ The state registrar shall file a new birth certificate filled out and signed by the registrar or the registrar's authorized representative ~~whenever the state registrar receives notification from the clerk of the court under s. 48.94 that a child born in this state has been adopted and whenever the state registrar receives notification from any party that the father and mother of a child born out of wedlock in this state have married under s. 765.25.~~ In this new certificate reference shall be made to this section by number only. In all other respects the certificate shall be the same as other birth certificates and shall contain nothing else to differentiate it ~~therefrom.~~ ~~In case such adopted child was born elsewhere a new certificate may be filed under this section if the adoptive parent files with the state registrar a certified copy of the original birth certificate or satisfactory proof that the birth was not recorded from other birth certificates.~~ The place

of birth ~~may be given as the place where the adoption order was made~~ and the date of birth shall be taken from the original certificate, or, in the absence thereof, ~~from the adoption order except that if of an original certificate, a delayed registration under s. 69.22 shall be established if the child is more than one year old.~~ If the child was born outside of the United States, a new certificate shall be issued and the actual place of birth shall be given whether or not the natural parents were U.S. citizens, but if they were not, the certificate shall not be issued until proof of naturalization of the child has been furnished to the registrar.

SECTION 15. 69.33 (9) of the statutes is amended to read:

69.33 (9) If the state registrar receives notification of a judgment entered under s. ~~52.37 (3)~~ 767.51, the state registrar shall either make and file a new certificate, ~~following the provisions of this section so far as applicable,~~ or correct the old certificate as provided in s. 69.335.

SECTION 15m. 69.334 of the statutes is created to read:

69.334 Statement of paternity. If the mother of a child born out of this state is unmarried at the time of conception or birth, a statement of paternity on a form supplied by the state registrar may be completed and signed by the mother and by the person named as the father. The document shall be filed with the state registrar and creates a presumption of paternity under s. 891.41.

SECTION 16. 241.09 of the statutes is amended to read:

241.09 Assignment of wages. No assignment of the salary or wages of any married person ~~shall be~~ is valid for any purpose unless ~~such the~~ the assignment ~~shall be~~ is in writing signed by the person's spouse, if ~~such the~~ the spouse at the time is a member of the family, and unless the spouse's signature is witnessed by 2 disinterested witnesses; ~~nor shall any.~~ No assignment of the salary or wages of any person ~~be~~ is valid as to any such salary or wages ~~to accrue~~ accruing more than 6 months after the date of the making of ~~such the~~ the assignment, ~~and~~ except that any assignment of wages made in connection with a proceeding under s. 128.21 shall run concurrently with the period during which the amortization proceedings are in effect and shall become void upon the dismissal of the proceedings. Nothing in this section shall apply to assignments made under s. 109.09 or ch. 767, nor to any authorization from an employe to an employer directing deductions from wages to accrue in the future for union or employe club dues, insurance or annuities, war bond purchases, a revocable and voluntary deduction to a credit union or a state chartered financial institution operated primarily for the benefit of the employes of any particular employer or other financial institution under s. 705.01 (3), for contributions to the American Red Cross, a community fund or other similar charity, or any indebtedness to the employer. No assignment of salary or wages or voluntary deduction which is permitted under this section shall be valid if prohibited by s. 422.404.

SECTION 17. 757.69 (3) (g) of the statutes is amended to read:

757.69 (3) (g) Conduct a paternity proceeding according to the procedures set out in ch. ~~52~~ 767 whenever a court commissioner is specifically authorized to do so.

SECTION 18. 765.25 of the statutes, as affected by chapter 32, laws of 1979, is renumbered 767.60.

SECTION 19. Chapter 767 (title) of the statutes, as affected by chapter 32, laws of 1979, is amended to read:

CHAPTER 767

ACTIONS AFFECTING MARRIAGE THE FAMILY

SECTION 20. 767.01 of the statutes, as affected by chapter 32, laws of 1979, is renumbered 767.01 (1) and amended to read:

767.01 (1) The circuit courts have jurisdiction of all actions affecting ~~marriage and of all actions under s. 52.10 (or concurrent jurisdiction where other courts are vested with like jurisdiction)~~, the family and have authority to do all acts and things necessary and proper in such actions and to carry their orders and judgments into execution as prescribed in this chapter. All such actions affecting the family shall be commenced and conducted and the orders and judgments ~~therein~~ enforced according to these statutes in respect to actions in circuit court, as far as applicable, except as provided in this chapter ~~and in s. 52.10.~~

SECTION 21. 767.01 (2) and (3) of the statutes are created to read:

767.01 (2) A person who has sexual intercourse in this state thereby submits to the jurisdiction of the courts of this state as to an action brought under this chapter with respect to a child who may have been conceived by that act of intercourse.

(3) An action under s. 767.45 may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced.

SECTION 22. 767.02 (1) (k) of the statutes is created to read:

767.02 (1) (k) To determine paternity.

SECTION 23. 767.37 (2) of the statutes, as affected by chapter 32, laws of 1979, is amended to read:

767.37 (2) So far as a judgment of divorce affects the marital status of the parties the court has the power to vacate or modify the same judgment for sufficient cause shown, upon its own motion, or upon the application of both parties to the action, at any time within 6 months from the granting of such judgment. ~~But no~~ No such judgment shall be vacated or modified without service of notice of motion on the family court commissioner. The court may direct the family court commissioner or appoint some other attorney, to bring appropriate proceedings for the vacation of the judgment. The compensation of the family court commissioner when not on a salaried basis or other attorney for performing such services shall be at the rate of \$50 per day, which shall be paid out of the county treasury upon order of the presiding judge and the certificate of the clerk of the court. If the judgment is vacated it shall restore the parties to the marital relation that existed before the granting of such judgment. If after vacation of the judgment either of the parties ~~shall bring~~ brings an action in this state for divorce against the other the court may order the petitioner in such action to reimburse the county the amount paid by it to the family court commissioner or other attorney in connection with such vacation proceedings. Whenever a judgment of divorce is set aside under this subsection, the court shall order the record in the action impounded without regard to s. 767.19; and thereafter neither the record nor any part ~~thereof~~ of the record shall be offered or admitted into evidence in any action or proceeding except by special order of the court of jurisdiction upon good cause shown in any paternity proceedings under ~~ss. 52.21 to 52.45~~ this chapter or by special order of any court of record upon a showing of necessity to clear title to real estate.

SECTION 24. 767.38 of the statutes, as affected by chapter 32, laws of 1979, is amended to read:

767.38 Judgment revoked on remarriage. When a judgment of divorce has been granted and the parties shall afterwards intermarry, the court, upon their joint application and upon satisfactory proof of such marriage, shall revoke all judgments and any orders which will not affect the right of 3rd persons and order the record impounded without regard to s. 767.19; and ~~thereafter~~ neither the record nor any part ~~thereof~~ of the record shall be offered or admitted into evidence in any action or proceeding except by special order of the court of jurisdiction upon good cause shown in any paternity proceedings under ~~ss. 52.21 to 52.45~~ this chapter or by special order of any court of record upon a showing of necessity to clear title to real estate.

SECTION 25. 767.45 to 767.53 of the statutes are created to read:

767.45 Determination of paternity. (1) The following persons may bring an action for the purpose of determining the paternity of a child or for the purpose of rebutting the presumption of paternity under s. 891.41:

- (a) The child.
- (b) The child's natural mother.
- (c) A man presumed to be the child's father under s. 891.39.
- (d) A man alleged or alleging himself to be the father of the child.
- (e) The personal representative of a person specified under pars. (a) to (d) if that person has died.
- (f) The legal or physical custodian of the child.
- (g) This state whenever assignment is made under s. 49.19 (4) (h) 1, including the delegates of the state as specified in sub. (6).

(2) Regardless of its terms, an agreement made after the effective date of this act (1979), other than an agreement approved by the court between an alleged or presumed father and the mother or child, does not bar an action under this section. Whenever the court approves an agreement in which one of the parties agrees not to commence an action under this section, the court shall first determine whether or not the agreement is in the best interest of the child. The court shall not approve any provision waiving the right to bring an action under this section if this provision is contrary to the best interests of the child.

(3) If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth. However, service of process and the taking of depositions to preserve testimony may be done before the birth of the child.

(4) The child may be a party to any action under this section.

(5) An action under this section may be joined with any other action for child support and shall be governed by the procedures specified in s. 767.05 relating to child support, except that the title of the action shall be "In re the paternity of A.B." The petition shall state whether or not an action by any of the parties to determine the paternity of the child or rebut the presumption of paternity to the child has at any time been commenced, or is pending before any judge or court commissioner, in this state or elsewhere. If a paternity judgment has been rendered, or if a paternity action has been dismissed, the petition shall state the court which rendered the judgment or dismissed the action, and the date and the place the judgment was granted if known. The petition shall also give notice of a party's right to request a blood test under s. 767.48.

(6) (a) The county board shall designate either the district attorney or the corporation counsel to provide the representation authorized under par. (b) in cases brought under this section.

(b) The attorney designated under par. (a) or any state attorney may represent any petitioner who commences an action under this section with that person's consent. The county attorney authorized under par. (a) is the only county attorney who may provide this representation with the consent of the petitioner and is the only county attorney who may provide representation when the state delegates its authority under sub. (1) (g).

(c) The county attorney or state attorney may not represent a party in an action under this section and at the same time act as guardian ad litem for the child or the alleged child of the party.

767.455 Summons. (1) **PURPOSE.** The summons shall state the purpose of the action.

(2) **SIGNING.** The process shall be signed by the clerk of the court or by the petitioner's attorney.

(3) **RETURN DATE.** Every summons shall specify a return date and time before a judge or family court commissioner. The clerk of the court shall set the date and hour at which the summons is returnable.

(4) **SERVICE.** The summons and petition shall be served in the manner provided in s. 801.11 or by certified mail.

(5) **FORM.** The summons shall be in substantially the following form:

STATE OF WISCONSIN,
CIRCUIT COURT
.... COUNTY
In re the Paternity of A.B.

Summons

THE STATE OF WISCONSIN,
To said respondent:

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

/-----/

/ Date:	/
/ Time:	/
/ Room:	/
/ Judge:	/
/ Address:	/

/-----/

If you do not appear, the court will order law enforcement officers to find you and bring you to court. If you plan to be represented by an attorney, you should contact the attorney prior to the court appearance listed above. If you are unable to afford an attorney, the court will appoint one for you. If you do not appear you may be found to be the father of the child in a judgment by the court.

Dated:, 19

.... C.D.
.... Clerk of Circuit Court
.... Petitioner's Attorney

767.456 First appearance. At the first court appearance where the respondent is present, the court or family court commissioner shall inform the parties of the following:

(1) A judgment of paternity lawfully designates the child as the child of the respondent, granting parental rights to the respondent, creating the right of inheritance for the child, obligating the respondent to pay support until the child reaches the age of 18, and making failure to pay support punishable by imprisonment as a civil contempt;

(2) If the respondent is unable to afford counsel due to indigency, and the petitioner is represented by a government attorney under s. 767.45 (1) (g) or (6), counsel shall be appointed for the respondent as provided in ch. 977, unless the respondent knowingly and voluntarily waives the appointment of counsel.

(3) The respondent may request the administration of blood tests which either demonstrate that he is not the father of the child or which demonstrate the probability that he is or is not the father of the child;

(4) That the court or family court commissioner will order blood tests upon the request of any party; and

(5) The respondent has the defenses that he was sterile or impotent at the time of conception, he did not have sexual intercourse with the mother during a period 8 to 10 months prior to the birth of the child, or that another man did have sexual intercourse with the mother during that period of time.

767.46 Pretrial paternity proceedings. (1) A pretrial hearing shall be held before the court or family court commissioner. A record of the proceeding shall be kept. At the pretrial hearing the parties may present and cross-examine witnesses, request blood tests and present other evidence relevant to the determination of paternity.

(2) On the basis of the information produced at the pretrial hearing, the judge or family court commissioner conducting the hearing shall evaluate the probability of determining the existence or nonexistence of paternity in a trial and whether a judicial determination of paternity would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties, which may include any of the following:

(a) That the action be dismissed with or without prejudice.

(b) That the alleged father voluntarily acknowledge paternity of the child.

(c) If the alleged father voluntarily acknowledges paternity of the child, that he agree to the duty of support, the custody of the child, the visitation and other matters as determined to be in the best interests of the child by the judge or family court commissioner.

(3) If the parties accept a recommendation made in accordance with this section, judgment shall be entered accordingly.

(4) If a party or the guardian ad litem refuses to accept a recommendation made under this section and blood tests have not yet been taken, the court shall require the appropriate parties to submit to blood tests. After the blood tests have been taken the judge or family court commissioner shall make an appropriate final recommendation.

(5) If a respondent or the guardian ad litem refuses to accept the final recommendation for support or any party refuses to accept any other final recommendation, the action shall be set for trial.

(6) The informal hearing may be terminated and the action set for trial if the judge or family court commissioner conducting the hearing finds it unlikely that all parties would accept a recommendation in this section.

767.465 Judgment on failure to appear or answer. (1) **WHEN PETITIONER FAILS TO APPEAR.** If the petitioner fails to appear and plead on the date set for the pretrial hearing or the date set for the trial, the court or family court commissioner may enter a judgment for the respondent dismissing the action, on the motion of the respondent or upon its own motion.

(2) **WHEN RESPONDENT FAILS TO APPEAR.** If the respondent has been personally served and fails to appear and plead on the return date specified in the summons, on the date set for the pretrial hearing or on the date set for the trial, the court or family court commissioner may issue an order for the arrest of the respondent under s. 818.02 (1) (f) and, if there are reasonable grounds to believe that the respondent is outside the state or if the respondent has not been apprehended within 6 months after the issuance of the order, the court or family court commissioner may enter a judgment upon the petition upon due proof by the petitioner of the facts alleged in the petition. However, the court may not make such a judgment where service has been obtained by publication. Upon finding that the respondent is the father of the child the court may make appropriate orders for support and custody of the child.

(3) **MOTION TO REOPEN.** A default judgment rendered under this section which adjudicates a person to be the father of a child may be reopened at any time upon motion or petition for good cause shown or upon a motion under s. 806.07.

(4) **APPEAL.** An appeal of a denial of the petition or motion to reopen shall be to the court of appeals.

767.47 Testimony and evidence relating to paternity. (1) Evidence relating to paternity, whether given at the trial or the pretrial hearing, may include, but is not limited to:

- (a) Evidence of sexual intercourse between the mother and alleged father at any possible time of conception.
 - (b) An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy.
 - (c) Blood test results under ss. 767.48 and 885.23.
 - (d) The statistical probability of the alleged father's paternity based upon the blood tests.
 - (e) Medical, scientific or genetic evidence relating to the alleged father's paternity of the child based on tests performed by experts.
 - (f) All other evidence relevant to the issue of paternity of the child, except as provided in subs. (2) and (3).
- (2) Testimony relating to sexual relations or possible sexual relations of the mother any time other than the probable time of conception of the child is inadmissible in evidence, unless offered by the mother.
 - (3) In an action against an alleged father, evidence offered by him with respect to an identified man who is not subject to the jurisdiction of the court concerning that man's sexual intercourse with the mother at or about the presumptive time of conception of the child is admissible in evidence only after the alleged father has undergone and made available to the court blood tests as provided in s. 767.48.
 - (4) No person may be prosecuted or subjected to any penalty or forfeiture for or on account of any pleading, any matter testified to or evidence given relating to the paternity of the child in any paternity proceeding, except for perjury committed in giving the testimony.
 - (5) Except as provided in sub. (6), upon refusal of any witness, including a party, to testify under oath or produce evidence, the court or family court commissioner may order the witness to testify under oath and produce evidence concerning all relevant facts. The refusal of a witness, including a witness who has immunity under sub. (4), to obey an order to testify or produce evidence is a civil contempt of the court.
 - (6) (a) Whenever the state brings the action to determine paternity pursuant to an assignment under s. 49.19 (4) (h) 1, the natural mother of the child may not be compelled to testify about the paternity of the child if it has been determined that the mother has good cause for refusing to cooperate in establishing paternity as provided in 42 USC 602 (a) (26) (B) and the federal regulations promulgated pursuant to this statute, as of the effective date of this act (1979), and pursuant to any rules promulgated by the department of health and social services which define good cause in accordance with the federal regulations, as authorized by 42 USC 602 (a) (26) (B) in effect on the effective date of this act (1979).
 - (b) Nothing in par. (a) prevents the state from bringing an action to determine paternity pursuant to an assignment under s. 49.19 (4) (h) 1 where evidence other than the testimony of the mother may establish the paternity of the child.
 - (7) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.
 - (8) The party bringing an action for the purpose of determining paternity or for the purpose of declaring the nonexistence of paternity presumed under s. 891.41 shall have the burden of proving the issues involved by clear and satisfactory preponderance of the evidence.
 - (9) Where a child is conceived by artificial insemination, the husband of the mother of the child at the time of the conception of the child is the natural father of the child, as provided in s. 891.40.

767.475 Paternity procedures. (1) The court or family court commissioner may appoint a guardian ad litem for the child and shall appoint a guardian ad litem for a minor parent or minor who is alleged to be a parent in a paternity proceeding unless the minor parent or the minor alleged to be the parent is represented by an attorney.

(2) Presumption of paternity shall be as provided in ss. 891.39 and 891.41.

(3) Evidence as to the time of conception may be offered as provided in s. 891.395.

(4) Discovery shall be conducted as provided in ch. 804, except that no discovery may be obtained from the mother of the child after the close of the pretrial hearing. No discovery may solicit information relating to the sexual relations or possible sexual relations of the mother at any time other than the probable time of conception.

(5) The statute of limitations for commencing actions concerning paternity is as provided in s. 893.195, except that an action brought on behalf of or by the child is as provided in s. 893.196.

(6) The alleged father in a paternity action may be arrested as provided in s. 818.02 (1) (f).

(7) The court may appoint a trustee or guardian to receive and manage money paid for the support of a minor child.

(8) In all other matters, paternity proceedings shall be governed by the procedures applicable to other actions affecting the family.

767.48 Blood tests in paternity actions. (1) The court may, and upon request of a party shall, require the child, mother, alleged father, or any male witness who testifies or will testify about his sexual relations with the mother at a possible time of conception to submit to blood tests. The tests shall be performed by an expert qualified as an examiner of genetic markers present on blood cells and components, appointed by the court.

(2) The court, upon request by a party, shall order that independent tests be performed by other experts qualified as examiners of genetic markers present on blood cells and components. Additional tests performed by other experts of the same qualifications may be ordered by the court at the request of any party.

(3) In all cases, the court shall determine the number and qualifications of the experts.

(4) Whenever the results of the blood tests exclude the alleged father as the father of the child this evidence shall be conclusive evidence of nonpaternity and the court shall dismiss the action. Whenever the results of the tests exclude any male witness from possible paternity the tests shall be conclusive evidence of nonpaternity of the male witness. If any party refuses to submit to the blood test this fact shall be disclosed to the fact finder. If the action was brought by the child's mother but she refuses to submit herself or the child to blood tests, the action shall be dismissed.

(5) The fees and costs for blood tests shall be paid for by the county but at the close of the proceeding the court may order either or both parties to reimburse the county if the court finds that they have sufficient resources to pay the costs of the blood tests.

(6) Any party calling a male witness for the purpose of testifying that he had sexual intercourse with the mother at any possible time of conception shall provide all other parties with the name and address of the witness 20 days before the trial or pretrial hearing. If a male witness is produced at the hearing for the purpose stated in this subsection but the party calling the witness failed to provide the 20-day notice, the court may adjourn the proceeding for the purpose of taking a blood test of the witness prior to hearing the testimony of the witness if the court finds that the party calling the witness acted in good faith.

(7) The court shall ensure that all parties are aware of their right to request blood tests under this section.

767.51 Paternity judgment. (1) The judgment or order of the court determining the existence or nonexistence of paternity is determinative for all purposes.

(2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a new birth certificate be issued under s. 69.33 or 69.336.

(3) The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the father to pay or contribute to the reasonable expenses of the mother's pregnancy and confinement during pregnancy and may direct either party to pay or contribute to the costs of blood tests, attorney fees and other costs. Contributions to the costs of blood tests shall be paid to the county which paid for the blood tests.

(4) Support judgments or orders ordinarily shall be for periodic payments which may vary in amount. The father's liability for past support of the child shall be limited to support for the period after commencement of action.

(5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including but not limited to:

- (a) The needs of the child.
- (b) The standard of living and circumstances of the parents.
- (c) The relative financial means of the parents.
- (d) The earning ability of the parents.
- (e) The need and capacity of the child for education, including higher education.
- (f) The age of the child.
- (g) The financial resources and the earning ability of the child.
- (h) The responsibility of the parents for the support of others.
- (i) The value of services contributed by the custodial parent.

(6) Sections 767.263, 767.265, 767.29, 767.30, 767.305, 767.31 and 767.32, where applicable, shall apply to a judgment or order under this section.

(7) The court may order the attorney for the prevailing party to prepare findings of fact, conclusions of law and a judgment for the approval of the court.

767.52 Right to counsel. (1) At the pretrial hearing, at the trial and in any further proceedings in any paternity action, any party may be represented by counsel. If the respondent is indigent and the state is the petitioner under s. 767.45 (1) (g) or the petitioner is represented by a government attorney as provided in s. 767.45 (6), counsel shall be appointed for the respondent as provided in ch. 977, unless the respondent knowingly and voluntarily waives the appointment of counsel.

(2) Any appointed attorney appearing on behalf of a party in a paternity action shall represent that party in all issues and proceedings relating to the paternity determination, including custody and visitation and related issues during the proceeding to determine paternity. However, this does not include a custody, visitation or related action which is commenced after the paternity proceeding has ended.

(3) Nothing contained in this section shall prevent a district attorney, corporation counsel or other attorney employed under s. 46.25 or 59.07 (97) from appearing in any paternity action as provided under s. 767.45 (6).

767.53 Paternity hearings and records; confidentiality. Any court appearance, hearing or trial relating to paternity determination shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. Any record of

the proceedings shall be placed in a closed file, except that access to the record shall be allowed to the parties and their attorneys or their authorized representatives.

SECTION 26. 806.04 (3m) of the statutes is repealed.

SECTION 27. 818.02 (1) (f) of the statutes is created to read:

818.02 (1) (f) In a proceeding to determine paternity, if the court finds that the petitioner cannot effect service of process upon the respondent despite due diligence on the part of the petitioner or after the respondent is personally served but fails to appear on the return date, on the date set for the pretrial hearing or on the date set for the trial.

SECTION 28. 852.05 (1) and (2) of the statutes are amended to read:

852.05 (1) An illegitimate child or ~~his~~ the child's issue is entitled to take in the same manner as a legitimate child by intestate succession from and through ~~(a)~~ his or her mother, and ~~(b) from and through his or her father if the father has either been adjudicated to be such under ss. 52.21 to 52.45 the father in a paternity proceeding under ch. 767, or has admitted in open court that he is the father, or has acknowledged himself to be the father in writing signed by him.~~

(2) Property of an illegitimate person passes in accordance with s. 852.01 except that the father or his kindred can inherit only if the father has been adjudicated to be ~~such under ss. 52.21 to 52.45 the father in a paternity proceeding under ch. 767.~~

SECTION 29. 852.05 (3) of the statutes, as affected by chapter 32, laws of 1979, is amended to read:

852.05 (3) This section does not apply to a child legitimated by the subsequent marriage of his parents under s. ~~765.25~~ 767.60, and status of an illegitimate child who is legally adopted is governed by s. 851.51.

SECTION 30. 885.23 of the statutes is amended to read:

885.23 Blood tests in civil actions. Whenever it is relevant in a civil action to determine the parentage or identity of any child, person or corpse, the court, by order, shall direct any party to the action and any person involved in the controversy to submit to one or more blood tests as provided in s. ~~52.36~~ 767.48. The results of ~~said the~~ tests shall constitute conclusive evidence be receivable as evidence in any case where exclusion from parentage is established and shall be receivable as evidence, but only in cases where a definite exclusion is established or where a probability of parentage is shown to exist. Whenever the court orders ~~such the~~ the blood tests and one of the parties refuses to submit to ~~such the~~ the tests ~~such that~~ that fact shall be disclosed upon trial. ~~Notwithstanding s. 52.36 (2) the court shall determine how and by whom the costs of such examination shall be paid.~~

SECTION 31. 891.395 of the statutes is amended to read:

891.395 Presumption as to time of conception. In any paternity proceeding, in the absence of a valid birth certificate indicating the birth weight, the mother shall be competent to testify as to the birth weight of the child whose paternity is at issue, and where the child whose paternity is at issue weighed 5 1/2 pounds or more at the time of its birth, the testimony of the mother as to ~~such the~~ the weight shall be presumptive evidence that the child was a full term child, unless competent evidence to the contrary is presented to the court. The conception of ~~such the~~ the child shall be presumed to have occurred within a span of time extending from 240 days to 300 days before the date of its birth, unless competent evidence to the contrary is presented to the court.

SECTION 32. 891.40 of the statutes is created to read:

891.40 Artificial insemination. (1) If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband of the mother at the time of the conception of the child shall be the natural father of a child conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and

the date of the insemination, and shall file the husband's consent with the department of health and social services, where it shall be kept confidential and in a sealed file except as provided in s. 46.03 (7) (bm). However, the physician's failure to file the consent form does not affect the legal status of father and child. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, may be inspected only upon an order of the court for good cause shown.

(2) The donor of semen provided to a licensed physician for use in artificial insemination of a married woman other than the donor's wife is not the natural father of a child conceived, bears no liability for the support of the child and has no parental rights with regard to the child.

SECTION 33. 891.41 of the statutes is created to read:

891.41 Presumption of paternity. (1) A man is presumed to be the natural father of a child if one or more of the following applies:

(a) He and the child's natural mother are or have been married to each other and the child is conceived or born during the marriage, and conception or birth takes place prior to the commencement of any action for legal separation, annulment or divorce between the parties; or

(b) He has acknowledged his paternity of the child in writing filed with the department of health and social services; and

1. At the time of conception he and the child's natural mother lived together; or

2. After the child's birth he and the child's natural mother marry or attempt to marry each other by a marriage solemnized in apparent compliance with the law.

SECTION 34. 893.195 of the statutes is amended to read:

893.195 (title) Within 6 years. Within ~~5~~ **6** years of the date of birth of a child or if the parents live together as ~~man~~ husband and wife after the birth of the child, ~~5~~ **6** years after they separate: An action ~~under ch. 52~~ for the establishment of the paternity of the child, except that this limitation shall not apply to an action by the child or where the parties thereto enter into an agreement for the support of the child in accordance with s. 52.28 or ~~where a 2nd proceeding is had pursuant to s. 52.31 (2). Where a warrant or summons under ch. 52 has been issued within such 5 years, ss. 893.30 and 939.74 (3) shall both be applicable in computing time under this section.~~

SECTION 35. 893.196 of the statutes is created to read:

893.196 Within 19 years. Within 19 years of the date of the birth of a child: an action for the establishment of the paternity of the child by the child.

SECTION 36. 905.04 (4) (g) of the statutes is created to read:

905.04 (4) (g) *Paternity proceedings.* There is no privilege concerning testimony about the medical circumstances of a pregnancy or the condition and characteristics of a child in a proceeding to determine the paternity of that child under ss. 767.45 to 767.53.

SECTION 37. 977.05 (4) (i) 7 of the statutes is created to read:

977.05 (4) (i) 7. Cases involving paternity determinations under ch. 767 where the state is the petitioner under s. 767.45 (1) (g) or where the petitioner is represented by the district attorney, corporation counsel or other state or county attorneys under s. 767.45 (6).

SECTION 38. 977.08 (2) (h) of the statutes is created to read:

977.08 (2) (h) Cases involving paternity determinations as provided in s. 767.52.

SECTION 39. **Term change.** Wherever in the following sections of the statutes the phrases "action affecting marriage" or "actions affecting marriage" are found, there is substituted the phrase "action affecting the family" or "actions affecting the family",

respectively: 48.425 (2n) and (6n) (b); 767.02 (title) and (1) (intro.), 767.045, 767.05 (1), (2), (3) and (5), 767.075, 767.085 (1) (intro.), 767.12 (1), 767.125, 767.14, 767.15, 767.16, 767.19 (2), 767.21 (1) and (2), 767.23 (1) and (3), 767.262, 767.27 (1) and (3), 767.275, 767.37 (1) (a), 767.39 (1), all as affected by chapter 32, laws of 1979; 801.05 (11), 801.07 (5) and 891.39 (1) (b).

SECTION 40. Applicability. This act applies to all paternity proceedings commenced after the effective date of this act. This act applies to all paternity proceedings commenced but not reduced to judgment or concluded prior to the effective date of this act. However, this act does not apply to paternity judgments or to any motion concerning paternity judgments or any paternity proceeding otherwise completed prior to the effective date of this act, except for motions to modify child support.

SECTION 41. Effective date. This act shall take effect on July 1, 1981.
