



State of Wisconsin
2011 - 2012 LEGISLATURE



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2011 ASSEMBLY BILL 42

March 8, 2011 - Introduced by Representatives KESTELL, LEMAHIEU, SPANBAUER and STRACHOTA, cosponsored by Senators OLSEN and TAYLOR, by request of Wisconsin Child Support Enforcement Association. Referred to Committee on Children and Families.

1 **AN ACT to renumber and amend** 49.141 (1) (i), 767.84 (1) (a) and 767.855; **to**
2 **amend** 48.02 (13), 48.27 (5), 48.396 (2) (dm), 48.42 (4) (b) 2., 48.837 (4) (e), 48.91
3 (2), 49.225 (2) (a), 49.855 (3), 49.855 (4m) (b), 69.15 (3) (a) (intro.), 69.15 (3) (a)
4 3., 565.30 (5m) (a), 767.407 (1) (c) (intro.), 767.41 (1) (b), 767.41 (1m) (intro.),
5 767.44 (1), 767.511 (1) (intro.), 767.511 (5), 767.513 (2), 767.55 (1), 767.55 (2)
6 (am) (intro.), 767.55 (3) (a) 1., 767.55 (3) (d), 767.55 (4) (b) (intro.), 767.59 (2s),
7 767.73 (1) (a), 767.75 (1) (b), 767.77 (1), 767.78 (1), 767.80 (1) (intro.), 767.80 (1)
8 (c), 767.80 (5m), 767.80 (5m), 767.80 (6m), 767.82 (2), 767.82 (2m), 767.87 (8),
9 802.12 (3) (d) 1., 802.12 (3) (d) 3., 808.075 (4) (d) 9., 808.075 (4) (d) 10., 852.05
10 (2), 938.02 (13), 938.27 (5) and 938.396 (2g) (g); and **to create** 49.141 (1) (i) 3.,
11 49.141 (1) (j) 6., 767.80 (1) (hm), 767.804, 767.84 (1) (a) 1., 767.84 (1) (a) 2.,
12 767.84 (1) (a) 3., 767.855 (1), 767.855 (2), 769.201 (7m) and 891.407 of the
13 statutes; **relating to:** presumption and conclusive determination of paternity

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1 on basis of genetic test results and orders that may be granted on the basis of
2 genetic test results.

Analysis by the Legislative Reference Bureau

Under current law, a man may be adjudicated to be a child's father in a paternity action. In addition, a man and a child's mother may sign and file with the state registrar a form called a statement acknowledging paternity. Both cases result in a conclusive determination that the man is the child's father, and the state registrar may change the child's birth certificate to show the man as the child's father and a court may enter orders for child support, legal custody, and physical placement rights with respect to the man. Current law also contains presumptions of paternity. There is a presumption (marriage presumption) that a man is the father of a child if he and the child's mother were married when the child was conceived or born or if he and child's mother married after the child was born but had a relationship during the time within which the child was conceived and no other man has been adjudicated to be the father or is presumed to be the father because he was married to the child's mother when the child was conceived or born. There is also a presumption (statement acknowledging paternity presumption) that a man is a child's father if he and the child's mother signed and filed a statement acknowledging paternity with the state registrar and no other man is presumed to be the child's father under the marriage presumption.

This bill creates another way for a man to be conclusively determined to be a child's father, with the same effect as a paternity judgment. Under the bill, a man is conclusively determined to be a child's father if all of the following are satisfied: 1) genetic tests are performed with respect to the child, the child's mother, and the man and the test results show that the man is not excluded as the father and the statistical probability that he is the father is 99 percent or higher; 2) both the mother and the man are at least 18 years old; 3) there is no marriage or statement acknowledging paternity presumption; and 4) the genetic tests were performed in response to a subpoena issued by a county child support agency (child support agency) requiring the parties to submit to the tests. If all of those requirements are satisfied, the child support agency must send notice to the parties advising of the test results, that an action may be commenced for orders related to child support, legal custody, and physical placement, and that the man may submit to the child support agency a written objection to the test results. If the man submits an objection, the child support agency must commence a paternity action on behalf of the state and the test results are admissible in the action. If the man does not submit an objection by the time specified in the notice, the child support agency must file with the state registrar a report of the test results, showing a conclusive determination of paternity. On the basis of the report, the state registrar must insert the name of the father on the child's original birth certificate if the father's name was omitted.

Under the bill, if genetic test results conclusively determine a man to be a child's father, an action may be brought for child support, legal custody, and physical

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placement. The court may also require the man to pay or contribute to the reasonable expenses of the mother's pregnancy, require either the man or mother to pay or contribute to the other party's attorney fees, and change the child's name upon the request of one or both of the parties. In addition, the bill creates a presumption that a man is a child's father if all of the requirements under the bill are satisfied for conclusively determining a man to be a child's father on the basis of genetic test results and no other man is presumed to be the child's father under the marriage or statement acknowledging paternity presumption.

The bill also makes other modifications related to genetic testing and paternity adjudications. Under current law, in a paternity action the court may require, and upon must require, the child, the child's mother, and any male for whom there is probable cause to believe that he had sexual relations with the mother during the possible time of the child's conception to submit to genetic tests. Under the bill, the court in a paternity action must require the child, the child's mother, and any male for whom there is probable cause to believe that he had sexual relations with the mother during the possible time of the child's conception to submit to genetic tests with the following exceptions:

1. Genetic tests are not required if the action will be dismissed or a default judgment will be entered because of the failure of a party to appear.

2. The court is not required to require any of the following persons to submit to genetic tests:

- a. A person who was required by a child support agency to submit to a genetic test and who has done so.

- b. The respondent in the action if he or she is deceased and genetic material is not available without undue hardship.

- c. A male respondent who fails to appear if genetic test results with respect to another male show that the other male is not excluded as the father and that the statistical probability that he is the father is 99 percent or higher.

Current law includes an exception to the requirement to order genetic tests in a paternity action. If the court determines, upon the motion of a party or guardian ad litem, that a judicial determination of whether a male is the father of the child is not in the best interest of the child, the court may, with respect to the male, refuse to order genetic tests, if they haven't already been taken, and dismiss the action. The Wisconsin Supreme Court, in *Randy A.J. v. Norma I.J.*, 2004 WI 41, 270 Wis. 2d 384, 677 N.W. 2d 630, determined that the statute does not apply if genetic tests have already been performed. The bill removes the requirement that genetic tests must not have been performed and provides that, if the court determines that a judicial determination of whether a male is the father of the child is not in the best interest of the child, the court may not only refuse to order genetic tests but may also dismiss the action, regardless of whether genetic tests have been performed or what the results were of any genetic tests that have been performed.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 48.02 (13) of the statutes is amended to read:

2 48.02 (13) “Parent” means a biological parent, a husband who has consented
3 to the artificial insemination of his wife under s. 891.40, or a parent by adoption. If
4 the child is a nonmarital child who is not adopted or whose parents do not
5 subsequently intermarry under s. 767.803, “parent” includes a person conclusively
6 determined from genetic test results to be the father under s. 767.804 or a person
7 acknowledged under s. 767.805 or a substantially similar law of another state or
8 adjudicated to be the biological father. “Parent” does not include any person whose
9 parental rights have been terminated. For purposes of the application of s. 48.028
10 and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, “parent” means a
11 biological parent, an Indian husband who has consented to the artificial
12 insemination of his wife under s. 891.40, or an Indian person who has lawfully
13 adopted an Indian child, including an adoption under tribal law or custom, and
14 includes, in the case of a nonmarital child who is not adopted or whose parents do
15 not subsequently intermarry under s. 767.803, a person conclusively determined
16 from genetic test results to be the father under s. 767.804, a person acknowledged
17 under s. 767.805, a substantially similar law of another state, or tribal law or custom
18 to be the biological father, or a person adjudicated to be the biological father, but does
19 not include any person whose parental rights have been terminated.

20 **SECTION 2.** 48.27 (5) of the statutes is amended to read:

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1 48.27 (5) Subject to sub. (3) (b), the court shall make every reasonable effort
2 to identify and notify any person who has filed a declaration of paternal interest
3 under s. 48.025, any person conclusively determined from genetic test results to be
4 the father under s. 767.804 (1), any person who has acknowledged paternity of the
5 child under s. 767.805 (1), and any person who has been adjudged to be the father
6 of the child in a judicial proceeding unless the person's parental rights have been
7 terminated.

8 **SECTION 3.** 48.396 (2) (dm) of the statutes is amended to read:

9 48.396 (2) (dm) Upon request of a court having jurisdiction over actions
10 affecting the family, an attorney responsible for support enforcement under s. 59.53
11 (6) (a) or a party to a paternity proceeding under subch. IX of ch. 767, the party's
12 attorney or the guardian ad litem for the child who is the subject of that proceeding
13 to review or be provided with information from the records of the court assigned to
14 exercise jurisdiction under this chapter and ch. 938 relating to the paternity of a child
15 for the purpose of determining the paternity of the child or for the purpose of
16 rebutting the presumption of paternity under s. 891.405, 891.407, or 891.41 (1), the
17 court assigned to exercise jurisdiction under this chapter and ch. 938 shall open for
18 inspection by the requester its records relating to the paternity of the child or disclose
19 to the requester those records.

20 **SECTION 4.** 48.42 (4) (b) 2. of the statutes is amended to read:

21 48.42 (4) (b) 2. If the child is a nonmarital child who is not adopted or whose
22 parents do not subsequently intermarry under s. 767.803 and paternity has not been
23 conclusively determined from genetic test results under s. 767.804, acknowledged
24 under s. 767.805 or a substantially similar law of another state, or adjudicated, the

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1 court may, as provided in s. 48.422 (6) (b), order publication of a notice under subd.
2 4.

3 **SECTION 5.** 48.837 (4) (e) of the statutes is amended to read:

4 48.837 (4) (e) Shall, before hearing the petitions under subs. (2) and (3),
5 ascertain whether the paternity of a nonmarital child who is not adopted or whose
6 parents do not subsequently intermarry under s. 767.803 has been conclusively
7 determined from genetic test results under s. 767.804, acknowledged under s.
8 767.805 or a substantially similar law of another state, or adjudicated in this state
9 or another jurisdiction. If the child's paternity has not been conclusively determined
10 from genetic test results, acknowledged, or adjudicated, the court shall attempt to
11 ascertain the paternity of the child and shall determine the rights of any person who
12 may be the father of the child as provided under s. 48.423. The court may not proceed
13 with the hearing on the petitions under this section unless the parental rights of the
14 nonpetitioning parent, whether known or unknown, have been terminated.

15 **SECTION 6.** 48.91 (2) of the statutes is amended to read:

16 48.91 (2) In an adoption proceeding for a nonmarital child who is not adopted
17 or whose parents do not subsequently intermarry under s. 767.803, the court shall
18 establish whether the child's paternity has been conclusively determined from
19 genetic test results under s. 767.804, acknowledged under s. 767.805 or a
20 substantially similar law of another state, or adjudicated in this state or in another
21 jurisdiction. If the child's paternity has not been conclusively determined from
22 genetic test results, acknowledged, or adjudicated, the court shall attempt to
23 ascertain the paternity of the child and shall determine the rights of any person who
24 may be the father of the child as provided under s. 48.423. The court may not proceed

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1 with the hearing on the petition for adoption unless the parental rights of the
2 nonpetitioning parent, whether known or unknown, have been terminated.

3 **SECTION 7.** 49.141 (1) (i) of the statutes is renumbered 49.141(1) (i) (intro.) and
4 amended to read:

5 49.141 (1) (i) (intro.) “Nonmarital coparent” means, with respect to an
6 individual and a dependent child, a parent who is not married to the individual, who
7 resides with the dependent child, and who is either an one of the following:

8 1. An adjudicated parent ~~or a~~.

9 2. A parent who has signed and filed with the state registrar under s. 69.15 (3)
10 (b) 3. a statement acknowledging paternity.

11 **SECTION 8.** 49.141 (1) (i) 3. of the statutes is created to read:

12 49.141 (1) (i) 3. A parent who has been conclusively determined from genetic
13 test results to be the father under s. 767.804.

14 **SECTION 9.** 49.141 (1) (j) 6. of the statutes is created to read:

15 49.141 (1) (j) 6. A man who has been conclusively determined from genetic test
16 results to be the father under s. 767.804.

17 **SECTION 10.** 49.225 (2) (a) of the statutes is amended to read:

18 49.225 (2) (a) A county child support agency under s. 59.53 (5) may require, by
19 subpoena in substantially the form authorized under s. 885.02 or by other means, a
20 child, the child’s mother, and a male alleged, or alleging himself, to be the child’s
21 father to submit to genetic tests if there is probable cause to believe that the male
22 had sexual intercourse with the child’s mother during a possible time of the child’s
23 conception. Probable cause of sexual intercourse during a possible time of conception
24 may be established by a sufficient affidavit of the child’s mother ~~or~~, the male alleged,

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1 or alleging himself, to be the child's father, or the county child support agency under
2 s. 59.53 (5) based on information provided by the child's mother.

3 **SECTION 11.** 49.855 (3) of the statutes is amended to read:

4 49.855 (3) Receipt of a certification by the department of revenue shall
5 constitute a lien, equal to the amount certified, on any state tax refunds or credits
6 owed to the obligor. The lien shall be foreclosed by the department of revenue as a
7 setoff under s. 71.93 (3), (6), and (7). When the department of revenue determines
8 that the obligor is otherwise entitled to a state tax refund or credit, it shall notify the
9 obligor that the state intends to reduce any state tax refund or credit due the obligor
10 by the amount the obligor is delinquent under the support, maintenance, or receiving
11 and disbursing fee order or obligation, by the outstanding amount for past support,
12 medical expenses, or birth expenses under the court order, or by the amount due
13 under s. 46.10 (4), 49.345 (4), or 301.12 (4). The notice shall provide that within 20
14 days the obligor may request a hearing before the circuit court rendering the order
15 under which the obligation arose. Within 10 days after receiving a request for
16 hearing under this subsection, the court shall set the matter for hearing. Pending
17 further order by the court or a circuit court commissioner, the department of children
18 and families or its designee, whichever is appropriate, is prohibited from disbursing
19 the obligor's state tax refund or credit. A circuit court commissioner may conduct the
20 hearing. The sole issues at that hearing shall be whether the obligor owes the
21 amount certified and, if not and it is a support or maintenance order, whether the
22 money withheld from a tax refund or credit shall be paid to the obligor or held for
23 future support or maintenance, except that the obligor's ability to pay shall also be
24 an issue at the hearing if the obligation relates to an order under s. 767.804 (3) (d)
25 1., 767.805 (4) (d) 1., or 767.89 (3) (e) 1. and the order specifies that the court found

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1 that the obligor's income was at or below the poverty line established under 42 USC
2 9902 (2).

3 **SECTION 12.** 49.855 (4m) (b) of the statutes is amended to read:

4 49.855 (4m) (b) The department of revenue may provide a certification that it
5 receives under sub. (1), (2m), (2p), or (2r) to the department of administration. Upon
6 receipt of the certification, the department of administration shall determine
7 whether the obligor is a vendor or is receiving any other payments from this state,
8 except for wages, retirement benefits, or assistance under s. 45.352, 1971 stats., s.
9 45.40 (1m), this chapter, or ch. 46, 108, or 301. If the department of administration
10 determines that the obligor is a vendor or is receiving payments from this state,
11 except for wages, retirement benefits, or assistance under s. 45.352, 1971 stats., s.
12 45.40 (1m), this chapter, or ch. 46, 108, or 301, it shall begin to withhold the amount
13 certified from those payments and shall notify the obligor that the state intends to
14 reduce any payments due the obligor by the amount the obligor is delinquent under
15 the support, maintenance, or receiving and disbursing fee order or obligation, by the
16 outstanding amount for past support, medical expenses, or birth expenses under the
17 court order, or by the amount due under s. 46.10 (4), 49.345 (4), or 301.12 (4). The
18 notice shall provide that within 20 days after receipt of the notice the obligor may
19 request a hearing before the circuit court rendering the order under which the
20 obligation arose. An obligor may, within 20 days after receiving notice, request a
21 hearing under this paragraph. Within 10 days after receiving a request for hearing
22 under this paragraph, the court shall set the matter for hearing. A circuit court
23 commissioner may conduct the hearing. Pending further order by the court or circuit
24 court commissioner, the department of children and families or its designee,
25 whichever is appropriate, may not disburse the payments withheld from the obligor.

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1 The sole issues at the hearing are whether the obligor owes the amount certified and,
2 if not and it is a support or maintenance order, whether the money withheld shall be
3 paid to the obligor or held for future support or maintenance, except that the obligor's
4 ability to pay is also an issue at the hearing if the obligation relates to an order under
5 s. 767.804 (3) (d) 1., 767.805 (4) (d) 1., or 767.89 (3) (e) 1. and the order specifies that
6 the court found that the obligor's income was at or below the poverty line established
7 under 42 USC 9902 (2).

8 **SECTION 13.** 69.15 (3) (a) (intro.) of the statutes is amended to read:

9 69.15 (3) (a) (intro.) If the state registrar receives an order under sub. (1) ~~which~~
10 that establishes paternity or determines that the man whose name appears on a
11 registrant's birth certificate is not the father of the registrant, or a report under s.
12 767.804 (1) (c) that shows a conclusive determination of paternity, the state registrar
13 shall do the following, as appropriate:

14 **SECTION 14.** 69.15 (3) (a) 3. of the statutes is amended to read:

15 69.15 (3) (a) 3. Except as provided under subd. 4., insert the name of the
16 adjudicated or conclusively determined father on the original birth certificate if the
17 name of the father was omitted on the original certificate.

18 **SECTION 15.** 565.30 (5m) (a) of the statutes is amended to read:

19 565.30 (5m) (a) The administrator shall report to the department of children
20 and families the name, address, and social security number of each winner of a
21 lottery prize that is payable in installments and the name, address, and social
22 security number or federal income tax number of the person who has been assigned
23 a lottery prize that is payable in installments. Upon receipt of the report, the
24 department of children and families shall certify to the administrator whether any
25 payee or assignee named in the report is obligated to provide child support, spousal

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1 support, maintenance, or family support under s. 767.001 (1) (f) or (g), 767.225,
2 767.34, 767.511, 767.531, 767.56, 767.804 (3), 767.805 (4), 767.85, 767.863 (3), 767.89
3 (3), 767.893 (2m), or 948.22 (7) or ch. 769 and the amount required to be withheld
4 from the lottery prize under s. 767.75. Subject to par. (b), the administrator shall
5 withhold the certified amount from each payment made to the winner or assignee
6 and remit the certified amount to the department of children and families.

7 **SECTION 16.** 767.407 (1) (c) (intro.) of the statutes is amended to read:

8 767.407 (1) (c) (intro.) The attorney responsible for support enforcement under
9 s. 59.53 (6) (a) may request that the court appoint a guardian ad litem to bring an
10 action or motion on behalf of a minor who is a nonmarital child whose paternity has
11 not been conclusively determined from genetic test results under s. 767.804,
12 acknowledged under s. 767.805 (1) or a substantially similar law of another state, or
13 adjudicated for the purpose of determining the paternity of the child, and the court
14 shall appoint a guardian ad litem, if any of the following applies:

15 **SECTION 17.** 767.41 (1) (b) of the statutes is amended to read:

16 767.41 (1) (b) In rendering a judgment of annulment, divorce, legal separation,
17 or paternity, or in rendering a judgment in an action under s. 767.001 (1) (e), 767.501,
18 767.804 (2), or 767.805 (3), the court shall make such provisions as it deems just and
19 reasonable concerning the legal custody and physical placement of any minor child
20 of the parties, as provided in this section.

21 **SECTION 18.** 767.41 (1m) (intro.) of the statutes is amended to read:

22 767.41 (1m) PARENTING PLAN. (intro.) Unless the court orders otherwise, in an
23 action for annulment, divorce, or legal separation, an action to determine paternity,
24 or an action under s. 767.001 (1) (e), 767.501, 767.804 (2), or 767.805 (3), in which
25 legal custody or physical placement is contested, a party seeking sole or joint legal

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1 custody or periods of physical placement shall file a parenting plan with the court if
2 the court waives the requirement to attend mediation under s. 767.405 (8) (b) or if
3 the parties attend mediation and the mediator notifies the court under s. 767.405
4 (12) (b) that the parties have not reached an agreement. Unless the court orders
5 otherwise, the parenting plan shall be filed within 60 days after the court waives the
6 mediation requirement or the mediator notifies the court that no agreement has been
7 reached. Except for cause shown, a party required to file a parenting plan under this
8 subsection who does not timely file a parenting plan waives the right to object to the
9 other party's parenting plan. A parenting plan shall provide information about the
10 following questions:

11 **SECTION 19.** 767.44 (1) of the statutes is amended to read:

12 767.44 (1) WHEN PROHIBITED. Notwithstanding ss. 767.225 (1) (am), 767.41 (1),
13 (4), and (5), 767.804 (3) (a), 767.805 (4) (a), and 767.89 (3) and except as provided in
14 sub. (2), in an action under this chapter that affects a minor child, a court may not
15 grant to the child's parent visitation or physical placement rights with the child if the
16 parent has been convicted under s. 940.01 of the first-degree intentional homicide,
17 or under s. 940.05 of the 2nd-degree intentional homicide, of the child's other parent,
18 and the conviction has not been reversed, set aside, or vacated.

19 **SECTION 20.** 767.511 (1) (intro.) of the statutes is amended to read:

20 767.511 (1) WHEN ORDERED. (intro.) When the court approves a stipulation for
21 child support under s. 767.34, enters a judgment of annulment, divorce, or legal
22 separation, or enters an order or a judgment in a paternity action or in an action
23 under s. 767.001 (1) (f) or (j), 767.501, 767.804 (2), or 767.805 (3), the court shall do
24 all of the following:

25 **SECTION 21.** 767.511 (5) of the statutes is amended to read:

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1 767.511 (5) LIABILITY FOR PAST SUPPORT. Subject to ss. 767.804 (4), 767.805 (4m),
2 and 767.89 (4), liability for past support is limited to the period after the birth of the
3 child.

4 **SECTION 22.** 767.513 (2) of the statutes is amended to read:

5 767.513 (2) RESPONSIBILITY AND PAYMENT. In addition to ordering child support
6 for a child under s. 767.511 (1), the court shall specifically assign responsibility for
7 and direct the manner of payment of the child's health care expenses. In assigning
8 responsibility for a child's health care expenses, the court shall consider whether a
9 child is covered under a parent's health insurance policy or plan at the time the court
10 approves a stipulation for child support under s. 767.34, enters a judgment of
11 annulment, divorce, or legal separation, or enters an order or a judgment in a
12 paternity action or in an action under s. 767.001 (1) (f) or (j), 767.501, 767.804 (2), or
13 767.805 (3), the availability of health insurance to each parent through an employer
14 or other organization, the extent of coverage available to a child, and the costs to the
15 parent for the coverage of the child. A parent may be required to initiate or continue
16 health care insurance coverage for a child under this section. If a parent is required
17 to do so, he or she shall provide copies of necessary program or policy identification
18 to the custodial parent and is liable for any health care costs for which he or she
19 receives direct payment from an insurer. This section shall not be construed to limit
20 the authority of the court to enter or modify support orders containing provisions for
21 payment of medical expenses, medical costs, or insurance premiums that are in
22 addition to and not inconsistent with this section.

23 **SECTION 23.** 767.55 (1) of the statutes is amended to read:

24 767.55 (1) GENERALLY. In an action for modification of a child support order
25 under s. 767.59 or an action in which an order for child support is required under s.

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1 767.511 (1), 767.804 (3), 767.805 (4), or 767.89 (3), the court may order either or both
2 parents of the child to seek employment or participate in an employment or training
3 program.

4 **SECTION 24.** 767.55 (2) (am) (intro.) of the statutes is amended to read:

5 767.55 (2) (am) (intro.) In an action for modification of a child support order
6 under s. 767.59, an action in which an order for child support is required under s.
7 767.511 (1), 767.804 (3), 767.805 (4), or 767.89 (3), or a contempt of court proceeding
8 to enforce a child support or family support order in a county that contracts under
9 s. 49.36 (2), the court may order a parent who is not a custodial parent to register for
10 a work experience and job training program under s. 49.36 if all of the following
11 conditions are met:

12 **SECTION 25.** 767.55 (3) (a) 1. of the statutes is amended to read:

13 767.55 (3) (a) 1. Is an action for modification of a child support order under s.
14 767.59 or an action in which an order for child support is required under s. 767.511
15 (1), 767.804 (3), 767.805 (4), or 767.89 (3).

16 **SECTION 26.** 767.55 (3) (d) of the statutes is amended to read:

17 767.55 (3) (d) Paragraph (b) does not limit the authority of a court to issue an
18 order, other than an order under par. (b), regarding employment of a parent in an
19 action for modification of a child support order under s. 767.59 or an action in which
20 an order for child support is required under s. 767.511 (1), 767.804 (3), 767.805 (4),
21 or 767.89 (3).

22 **SECTION 27.** 767.55 (4) (b) (intro.) of the statutes is amended to read:

23 767.55 (4) (b) (intro.) In an action for revision of a judgment or order providing
24 for child support under s. 767.59 or an action in which an order for child support is

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1 required under s. 767.511 (1), 767.804 (3), 767.805 (4), or 767.89 (3), the court shall
2 order an unemployed teenage parent to do one or more of the following:

3 **SECTION 28.** 767.59 (2s) of the statutes is amended to read:

4 767.59 (2s) STIPULATION FOR REVISION OF SUPPORT. In an action under sub. (1c),
5 the court may not approve a stipulation for the revision of a judgment or order with
6 respect to an amount of child support or family support unless the stipulation
7 provides for payment of an amount of child support or family support that is
8 determined in the manner required under s. 46.10 (14), 49.345 (14), 301.12 (14),
9 767.511, 767.804 (3), 767.805 (4), or 767.89, whichever is appropriate.

10 **SECTION 29.** 767.73 (1) (a) of the statutes is amended to read:

11 767.73 (1) (a) In this subsection, “support payment” means a payment ordered
12 for support under s. 767.521, support under s. 767.501, child support or family
13 support under s. 767.225, child support under s. 767.511, family support under s.
14 767.531, revised child or family support under s. 767.59, child support under s.
15 767.863 (3), child support under s. 767.85, child support under s. 767.89, child
16 support under s. 767.804 (3), child support under s. 767.805 (4), child support under
17 ch. 769, or child support under s. 948.22 (7).

18 **SECTION 30.** 767.75 (1) (b) of the statutes is amended to read:

19 767.75 (1) (b) “Payment order” means an order for child support under this
20 chapter, for maintenance payments under s. 767.225 or 767.56, for family support
21 under this chapter, for costs ordered under s. 767.804 (3), 767.805 (4), or 767.89 (3),
22 for support by a spouse under s. 767.001 (1) (f), or for maintenance payments under
23 s. 767.001 (1) (g); an order for or obligation to pay the annual receiving and
24 disbursing fee under s. 767.57 (1e) (a); an order for a revision in a judgment or order
25 with respect to child support, maintenance, or family support payments under s.

ASSEMBLY BILL 42**SECTION 30**

1 767.59; a stipulation approved by the court for child support under this chapter; and
2 an order for child or spousal support entered under s. 948.22 (7).

3 **SECTION 31.** 767.77 (1) of the statutes is amended to read:

4 767.77 (1) DEFINITION. In this section, “payment obligation” means an
5 obligation to pay support under s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2), 938.183
6 (4), 938.355 (2) (b) 4., 938.357 (5m) (a), or 938.363 (2), support or maintenance under
7 s. 767.501, child support, family support, or maintenance under s. 767.225, child
8 support under s. 767.511, maintenance under s. 767.56, family support under s.
9 767.531, attorney fees under s. 767.241, child support or a child’s health care
10 expenses under s. 767.85, paternity obligations under s. 767.804 (3), 767.805 (4),
11 767.863 (3), or 767.89, support arrearages under s. 767.71, or child or spousal support
12 under s. 948.22 (7).

13 **SECTION 32.** 767.78 (1) of the statutes is amended to read:

14 767.78 (1) DEFINITION. In this section, “financial obligation” means an
15 obligation for payment incurred under s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2),
16 767.225, 767.241, 767.511, 767.531, 767.56, 767.61, 767.71, 767.804 (3), 767.805 (4),
17 767.85, 767.863 (3), 767.89, 938.183 (4), 938.355 (2) (b) 4., 938.357 (5m) (a), or
18 938.363 (2).

19 **SECTION 33.** 767.80 (1) (intro.) of the statutes is amended to read:

20 767.80 (1) WHO MAY BRING ACTION OR FILE MOTION. (intro.) The following persons
21 may bring an action or file a motion, including an action or motion for declaratory
22 judgment, for the purpose of determining the paternity of a child, or for the purpose
23 of rebutting the presumption of paternity under s. 891.405, 891.407, or 891.41 (1):

24 **SECTION 34.** 767.80 (1) (c) of the statutes is amended to read:

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1 767.80 (1) (c) Unless s. 767.804 (1) or 767.805 (1) applies, a male presumed to
2 be the child's father under s. 891.405, 891.407, or 891.41 (1).

3 **SECTION 35.** 767.80 (1) (hm) of the statutes is created to read:

4 767.80 (1) (hm) The state as provided under s. 767.804 (1) (d).

5 **SECTION 36.** 767.80 (5m) of the statutes is amended to read:

6 767.80 (**5m**) APPLICABLE PROCEDURE; EXCEPTIONS. Except as provided in ss.
7 767.804, 767.805, 767.863 (3), 767.85, 767.893 (2) and (2m), and 769.401, unless a
8 male is presumed the child's father under s. 891.41 (1), is adjudicated the child's
9 father either under s. 767.89 or by final order or judgment of a court of competent
10 jurisdiction in another state, is conclusively determined to be the child's father from
11 genetic test results under s. 767.804, or has acknowledged himself to be the child's
12 father under s. 767.805 (1) or a substantially similar law of another state, no order
13 or temporary order may be entered for child support, legal custody, or physical
14 placement until the male is adjudicated the father using the procedure set forth in
15 this subchapter, except s. 767.804 or 767.805. Except as provided in ss. 767.804,
16 767.805, 767.85, and 769.401, the exclusive procedure for establishment of child
17 support obligations, legal custody, or physical placement rights for a male who is not
18 presumed the child's father under s. 891.41 (1), adjudicated the father, conclusively
19 determined to be the child's father from genetic test results under s. 767.804, or
20 acknowledged under s. 767.805 (1) or a substantially similar law of another state to
21 be the father is by an action under this subchapter, except s. 767.804 or 767.805, or
22 under s. 769.701. No person may waive the use of this procedure. If a presumption
23 under s. 891.41 (1) exists, a party denying paternity has the burden of rebutting the
24 presumption.

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1 **SECTION 37.** 767.80 (5m) of the statutes, as affected by 2009 Wisconsin Act 321,
2 is amended to read:

3 **767.80 (5m) APPLICABLE PROCEDURE; EXCEPTIONS.** Except as provided in ss.
4 767.804, 767.805, 767.863 (3), 767.85, 767.893 (2) and (2m), and 769.401, unless a
5 male is presumed the child's father under s. 891.41 (1), is adjudicated the child's
6 father either under s. 767.89 or by final order or judgment of a court of competent
7 jurisdiction in another state, is conclusively determined to be the child's father from
8 genetic test results under s. 767.804, or has acknowledged himself to be the child's
9 father under s. 767.805 (1) or a substantially similar law of another state, no order
10 or temporary order may be entered for child support, legal custody, or physical
11 placement until the male is adjudicated the father using the procedure set forth in
12 this subchapter, except s. 767.804 or 767.805. Except as provided in ss. 767.804,
13 767.805, 767.85, and 769.401, the exclusive procedure for establishment of child
14 support obligations, legal custody, or physical placement rights for a male who is not
15 presumed the child's father under s. 891.41 (1), adjudicated the father, conclusively
16 determined to be the child's father from genetic test results under s. 767.804, or
17 acknowledged under s. 767.805 (1) or a substantially similar law of another state to
18 be the father is by an action under this subchapter, except s. 767.804 or 767.805, or
19 under s. 769.402. No person may waive the use of this procedure. If a presumption
20 under s. 891.41 (1) exists, a party denying paternity has the burden of rebutting the
21 presumption.

22 **SECTION 38.** 767.80 (6m) of the statutes is amended to read:

23 **767.80 (6m) WHEN ACTION MUST BE COMMENCED.** The attorney designated under
24 sub. (6) (a) shall commence an action under this section on behalf of the state within
25 6 months after receiving notification under s. 69.03 (15) that no father is named on

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1 the birth certificate of a child who is a resident of the county if paternity has not been
2 conclusively determined from genetic test results under s. 767.804, acknowledged
3 under s. 767.805 (1) or a substantially similar law of another state, or adjudicated,
4 except in situations under s. 69.14 (1) (g) and (h) and as provided by the department
5 by rule.

6 **SECTION 39.** 767.804 of the statutes is created to read:

7 **767.804 Genetic test results. (1) CONCLUSIVE DETERMINATION OF PATERNITY.**

8 (a) If genetic tests have been performed with respect to a child, the child's mother,
9 and a male alleged, or alleging himself, to be the child's father, the test results
10 constitute a conclusive determination of paternity, which shall be effective on the
11 date on which the report under par. (c) is submitted to the state registrar and which
12 shall be of the same effect as a judgment of paternity, if all of the following apply:

- 13 1. Both the child's mother and the male are over the age of 18 years.
- 14 2. The genetic tests were performed under s. 49.225.
- 15 3. The test results show that the male is not excluded as the father and that
16 the statistical probability of the male's parentage is 99.0 percent or higher.
- 17 4. No other male is presumed to be the father under s. 891.405 or 891.41 (1).

18 (b) If the county child support agency under s. 59.53 (5) receives genetic test
19 results described in par. (a) 3. and the requirements under par. (a) are satisfied, the
20 county child support agency shall send notice to the parties by regular mail at their
21 last-known addresses. The notice must be sent at least 15 days in advance of the
22 date on which the county child support agency intends to file the report under par.
23 (c) and shall advise the parties of all of the following:

- 24 1. The test results.

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1 2. That the report under par. (c) will be filed with the state registrar if the father
2 does not timely object under subd. 4., and the date on which the report will be filed.

3 3. That an action affecting the family concerning custody, child support, or
4 physical placement rights may be brought with respect to the parties.

5 4. That the father may object to the test results by submitting an objection in
6 writing to the county child support agency no later than the day before the date
7 specified in subd. 2., and that, if the father submits an objection, the state will
8 commence a paternity action.

9 (c) 1. If the male does not timely submit an objection under par. (b) 4., the county
10 child support agency shall file with the state registrar a report showing the names,
11 dates, and birth places of the child and the father, the social security numbers of the
12 mother, father, and child, and the maiden name of the mother on a form prescribed
13 by the state registrar, along with the fee set forth in s. 69.22 (5), if any, which the
14 county child support agency shall collect.

15 2. The department shall pay, and may not require the county or county child
16 support agency to reimburse the department for the cost of a fee for inserting the
17 father's name on a birth certificate under s. 69.15 (3) (a) 3. if the county child support
18 agency is unable to collect the fee.

19 (d) If the male timely submits an objection under par. (b) 4., the county child
20 support agency shall commence an action under s. 767.80 (1) on behalf of the state.
21 The genetic test results described in par. (a) are admissible in an action commenced
22 under this paragraph.

23 **(2) ACTIONS.** Unless sub. (1) (d) applies, an action affecting the family
24 concerning custody, child support, or physical placement rights may be brought
25 under this subsection with respect to a child's mother and a male who, along with the

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1 child, were the subjects of genetic tests, the results of which constitute a conclusive
2 determination of paternity under sub. (1). Except as provided in s. 767.407, in an
3 action under this subsection the court may appoint a guardian ad litem for the child.

4 **(3) ORDERS.** In an action under sub. (2), if the child's mother and the male had
5 notice of the hearing, the court shall make an order that contains all of the following
6 provisions:

7 (a) Orders for the legal custody of and periods of physical placement with the
8 child, determined in accordance with s. 767.41.

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

14 (c) A determination as to which parent, if eligible, shall have the right to claim
15 the child as an exemption for federal tax purposes under 26 USC 151 (c) (1) (B), or
16 as an exemption for state tax purposes under s. 71.07 (8) (b).

17 (d) 1. An order establishing the amount of the father's obligation to pay or
18 contribute to the reasonable expenses of the mother's pregnancy and the child's
19 birth. The amount established may not exceed one-half of the total actual and
20 reasonable pregnancy and birth expenses. The order also shall specify the court's
21 findings as to whether the father's income is at or below the poverty line established
22 under 42 USC 9902 (2), and shall specify whether periodic payments are due on the
23 obligation, based on the father's ability to pay or contribute to those expenses.

24 2. If the order does not require periodic payments because the father has no
25 present ability to pay or contribute to the expenses, the court may modify the

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1 judgment or order at a later date to require periodic payments if the father has the
2 ability to pay at that time.

3 (e) An order requiring either or both parties to pay or contribute to the costs
4 of guardian ad litem fees, if any, and other costs.

5 (f) An order requiring either party to pay or contribute to the attorney fees of
6 the other party.

7 **(3m) CHANGE OF CHILD'S NAME.** (a) Upon the request of both parents, the court
8 shall include in the order under sub. (3) an order changing the name of the child to
9 a name agreed upon by the parents.

10 (b) Except as provided in par. (a), the court may include an order changing the
11 surname of the child to a surname that consists of the surnames of both parents
12 separated by a hyphen or, if one or both parents have more than one surname, of one
13 of the surnames of each parent separated by a hyphen, if all of the following apply:

14 1. Only one parent requests that the child's name be changed, or both parents
15 request that the child's name be changed but each parent requests a different name
16 change.

17 2. The court finds that such a name change is in the child's best interest.

18 (c) Section 786.36 does not apply to a name change under this subsection.

19 **(4) LIABILITY FOR PAST SUPPORT.** (a) Subject to par. (b), liability for past support
20 of the child shall be limited to support for the period after the day on which the
21 petition, motion, or order to show cause requesting support is filed in the action for
22 support under sub. (2), unless a party shows, to the satisfaction of the court, all of the
23 following:

24 1. That he or she was induced to delay commencing the action by any of the
25 following:

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1 a. Duress or threats.

2 b. Actions, promises, or representations by the other party upon which the
3 party relied.

4 c. Actions taken by the other party to evade proceedings under sub. (2).

5 2. That, after the inducement ceased to operate, he or she did not unreasonably
6 delay in commencing the action.

7 (b) In no event may liability for past support of the child be imposed for any
8 period before the birth of the child.

9 **SECTION 40.** 767.82 (2) of the statutes is amended to read:

10 767.82 (2) PRESUMPTION. Presumption of paternity shall be as provided in ss.
11 891.39, 891.405, 891.407, and 891.41 (1).

12 **SECTION 41.** 767.82 (2m) of the statutes is amended to read:

13 767.82 (2m) CUSTODY PENDING COURT ORDER. If there is no presumption of
14 paternity under s. 891.41 (1) or if paternity is conclusively determined from genetic
15 test results under s. 767.804 (1) or acknowledged under s. 767.805 (1), the mother
16 shall have sole legal custody of the child until the court orders otherwise.

17 **SECTION 42.** 767.84 (1) (a) of the statutes is renumbered 767.84 (1) (a) (intro.)
18 and amended to read:

19 767.84 (1) (a) (intro.) The Except as provided in ss. 767.855 and 767.863, and
20 except in actions to which s. 767.893 applies, the court may, and upon request of a
21 party shall, require the child, mother, any male for whom there is probable cause to
22 believe that he had sexual intercourse with the mother during a possible time of the
23 child's conception, or any male witness who testifies or will testify about his sexual
24 relations with the mother at a possible time of conception to submit to genetic tests.
25 Probable cause of sexual intercourse during a possible time of conception may be

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1 established by a sufficient petition or affidavit of the child's mother or an alleged
2 father, filed with the court, or after an examination under oath of a party or witness,
3 when the court determines that an examination is necessary. The court is not
4 required to order a person who has undergone a genetic test under s. 49.225 to submit
5 to another genetic test under this paragraph unless a party requests additional tests
6 under sub. (2). with respect to any of the following:

7 **SECTION 43.** 767.84 (1) (a) 1. of the statutes is created to read:

8 767.84 (1) (a) 1. A person who has undergone a genetic test under s. 49.225,
9 unless a party requests additional tests under sub. (2).

10 **SECTION 44.** 767.84 (1) (a) 2. of the statutes is created to read:

11 767.84 (1) (a) 2. A deceased respondent if genetic material is not available
12 without undue hardship as provided in s. 767.865 (2).

13 **SECTION 45.** 767.84 (1) (a) 3. of the statutes is created to read:

14 767.84 (1) (a) 3. a. Except as provided in subd. 3. b., a male respondent who fails
15 to appear, if genetic test results with respect to another man show that the other man
16 is not excluded as the father and that the statistical probability of the other man's
17 parentage is 99.0 percent or higher creating a presumption of the other man's
18 paternity.

19 b. Subdivision 3. a. does not apply if the presumption of the other man's
20 paternity is rebutted.

21 **SECTION 46.** 767.855 of the statutes is renumbered 767.855 (intro.) and
22 amended to read:

23 **767.855 Dismissal if adjudication not in child's best interest.** (intro.)
24 Except as provided in s. 767.863 (1m), at any time in an action to establish the
25 paternity of a child, upon the motion of a party or guardian ad litem, the court or

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1 supplemental court commissioner under s. 757.675 (2) (g) may, with respect to a
2 male, ~~refuse to order genetic tests, if genetic tests have not yet been taken, and~~
3 ~~dismiss the action~~ do any of the following if the court or supplemental court
4 commissioner determines that a judicial determination of whether the male is the
5 father of the child is not in the best interest of the child.:

6 **SECTION 47.** 767.855 (1) of the statutes is created to read:

7 767.855 (1) Refuse to order genetic tests.

8 **SECTION 48.** 767.855 (2) of the statutes is created to read:

9 767.855 (2) Dismiss the action, regardless of whether genetic tests have been
10 performed or what the results of the tests, if performed, were.

11 **SECTION 49.** 767.87 (8) of the statutes is amended to read:

12 767.87 (8) BURDEN OF PROOF. The party bringing an action for the purpose of
13 determining paternity or for the purpose of declaring the nonexistence of paternity
14 presumed under s. 891.405, 891.407, or 891.41 (1) shall have the burden of proving
15 the issues involved by clear and satisfactory preponderance of the evidence.

16 **SECTION 50.** 769.201 (7m) of the statutes is created to read:

17 769.201 (7m) The individual was conclusively determined from genetic test
18 results to be the father under s. 767.804.

19 **SECTION 51.** 802.12 (3) (d) 1. of the statutes is amended to read:

20 802.12 (3) (d) 1. Custody and physical placement under s. 767.41, 767.804 (3),
21 767.805 (4), 767.863 (3), or 767.89 (3).

22 **SECTION 52.** 802.12 (3) (d) 3. of the statutes is amended to read:

23 802.12 (3) (d) 3. Child support under s. 767.511, 767.804 (3), 767.805 (4),
24 767.863 (3), or 767.89 (3).

25 **SECTION 53.** 808.075 (4) (d) 9. of the statutes is amended to read:

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1 808.075 (4) (d) 9. Enforcement of payments under s. 767.77, 767.804 (3),
2 767.805 (4), or 767.89.

3 **SECTION 54.** 808.075 (4) (d) 10. of the statutes is amended to read:

4 808.075 (4) (d) 10. Enforcement of orders under s. ~~s.~~ 767.78, 767.804 (3),
5 767.805 (4), or 767.89.

6 **SECTION 55.** 852.05 (2) of the statutes is amended to read:

7 852.05 (2) Property of a child born to unmarried parents passes in accordance
8 with s. 852.01 except that the father or the father's kindred can inherit only if the
9 father has been adjudicated to be the father in a paternity proceeding under ch. 767
10 or by final order or judgment of a court of competent jurisdiction in another state or
11 has been determined to be the father under s. 767.804 or 767.805 or a substantially
12 similar law of another state.

13 **SECTION 56.** 891.407 of the statutes is created to read:

14 **891.407 Presumption of paternity based on genetic test results.** A man
15 is presumed to be the natural father of a child if the man has been conclusively
16 determined from genetic test results to be the father under s. 767.804 and no other
17 man is presumed to be the father under s. 891.405 or 891.41 (1).

18 **SECTION 57.** 938.02 (13) of the statutes is amended to read:

19 938.02 (13) "Parent" means a biological parent, a husband who has consented
20 to the artificial insemination of his wife under s. 891.40, or a parent by adoption. If
21 the juvenile is a nonmarital child who is not adopted or whose parents do not
22 subsequently intermarry under s. 767.803, "parent" includes a person conclusively
23 determined from genetic test results to be the father under s. 767.804 or a person
24 acknowledged under s. 767.805 or a substantially similar law of another state or
25 adjudicated to be the biological father. "Parent" does not include any person whose

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1 parental rights have been terminated. For purposes of the application of s. 938.028
2 and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, “parent” means a
3 biological parent, an Indian husband who has consented to the artificial
4 insemination of his wife under s. 891.40, or an Indian person who has lawfully
5 adopted an Indian juvenile, including an adoption under tribal law or custom, and
6 includes, in the case of a nonmarital child who is not adopted or whose parents do
7 not subsequently intermarry under s. 767.803, a person conclusively determined
8 from genetic test results to be the father under s. 767.804, a person acknowledged
9 under s. 767.805, a substantially similar law of another state, or tribal law or custom
10 to be the biological father, or a person adjudicated to be the biological father, but does
11 not include any person whose parental rights have been terminated.

12 **SECTION 58.** 938.27 (5) of the statutes is amended to read:

13 938.27 (5) NOTICE TO BIOLOGICAL FATHERS. Subject to sub. (3) (b), the court shall
14 make reasonable efforts to identify and notify any person who has filed a declaration
15 of paternal interest under s. 48.025, any person conclusively determined from
16 genetic test results to be the father under s. 767.804 (1), any person who has
17 acknowledged paternity of the child under s. 767.805 (1), and any person who has
18 been adjudged to be the father of the juvenile in a judicial proceeding unless the
19 person’s parental rights have been terminated.

20 **SECTION 59.** 938.396 (2g) (g) of the statutes is amended to read:

21 938.396 (2g) (g) *Paternity of juvenile.* Upon request of a court having
22 jurisdiction over actions affecting the family, an attorney responsible for support
23 enforcement under s. 59.53 (6) (a) or a party to a paternity proceeding under subch.
24 IX of ch. 767, the party’s attorney or the guardian ad litem for the juvenile who is the
25 subject of that proceeding to review or be provided with information from the records

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1 of the court assigned to exercise jurisdiction under this chapter and ch. 48 relating
2 to the paternity of a juvenile for the purpose of determining the paternity of the
3 juvenile or for the purpose of rebutting the presumption of paternity under s.
4 891.405, 891.407, or 891.41, the court assigned to exercise jurisdiction under this
5 chapter and ch. 48 shall open for inspection by the requester its records relating to
6 the paternity of the juvenile or disclose to the requester those records.

7 **SECTION 60. Initial applicability.**

8 (1) PATERNITY DETERMINATION OR PRESUMPTION BASED ON GENETIC TEST RESULTS.

9 The treatment of section 767.804 of the statutes first applies to genetic tests that are
10 performed on the effective date of this subsection.

11 (2) GENETIC TESTS IN PATERNITY ACTIONS. The renumbering and amendment of
12 sections 767.84 (1) (a) and 767.855 of the statutes and the creation of sections 767.84
13 (1) (a) 1., 2., and 3. and 767.855 (1) and (2) of the statutes first apply to paternity
14 actions commenced on the effective date of this subsection.

15 **SECTION 61. Effective dates.** This act takes effect on the first day of the 6th
16 month beginning after publication, except as follows:

17 (1) The treatment of section 767.80 (5m) (by SECTION 37) of the statutes takes
18 effect on the date stated in the notice published in the Wisconsin Administrative
19 Register under section 769.904 of the statutes.

20 (END)