

CHAPTER 52

SUPPORT OF DEPENDENTS

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52.01 Liability of relatives; enforcement. (1)

(a) The parent and spouse of any dependent person (as defined in s. 49.01) who is unable to maintain himself shall maintain such dependent person, so far as able, in a manner approved by the authorities having charge of the dependent, or by the board in charge of the institution where such dependent person is; but no parent shall be required to support a child 18 years of age or older.

(b) For purposes of this section those persons receiving benefits under federal Title XVI or under s. 49.177 shall not be deemed dependent persons.

(c) For the purpose of determining the ability of a parent or spouse to maintain a dependent person, credit granted under s. 71.09 (7) shall not be considered.

(1m) Each spouse has an equal obligation to support the other spouse as provided in this chapter. Each parent has an equal obligation to support his or her minor children as provided in this chapter and chs. 48 and 49.

NOTE: 1983 Wis. Act 186 creates sub. (1m) eff. 1-1-86.

(2) Upon failure of these relatives to provide maintenance the authorities or board shall submit to the district attorney a report of its findings. Upon receipt of the report the district attorney shall, within 60 days, apply to the circuit court for the county in which the dependent person resides for an order to compel such maintenance. Upon such an application the district attorney shall make a written report to the county department of social services or public welfare, with a copy to the chairperson of the county board and to the department.

(3) At least 10 days prior to the hearing on said application notice thereof shall be served upon such relatives in the manner provided for the service of summons in courts of record.

(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 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.

(5) Any party aggrieved by such order may appeal therefrom but when the appeal is taken by the authorities having charge of the dependent person an undertaking need not be filed.

(6) If any relative who has been ordered to maintain a dependent person neglects to do as ordered, the authorities or board may recover in an action on behalf of the municipality or institution for relief or support accorded the dependent person against such relative the sum prescribed for each week the order was disobeyed up to the time of judgment, with costs.

(7) When the income of a responsible relative is such that he would be expected to make a contribution to the support of the recipient and such recipient lives in the relative's home and requires care, a reasonable amount may be

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deducted from the expected contribution in exchange for the care provided.

(9) In any action under this section the court may impose any sum ordered paid by a party as a charge upon any specific real estate of the party liable or may require sufficient security to be given for payment according to the judgment or order.

History: 1973 c. 90 ss 296e, 560 (2); 1973 c. 147, 336; Sup. Ct. Order, 67 W (2d) 773; 1975 c. 82, 199; 1977 c. 271, 449; 1979 c. 221, 352; 1981 c. 317; 1983 a. 186.

52.03 Abandonment; seizure of property. (1)

If a person absconds or is about to abscond from his or her children or spouse, or is about to remove permanently from the municipality in which he or she resides leaving a 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 spouse or children, the county or municipality where the 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 parent or spouse is situated for a warrant to seize the property.

(2) Upon due proof of the facts the court shall issue a warrant authorizing the county or municipality to seize the property of that person wherever found in the county; and they shall, respectively, be vested with all the rights and title, as limited in this section, to that property which the person had at the time of his or her departure. They shall immediately make an inventory of the property and return it with the warrant and their proceedings thereon to the circuit court. All sales and transfers of any real or personal property left in that county made by the person after the issuing of the warrant is void.

(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 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 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 spouse or children so abandoned or give security to the county or municipality, respectively, (to be approved by them) that 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.

History: Sup. Ct. Order, 67 W (2d) 773; 1977 c. 449; 1979 c. 352.

52.05 Abandonment; uniform act. (1) PEN-

ALTY. Any person who deserts or wilfully neglects or refuses to provide for the support and maintenance of his or her spouse or marital or nonmarital child under 18 years in destitute or necessitous circumstances shall be fined not more than \$500 or imprisoned not more than 2 years or both. It is a defense to criminal liability that the person has just cause to desert, wilfully neglect or refuse to provide support and maintenance. The parent of any nonmarital child who has made provision for the support of such child by giving bond, or by an agreement approved by a court under s. 767.45 (2), on which such parent is not in default, is not 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 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 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 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 spouse or to the guardian, curator or custodian of the 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 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 the order of support, or of any subsequent modification thereof, then 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 spouse, or to the guardian, curator, custodian or trustee of the 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 the husband and wife, or that the defendant is the father or mother of the child or children, whether marital or nonmarital, 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 the marriage and the parentage of the child or children, but neither shall be compelled to give evidence incriminating himself or herself. Proof of the desertion of the spouse, child or children in destitute or necessitous circumstances or of neglect or refusal to provide for the support and maintenance of the spouse, child or children

shall be prima facie evidence that such desertion, neglect or refusal is wilful. Substantial failure by 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.

History: 1977 c. 271; 1979 c. 352; 1981 c. 145; 1983 a. 447

Trial court is not authorized by (4) to impose a sentence or probation and subsequently withdraw such disposition in favor of a court order for support. *Petit v. State*, 73 W (2d) 543, 243 NW (2d) 223

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 marital or nonmarital child under 18 years, or any person who, without just cause, intentionally neglects or refuses to provide for the necessary and adequate maintenance of his 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 nonmarital child who has made provision for the support of such child by giving bond, or by 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 the parent or person to provide for 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 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 or her spouse shall be prima facie evidence of a violation of this section for prosecution 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 spouse or to the guardian, curator or custodian of the 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 in vacation orders and approves. The condition of the recognizance shall be that if the defendant makes personal appearance in court whenever so ordered and further complies with the terms of the order of support, or of any subsequent modification thereof, then the recognizance is void, otherwise of full force and effect.

(2m) (a) 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 parent to assign such salary, benefits under chs. 102 and 108 or wages due or to be due the parent in the future to the clerk of court where the judgment in any action affecting the family, as designated in s. 767.02, was granted, 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. If the parent does not execute an assignment when so ordered, the court shall execute that assignment. The assignment of benefits under ch. 108 is subject to the requirements of s. 108.13 (3).

(b) The assignment shall be binding upon the party from whom the parent receives salary, benefits or wages one week after service upon it of a true copy of the assignment signed by the parent or court 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 party from whom the parent receives salary, benefits or wages shall receive \$1 which it shall deduct from the money to be paid the parent. This paragraph does not apply to the assignment of benefits under ch. 108.

(c) Section 241.09 shall not apply to assignments under this section. An employer may not use the assignment as a basis for the discharge of an employe or for any disciplinary action against the employe. Compliance by the party from whom the parent receives salary, benefits or wages with the order operates as a discharge of its liability to the parent as to that portion of the parent's salary, benefits or 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 by execution,

the sum recovered may, in the discretion of the court, be paid in whole or in part, to the spouse, or to the guardian, curator, custodian, trustee of the minor children or to the county department of social services or public welfare.

History: 1977 c. 105 s. 60; 1977 c. 271, 273; 1979 c. 32 s. 92 (4); 1979 c. 352; 1981 c. 20, 186; 1983 a. 384, 447.

52.06 Courts; process. Circuit courts have jurisdiction of offenses arising under s. 52.05, and every such court shall be open to hear, try and determine all cases arising under that section. Process may issue and proceedings be had for the arrest and examination of offenders under ch. 968. If, upon examination, the defendant is bound over or held for trial, the court or officer who conducts the examination shall, if necessary, forthwith transmit the record of the examination to the circuit court for the county in which the examination was held and shall order the defendant forthwith to appear before the court to which he or she has been held, there to stand trial.

History: 1971 c. 42; 1975 c. 39; 1977 c. 449.

52.07 Procedure. The district attorney shall file an information against the defendant as soon thereafter as practicable, and the defendant shall be arraigned upon the same. If the defendant pleads guilty, sentence shall be immediately awarded. If the defendant pleads not guilty, a jury shall forthwith be impaneled and the defendant put upon trial, unless a continuance is granted for cause. If at the time a plea of not guilty is made there is not a regular panel of jurors in attendance upon the circuit court, the court shall order the sheriff to summon a specified number of jurors from the residents of the county qualified to serve as jurors in that court. The trial and all proceedings therein and subsequent thereto shall be, as nearly as possible, in conformity with the practice of the court in criminal cases.

History: 1977 c. 449.

52.10 Revised uniform reciprocal enforcement of support act (1968). **(1) PURPOSES.** The purposes of this section are to improve and extend by reciprocal legislation the enforcement of duties of support.

(2) DEFINITIONS. (a) "Court" means the court assigned to exercise jurisdiction under ch. 767 or, if there is none, the court having jurisdiction under s. 52.05 to enforce support and, when the context requires, means the court or agency of any other state as defined in a substantially similar reciprocal law.

(am) "District attorney", as used in this section, means either the district attorney or, when authorized by county board resolution to

conduct the duties of the district attorney under this section, the corporation counsel.

(b) "Duty of support" means a duty of support whether imposed or imposable by law or by order, decree or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance or otherwise and includes the duty to pay arrearages of support past due and unpaid.

(c) "Governor" includes any person performing the functions of governor or the executive authority of any state covered by this section.

(d) "Initiating state" means a state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "Initiating court" means the court in which a proceeding is commenced.

(e) "Law" includes both common and statutory law.

(f) "Obligee" means a person including a state or political subdivision to whom a duty of support is owed or a person including a state or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(g) "Obligor" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(i) "Register" means to file in the registry of foreign support orders.

(j) "Registering court" means any court of this state in which a support order of a rendering state is registered.

(k) "Rendering state" means a state in which the court has issued a support order for which registration is sought or granted in the court of another state.

(kz) "Responding state" means a state in which any responsive proceeding pursuant to the proceeding in the initiating state is commenced. "Responding court" means the court in which the responsive proceeding is commenced.

(m) "State" includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a federally recognized elected tribal governing body and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect or which has established enforcement procedures with or without court participation under a treaty, the application of which extends to this state.

(n) "Support order" means any judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

(3) REMEDIES ADDITIONAL TO THOSE NOW EXISTING. The remedies provided in this section are in addition to and not in substitution for any other remedies.

(4) EXTENT OF DUTIES OF SUPPORT. Duties of support arising under the law of this state, when applicable under sub (7), bind the obligor present in this state regardless of the presence or residence of the obligee.

(5) INTERSTATE RENDITION. The governor of this state may:

(a) Demand of the governor of another state the surrender of a person found in that state who is charged criminally in this state with failing to provide for the support of any person; or

(b) Surrender on demand by the governor of another state a person found in this state who is charged criminally in that state with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this section apply to the demand even if the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and has not fled therefrom. The demand, the oath and any proceedings for extradition pursuant to this subsection need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding state.

(6) CONDITIONS OF INTERSTATE RENDITION. (a) Before making the demand upon the governor of another state for the surrender of a person charged criminally in this state with failing to provide for the support of a person, the governor of this state may require any district attorney of this state to satisfy him that at least 60 days prior thereto the obligee initiated proceedings for support under this section or that any proceeding would be of no avail.

(b) If, under a substantially similar law, the governor of another state makes a demand upon the governor of this state for the surrender of a person charged criminally in that state with failure to provide for the support of a person, the governor may require any district attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the governor that a proceeding would be effective but has not been initiated he may delay

honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If proceedings have been initiated and the person demanded has prevailed therein the governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the governor may decline to honor the demand if the person demanded is complying with the support order.

(7) CHOICE OF LAW. Duties of support applicable under this section are those imposed under the laws of any state where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

(8) REMEDIES OF STATE OR POLITICAL SUBDIVISION FURNISHING SUPPORT. If a state or a political subdivision furnishes support to an individual obligee it has the same right to initiate a proceeding under this section as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

(9) HOW DUTIES OF SUPPORT ENFORCED. All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this section including a proceeding for contempt of court. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

(10) JURISDICTION. Jurisdiction of any proceeding under this section is vested in the court defined in sub. (2) (a).

(11) CONTENTS AND FILING OF PETITION FOR SUPPORT; VENUE. (a) The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints and his social security number.

(b) The petition may be filed in the appropriate court of any state in which the obligee resides. The court shall not decline or refuse to accept and forward the petition on the ground that it should be filed with some other court of this or any other state where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption or custody between the same parties or where

another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

(12) OFFICIALS TO REPRESENT OBLIGEE. If this state is acting as an initiating state the district attorney upon the request of the court or the person in charge of county welfare activities shall represent the obligee in any proceeding under this section. If the district attorney neglects or refuses to represent the obligee, the department of justice may undertake the representation.

(13) PETITION FOR A MINOR. A petition on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

(14) DUTY OF INITIATING COURT. If the initiating court finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding state may obtain jurisdiction of the obligor or his property it shall so certify and cause 3 copies of the petition and its certificate and one copy of this section to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating state. If the name and address of the responding court is unknown and the responding state has an information agency comparable to that established in the initiating state it shall cause the copies to be sent to the state information agency or other proper official of the responding state, with a request that the agency or official forward them to the proper court and that the court of the responding state acknowledge their receipt to the initiating court.

(15) COSTS AND FEES. An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect only those fees and costs from the obligor which are incurred in the responding state. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs incurred in this state when acting as a responding state, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service or other service supplied to the obligor, be paid in whole or in part by the obligor, the county or the federally recognized elected tribal governing body. These costs or fees except for the receiving and disbursing fee authorized by s. 814.61 (12) (b) do not have priority over amounts due the obligee.

(16) JURISDICTION BY ARREST. If the court of this state believes that the obligor may flee it may:

(a) As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(b) As a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

(17) STATE INFORMATION AGENCY. (a) The department of health and social services is designated as the state information agency under this section, and shall:

1. Compile a list of the courts and their addresses in this state having jurisdiction under this section and transmit it to the state information agency of every other state which has adopted this or a substantially similar law. Upon adjournment of each session of the legislature the agency shall distribute copies of any amendments to this section and a statement of their effective date to all other state information agencies;

2. Maintain a register of lists of courts received from other states and transmit copies thereof promptly to every court in this state having jurisdiction under this section; and

3. Forward to the court in this state which has jurisdiction over the obligor or his property petitions, certificates and copies of the laws it receives from courts or information agencies of other states.

(b) If the state information agency does not know the location of the obligor or his property in the state and no state location service is available it shall use all means at its disposal to obtain this information, including the examination of official records in the state and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both state and federal where such offices are able to cooperate, and requests made to the social security administration as permitted by the social security act, as amended.

(c) After the deposit of 3 copies of the petition and certificate and one copy of the law of the initiating state with the clerk of the appropriate court, if the state information agency knows or believes that the district attorney is not prosecuting the case diligently, the department of justice may undertake the representation.

(18) DUTY OF THE COURT AND OFFICIALS OF THIS STATE AS RESPONDING STATE. (a) After the responding court receives copies of the petition, certificate and law from the initiating court, the

clerk of the court shall docket the case and notify the district attorney of his action.

(b) The district attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this state to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

(c) If the district attorney neglects or refuses to represent the obligee, the department of justice may undertake the representation.

(19) FURTHER DUTIES OF COURT AND OFFICIALS IN THE RESPONDING STATE. (a) The district attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the petition or otherwise the court cannot obtain jurisdiction the district attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the initiating court.

(b) If the obligor or his property is not found in the county, and the district attorney discovers that the obligor or his property may be found in another county of this state or in another state he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating state to a court in the other county or to a court in the other state or to the information agency or other proper official of the other state with a request that the documents be forwarded to the proper court. All powers and duties provided by this section apply to the recipient of the documents so forwarded. If the clerk of a court of this state forwards documents to another court he shall forthwith notify the initiating court.

(c) If the district attorney has no information as to the location of the obligor or his property he shall so inform the initiating court.

(20) HEARING AND CONTINUANCE. If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense the court, upon request of either party, shall continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

(21) IMMUNITY FROM CRIMINAL PROSECUTION. If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may

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tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

(22) EVIDENCE OF HUSBAND AND WIFE. Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this section. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

(23) RULES OF EVIDENCE. In any hearing for the civil enforcement of this section the court is governed by the rules of evidence applicable in a civil court action. If the action is based on a support order issued by another court a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity under sub. (27) or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

(24) ORDER OF SUPPORT. If the responding court finds a duty of support it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this section shall require that payments be made to the clerk of the court of the responding state. The court and district attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the district attorney shall send a certified copy of the order to the district attorney of any county in which it appears that proceedings to enforce the order would be effective. The district attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order. The enforcement may proceed as provided in subs. (37) to (40).

(25) RESPONDING COURT TO TRANSMIT COPIES TO INITIATING COURT. The responding court shall cause a copy of all support orders to be sent to the initiating court.

(26) ADDITIONAL POWERS OF RESPONDING COURT. In addition to the foregoing powers a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

(a) Require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

(b) Require the obligor to report personally and to make payments at specified intervals to the clerk of the court; and

(c) Punish under the power of contempt the obligor who violates any order of the court.

(27) PATERNITY. If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

(28) ADDITIONAL DUTIES OF RESPONDING COURT. A responding court has the following duties which may be carried out through the clerk of the court:

(a) To transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

(b) To furnish to the initiating court upon request a certified statement of all payments made by the obligor.

(29) ADDITIONAL DUTY OF INITIATING COURT. An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the clerk of the court.

(30) PROCEEDINGS NOT TO BE STAYED. A responding court shall not stay the proceeding or refuse a hearing under this section because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption or custody in this or any other state. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the petition being heard the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

(31) APPLICATION OF PAYMENTS. A support order made by a court of this state pursuant to this section does not nullify and is not nullified by a support order made by a court of this state

pursuant to any other law or by a support order made by a court of any other state pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another state shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this state.

(32) EFFECT OF PARTICIPATION IN PROCEEDING. Participation in any proceeding under this section does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

(33) INTRASTATE APPLICATION. This section applies if both the obligee and the obligor are in this state but one or both are in the jurisdiction of a federally recognized elected tribal governing body or the 2 are in different counties. If the court of the tribal jurisdiction or the circuit court for the county in which the petition is filed finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another tribal jurisdiction or the circuit court for another county in this state may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the petition and a certification of the findings to the court of the tribal jurisdiction or the circuit court for the county in which the obligor or his property is found. The clerk of the court receiving these documents shall notify the district attorney or the tribal attorney of their receipt. The attorney and the court to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this state as a responding state.

(34) APPEALS. If the department of justice is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, it may:

(a) Perfect an appeal to the court of appeals if the support order was issued by a court of this state; or

(b) If the support order was issued in another state, cause the appeal to be taken in the other state. In either case expenses of appeal may be paid on its order from funds appropriated for the department of justice.

(35) ADDITIONAL REMEDIES. If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in subs. (36) to (40).

(36) REGISTRATION. The obligee may register the foreign support order in a court of this state

in the manner, with the effect and for the purposes herein provided.

(37) REGISTRY OF FOREIGN SUPPORT ORDERS.

The clerk of the court shall maintain a registry of foreign support orders in which he shall file foreign support orders.

(38) OFFICIAL TO REPRESENT OBLIGEE. (a) If this state is acting either as a rendering or a registering state the district attorney upon the request of the court shall represent the obligee in proceedings under sub. (36) to (40).

(b) If the district attorney neglects or refuses to represent the obligee, the department of justice may undertake the representation.

(39) REGISTRATION PROCEDURE; NOTICE. (a) An obligee seeking to register a foreign support order in a court of this state shall transmit to the clerk of the court 1) 3 certified copies of the order with all modifications thereof, 2) one copy of the reciprocal enforcement of support act of the state in which the order was made and 3) a statement verified and signed by the obligee, showing the post-office address of the obligee, the last-known place of residence and post-office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution and a list of the states in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the registry of foreign support orders. The filing constitutes registration under this section.

(b) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post-office address of the obligee. He shall also docket the case and notify the district attorney of his action. The district attorney shall proceed diligently to enforce the order.

(40) EFFECT OF REGISTRATION; ENFORCEMENT PROCEDURE. (a) Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a support order of this state and may be enforced and satisfied in like manner.

(b) The obligor has 20 days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition the registered support order is confirmed.

(c) At the hearing to enforce the registered support order the obligor may present only

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matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering state. If he shows to the court any ground upon which enforcement of a support order of this state may be stayed the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this state.

(41) UNIFORMITY OF INTERPRETATION. This section shall be so construed as to effectuate its

general purpose to make uniform the law of those states which enact it.

(42) SHORT TITLE. This section may be cited as the revised uniform reciprocal enforcement of support act (1968).

History: 1975 c. 82; 1977 c. 187, 449; 1979 c. 32 s. 92 (4); 1979 c. 221, 257; 1981 c. 317 s. 2202; 1983 a. 27

A nonresident can be prosecuted for failure to support a wife and children who reside here. *Poole v. State*, 60 W (2d) 152, 208 NW (2d) 328

Sub (40) (b) does not prohibit obligor from seeking retroactive and prospective modification of a support order at any time after its registration. *Monson v. Monson*, 85 W (2d) 794, 271 NW (2d) 137 (Ct. App. 1978)

Since support obligation is unaffected by misconduct of custodial parent, matters of visitation, custody, and contempt are of no concern in proceeding to enforce foreign jurisdiction order of support. *State ex rel. Hubbard v. Hubbard*, 110 W (2d) 683, 329 NW (2d) 202 (1983)

Reciprocal nonsupport actions under 52.10 and paternity proceedings may be prosecuted by corporation counsel rather than district attorney in counties other than Milwaukee only upon direction by resolution or ordinance of the county board. 60 Atty Gen 190