CHAPTER 767

ACTIONS AFFECTING THE FAMILY

767.01 Jurisdiction. (1) The circuit courts have jurisdiction of all actions affecting the family and have authority to do all acts and things necessary and proper in such actions and to carry their orders and judgments into execution as prescribed in this chapter. All actions affecting the family shall be commenced and conducted and the orders and judgments enforced according to these statutes in respect to actions in circuit court, as far as applicable, except as provided in this chapter.

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

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

History: 1975 c. 39; 1977 c. 449; 1979 c. 32 s. 50; 1979 c. 196, 352.

Cross Reference: See 765.001 for provision as to intent and construction of this chapter.

Court had authority to direct defendant to pay plaintiff's medical expenses which would have been covered under insurance policy had defendant properly converted policy pursuant to divorce decree. Rotter v. Rotter, 80 W (2d) 56, 257 NW (2d) 861.

Where husband complied with original court order to make property division instalment payments, court had no authority to order husband to pay wife's income tax on instalments. Wright v. Wright, 92 W (2d) 246, 284 NW (2d) 894 (1979).

Where disposition of homestead was ordered in divorce judgment, family court and probate court had concurrent jurisdiction. Morrissette v. Morrissette, 99 W (2d) 467, 299 NW (2d) 590 (Ct. App. 1980).

Court's order to arbitrate custody and visitation was not proper exercise of authority. Court's order to mediate under 767.081 was abuse of discretion. In re Marriage of Biel v. Biel, 114 W (2d) 191, 336 NW (2d) 404 (Ct. App. 1983).

767.015 Child custody jurisdiction. All proceedings relating to the custody of children shall comply with the requirements of ch. 822.

History: 1975 c. 283; 1979 c. 32 s. 50.

767.02 Actions affecting the family. (1) Actions affecting the family are:

(a) To affirm marriage.

(b) Annulment.

(c) Divorce.

(d) Legal separation (formerly divorce from bed and board).

(e) Custody.

(f) For child support, including an action under s. 767.65.

(g) For maintenance payments.

(h) For property division.

(i) To enforce or modify a judgment in an action affecting the family granted in this state or elsewhere. If a petition requesting enforcement or modification of a judgment in an action affecting the family which was granted by a court of this state is filed in a county other than the county in which the judgment was rendered, the petitioner shall send a copy of the petition and summons to the clerk of the court in which the judgment was rendered. The petitioner shall send a copy of any order rendered pursuant to this petition to the clerk of the court in which the original judgment was rendered.

(j) For periodic family support payments.

(k) Concerning visitation rights to children.

(l) To determine paternity.

(2) "Divorce" means divorce from the bonds of matrimony or absolute divorce, when used in this chapter.

(3) Commencement of an action affecting the family which affects a minor child constitutes an application to the depart-

ment of health and social services for services on behalf of the minor child under s. 46.25. This application does not authorize representation under s. 46.25 or 59.47 (14), or intervention as a party in any action, by the department of health and social services.

History: 1977 c. 105, 418; 1979 c. 32 s. 50; 1979 c. 196; 1979 c. 352 ss. 22, 39; 1979 c. 355, 357; 1985 a. 29.

Section 767.02 (1) (i) allows all actions to modify a judgment in an action affecting marriage to be commenced in any court having jurisdiction under 767.01. 68 Atty. Gen. 106.

The 1977 amendments to the Wisconsin Family Code. Perkins, 1978 WLR 882.

767.03 Annulment. No marriage may be annulled or held void except pursuant to judicial proceedings. No marriage may be annulled after the death of either party to the marriage. A court may annul a marriage entered into under the following circumstances:

(1) A party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of age, because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other incapacitating substances, or a party was induced to enter into a marriage by force or duress, or by fraud involving the essentials of marriage. Suit may be brought by either party, or by the legal representative of a party lacking the capacity to consent, no later than one year after the petitioner obtained knowledge of the described condition.

(2) A party lacks the physical capacity to consummate the marriage by sexual intercourse, and at the time the marriage was solemnized the other party did not know of the incapacity. Suit may be brought by either party no later than one year after the petitioner obtained knowledge of the incapacity.

(3) A party was 16 or 17 years of age and did not have the consent of his or her parent or guardian or judicial approval, or a party was under 16 years of age. Suit may be brought by the underaged party or a parent or guardian at any time prior to the party's attaining the age of 18 years, but a parent or guardian must bring suit within one year of obtaining knowledge of the marriage.

(4) The marriage is prohibited by the laws of this state. Suit may be brought by either party within 10 years of the marriage, except that the 10-year limitation shall not apply where the marriage is prohibited because either party has another spouse living at the time of the marriage and the impediment has not been removed under s. 765.24.

History: 1977 c. 105; 1979 c. 32 ss. 50, 92 (2).

767.04 Actions to affirm marriage. When the validity of any marriage shall be denied or doubted by either of the parties the other party may commence an action to affirm the marriage, and the judgment in such action shall declare such marriage valid or annul the same, and be conclusive upon all persons concerned.

History: 1979 c. 32 s. 50.

767.045 Guardian ad litem for minor children. In any action affecting the family in which the court has reason for special concern as to the future welfare of the minor children, in which the custody of such children is contested, and in any action in which paternity is contested under s. 891.39, the court shall appoint an attorney admitted to practice in this state as guardian ad litem to represent the interests of children as to custody, support and visitation. The guardian ad litem shall be an advocate for the best interests of the child or children and consider the factors under s. 767.24. If a guardian ad litem is appointed, the court shall direct either or both parties to pay the fee of the guardian ad litem, the amount of which fee shall be approved by the court. If either or both parties are unable to pay, the court, in its discretion, may direct that the fee of the guardian ad litem, in whole or in part, be paid by the county of venue, and may direct either party to reimburse the county, in whole or in part, for the payment.

History: Sup. Ct. Order, 50 W (2d) vii; 1977 c. 105, 299; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; 1979 c. 352 s. 39.

Comment of Judicial Council, 1971: This section provides that in any action for an annulment, divorce, legal separation, or otherwise, where the court determines there is reason for special concern for future welfare of the minor children, the court shall appoint a guardian ad litem for representation of the children. If a guardian ad litem is appointed, the court shall direct payment of fees by either or both parties. If the parties are indigent, the court, in its discretion, may direct that the fee be paid by the county. In all cases the court shall approve the amount of the fee of the guardian ad litem. [Re Order effective July 1, 1971]

The trial court's omission to appoint a guardian ad litem to represent the children, does not constitute grounds for reversal of its custody determination. Pfeifer v. Pfeifer, 62 W (2d) 417, 215 NW (2d) 419.

Trial court direction that the husband pay the entire fee of the guardian ad litem is held to be an abuse of discretion, requiring modification, so as to charge the wife with 50%. Tesch v. Tesch, 63 W (2d) 320, 217 NW (2d) 647.

The trial court should have appointed a guardian ad litem for the children to aid in ascertaining whether the welfare of the children might best be served by their remaining in their grandparents' home. LaChapell v. Mawhinney, 66 W (2d) 679, 225 NW (2d) 501.

While some proceedings affecting marriage will have little effect upon the welfare of the children and thus involve no special concern therefor, a petition for change of custody by definition raises a question of "special concern" within the meaning of this section, and requires a trial judge to sua sponte appoint a guardian ad litem to represent the interests of the minor children. de Montigny v. de Montigny, 70 W (2d) 131, 233 NW (2d) 463.

Where both counsel consented to absence of guardian ad litem during part of custody hearing, absence was not reversible error. Greco v. Greco, 73 W (2d) 220, 243 NW (2d) 465.

Where guardian ad litem's report was timely disclosed to both parties, trial court did not err in failing to introduce report during custody hearing. Allen v. Allen, 78 W (2d) 263, 254 NW (2d) 244.

Increase of visitation rights from 24 days to 75 days per year had sufficient impact upon welfare of children so as to require appointment of guardian ad litem. Bahr v. Galonski, 80 W (2d) 72, 257 NW (2d) 869.

The "why" behind appointing guardians ad litem for children in divorce proceedings. Podell, 57 MLR 103.

767.05 Procedures. (1) JURISDICTION. A court of this state having jurisdiction to hear actions affecting the family may exercise jurisdiction as provided under ch. 801 except that personal jurisdiction is limited by s. 801.05 (11).

(1m) RESIDENCE. No action under s. 767.02 (1) (a) or (b) may be brought unless at least one of the parties has been a bona fide resident of the county in which the action is brought for not less than 30 days next preceding the commencement of the action, or unless the marriage has been contracted within this state within one year prior to the commencement of the action. No action under s. 767.02 (1) (c) or (d) may be brought unless at least one of the parties has been a bona fide resident of the county in which the action is brought for not less than 30 days next preceding the commencement of the action. No action under s. 767.02 (1) (c) may be brought unless at least one of the parties has been a bona fide resident of this state for not less than 6 months next preceding the commencement of the action.

(2) ACTIONS FOR CUSTODY OF CHILDREN. Subject to ch. 822, the question of a child's custody may be determined as an incident of any action affecting the family or in an independent action for custody. The effect of any determination of a child's custody shall not be binding personally against any parent or guardian unless the parent or guardian has been made personally subject to the jurisdiction of the court in the action as provided under ch. 801 or has been notified under s. 822.05 as provided in s. 822.12. Nothing in this section may be construed to foreclose a person other than a parent who has physical custody of a child from proceeding under ch. 822.

(3) PARTIES. The party initiating an action affecting the family shall be denominated the petitioner. The party responding to the action shall be denominated the respondent. All references to "plaintiff" in chs. 801 to 807 shall apply to the petitioner, and all references to "defendant" in

chs. 801 to 807 shall apply to the respondent. Both parties together may initiate the petition by signing and filing a joint petition. The parties to a joint petition shall be called joint petitioners. The parties to a joint petition shall state within the joint petition that both parties consent to personal jurisdiction and waive service of summons.

(4) PETITION. All references to a "complaint" in chs. 801 to 807 shall apply to petitions under s. 767.085.

(5) TITLE OF ACTIONS. An action affecting the family under s. 767.02 (1) (a) to (d) and (f) to (k) shall be entitled "In re the marriage of A.B. and C.D.". A child custody action shall be entitled "In re the custody of A.B.". In all other respects, the general provisions of chs. 801 and 802 respecting the content and form of the summons and pleadings shall apply.

(6) DISMISSAL. An action affecting the family may not be dismissed under s. 805.04 (1) unless all the parties who have appeared in the action have been served with a copy of the notice of dismissal and have had an opportunity to file a responsive pleading or motion.

(7) ACTIONS FOR CERTAIN INTERSPOUSAL REMEDIES. If a spouse has begun an action against the other spouse under s. 766.70 and either or both spouses subsequently bring an action under this chapter for divorce, annulment or legal separation, the actions may be consolidated by the court exercising jurisdiction under this chapter. If the actions are consolidated, to the extent the procedural and substantive requirements of this chapter conflict with the requirements under s. 766.70, this chapter controls. No action under s. 766.70 may be brought by a spouse against the other spouse while an action for divorce, annulment or legal separation is pending under this chapter.

History: 1977 c. 105, 418, 447; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; 1979 c. 352 s. 39; 1983 a. 326; 1983 a. 447 s. 67; 1985 a. 37.

In a child custody dispute between the children's father, who was divorced by his wife, and the wife's parents, subsequent to her death, the trial court erred in concluding that it had no choice but to award custody to the surviving natural parent unless it found him unfit or unable to care for the children. LaChapell v. Mawhinney, 66 W (2d) 679, 225 NW (2d) 501.

Where divorce action was brought before meeting residency requirement, action was never commenced and petition could not be amended after requirement was met. Siemering v. Siemering, 95 W (2d) 111, 288 NW (2d) 881 (Ct. App. 1980).

767.07 Judgment of divorce or legal separation. A court of competent jurisdiction shall grant a judgment of divorce or legal separation if:

(1) The requirements of this chapter as to residence and marriage assessment counseling have been complied with;

(2) The court finds that the marriage is irretrievably broken under s. 767.12 (2); and

(3) To the extent it has jurisdiction to do so, the court has considered, approved or made provision for child custody, the support of any child of the marriage entitled to support, the maintenance of either spouse, the support of the family under s. 767.261 and the disposition of property.

History: 1971 c. 220; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4).

767.075 State is real party in interest. Whenever aid under s. 49.19 or 49.45 is provided a dependent, the state shall be deemed a real party in interest within the meaning of s. 803.01 for purposes of securing reimbursement of aid paid, future support and costs as appropriate in an action affecting the family.

History: 1977 c. 418; 1979 c. 32 s. 50; 1979 c. 352 s. 39; 1983 a. 27 s. 2202 (57).

See note to 767.25, citing State ex rel. v. Reible, 91 W (2d) 394, 283 NW (2d) 427 (Ct. App. 1979).

767.08 Actions to compel support. (1) In this section:

(a) "Nonlegally responsible relative" means a relative who assumes responsibility for the care of a child without legal custody, but is not in violation of a court order. "Nonlegally responsible relative" does not include a relative who has physical custody of a child during a court-ordered visitation period.

(b) "Relative" means any person connected with a child by consanguinity or direct affinity.

(2) (a) If a person fails or refuses to provide for the support and maintenance of his or her spouse or minor child, any of the following may commence an action in any court having jurisdiction in actions affecting the family to compel the person to provide any legally required support and maintenance:

1. The person's spouse.
2. The minor child.
3. The person with legal custody of the child.
4. A nonlegally responsible relative.

(b) The court in the action shall, as provided under s. 767.25 or 767.26, determine and adjudge the amount, if any, the person should reasonably contribute to the support and maintenance of the spouse or child and how the sum should be paid. This amount may be expressed as a percentage of the person's income or as a fixed sum. The amount so ordered to be paid may be changed or modified by the court upon notice of motion or order to show cause by either party upon sufficient evidence.

(c) The determination may be enforced by contempt proceedings, an assignment of income under s. 767.265, or other enforcement mechanisms as provided under s. 767.30.

(d) In any such support action there shall be no filing fee or other costs taxable to the person's spouse, the minor child, the person with legal custody or the nonlegally responsible relative, but after the action has been commenced and filed the court may direct that any part of or all fees and costs incurred shall be paid by either party.

(3) If the state or any subdivision thereof furnishes public aid to a spouse or dependent child for support and maintenance and the spouse, person with legal custody or nonlegally responsible relative fails or refuses to institute an appropriate court action under this chapter to provide for the same, the person in charge of county welfare activities, the county child support agency or the state department of health and social services shall have the same right as the spouse, person with legal custody or nonlegally responsible relative to initiate an action under this section, for the purpose of obtaining support and maintenance. In counties having a population of 500,000 or more, counsel employed by the county department under s. 46.215, the county child support agency or the department of health and social services shall represent the director or department thereof in any such action and may petition the court to be appointed as guardian ad litem for any minor or incompetent children. The title of the action shall be "In re the support or maintenance of A.B. (Child)".

History: 1971 c. 220; 1971 c. 307 s. 116; 1973 c. 237; 1975 c. 82; 1977 c. 105, 271; 1979 c. 32 ss. 50, 92 (4); 1981 c. 317; 1983 a. 27; 1985 a. 29, 176.

Husband incurs primary liability for necessaries procured for his family's sustenance. Sharpe Furniture, Inc. v. Buckstaff, 99 W (2d) 114, 299 NW (2d) 219 (1980).

See note to Art. I, sec. 1, citing Marshfield Clinic v. Discher, 105 W (2d) 506, 314 NW (2d) 326 (1982).

County child support agencies can initiate actions to compel support under this section without payment of filing fee. 72 Atty. Gen. 72.

767.081 Counseling for marriage assessment, divorce and separation. In every action for annulment, divorce or legal separation, the family court commissioner shall inform the parties of the availability of counseling for marriage assessment, divorce and separation and referral services offered by the family court commissioner or the department of family conciliation. In this section, "counseling for marriage assessment, divorce and separation" means counseling to explore the possibility of reconciliation, to enable the

parties to adjust to the status of being unmarried persons, to prepare the parties to live separate lives and to assist the parties in planning for the needs of their minor children, if any.

(1) In every action for divorce or legal separation, the family court commissioner shall require the petitioner and, if personally served within this state, the respondent to participate in the counseling which shall be provided either through the commissioner's efforts or the efforts of a department of family conciliation if it exists or through referrals of the parties to a suitable counseling source, including a county mental health or guidance clinic, a member of the clergy, or, if there are minor children of the parties' marriage, a child welfare agency licensed under ss. 48.66 to 48.73. No person so consulted may disclose any statement made by either party without the consent of that party.

(2) The family court commissioner shall arrange for such counseling on a voluntary basis for parties to an action for annulment who request such counseling and who are not required to participate in such counseling under sub. (1). Such counseling shall be provided as under sub. (1). No person consulted for counseling may disclose any statement made by either party without the consent of that party.

History: 1977 c. 105, 271, 447, 449; 1979 c. 32 s. 50.

See note to 767.01, citing In re Marriage of Biel v. Biel, 114 W (2d) 191, 336 NW (2d) 404 (Ct. App. 1983).

767.082 Suspension of proceedings to effect reconciliation. During the pendency of any action for divorce or legal separation, the court may, upon written stipulation of both parties that they desire to attempt a reconciliation, enter an order suspending any and all orders and proceedings for such period, not exceeding 90 days, as the court determines advisable so as to permit the parties to attempt a reconciliation without prejudice to their respective rights. During the period of suspension the parties may resume living together as husband and wife and their acts and conduct shall not constitute an admission that the marriage is not irretrievably broken or a waiver of the ground that the parties have voluntarily lived apart continuously for 12 months or more immediately prior to the commencement of the action if such is the case. Suspension may be revoked upon motion of either party by order of the court. If the parties become reconciled, the court shall dismiss the action. If the parties are not reconciled after the period of suspension, the action shall proceed as though no reconciliation period was attempted.

History: 1971 c. 220; 1977 c. 105; 1979 c. 32 s. 50.

767.083 Requirements for trial: counseling information; waiting period. (1) COUNSELING INFORMATION. No petition for annulment, divorce or legal separation may be brought to trial until the family court commissioner has certified to the court that the parties have been informed of counseling and referral services available and one of the parties or, in the case of a joint petition, one of the joint petitioners has met the counseling requirement, if any, under s. 767.081. The certification by the family court commissioner shall be filed and entered in the court record. The wilful failure or refusal of the other party to satisfy the counseling requirement under s. 767.081, if any, may be punished under ch. 785, but such failure or refusal may not prevent the timely trial of the action.

(2) WAITING PERIOD. No petition for divorce or legal separation may be brought to trial until the happening of whichever of the following events occurs first:

(a) The expiration of 120 days after service of the summons and petition upon the respondent or the expiration of 120 days after the filing of the joint petition; or

(b) An order by the court, after consideration of the recommendation of the family court commissioner, directing an immediate hearing on the petition for the protection of the health or safety of either of the parties or of any child of the marriage or for other emergency reasons consistent with the policies of this chapter. The court shall upon granting such order specify the grounds therefor.

History: 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196.

767.085 Petition and response. (1) PETITION, CONTENTS. In any action affecting the family, the petition shall state:

(a) The name and birthdate of the parties, the social security numbers of the husband and wife and their occupations, the date and place of marriage and the facts relating to the residence of both parties.

(b) The name and birthdate of each minor child of the parties and each other child born to the wife during the marriage, and whether the wife is pregnant.

(c) That the marriage is irretrievably broken, or, alternatively, that both parties agree that the marriage is irretrievably broken.

(d) Whether or not an action for divorce or legal separation by either of the parties was or has been at any time commenced, or is pending in any other court or before any judge thereof, in this state or elsewhere, and if either party was previously married, and if so the manner in which such marriage was terminated, and if terminated by court judgment, the name of the court in which the judgment was granted and the time and place the judgment was granted, if known.

(e) Whether the parties have entered into any written agreements as to support, custody, and visitation of the children, maintenance of either party, and property division; and if so, the written agreement shall be attached.

(f) The relief requested. When the relief requested is a legal separation, the petition shall state the specific reason for requesting such relief.

(g) Whenever the petitioner requests an order or judgment affecting a minor child, that the petitioner requests the department of health and social services to provide services on behalf of the minor child under s. 46.25, except that this application does not authorize representation under s. 46.25 or 59.47 (14), or intervention as a party in any action, by the department of health and social services.

(2) INITIATION OF ACTION. (a) Either or both of the parties to the marriage may initiate the action. The party initiating the action or his or her attorney shall sign the petition. Both parties or their respective attorneys shall sign a joint petition.

(b) The clerk of court shall provide without charge, to each person filing a petition requesting child support, a document setting forth the percentage standard established by the department of health and social services under s. 46.25 (9) (a) and listing the factors which a court may consider under s. 767.25 (1m).

(2m) SUMMONS, CONTENTS. Where only one party initiates the action and the parties have minor children, the summons served on the other party shall include notification of the contents of s. 946.715 and be accompanied by a document, provided without charge by the clerk of court, setting forth the percentage standard established by the department of health and social services under s. 46.25 (9) (a) and listing the factors which a court may consider under s. 767.25 (1m), except that if service is by publication, notification of the contents of the percentage standard and the factors need not be provided.

(3) SERVICE. If only one party initiates the action, the other shall be served under ch. 801 and may serve a response or counterclaim within 20 days after the date of service, except

that questions of jurisdiction may be raised at any time prior to judgment. Service shall be made upon the petitioner and upon the family court commissioner as provided in s. 767.14, and the original copy of the response shall be filed in court. If the parties together initiate the action with a joint petition, service of summons is not required.

(4) DEFENSES ABOLISHED. Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(5) RESPONSE, CONTENTS. Whenever the respondent requests an order or judgment affecting a minor child, the response shall state that the respondent requests the department of health and social services to provide services on behalf of the minor child under s. 46.25, except that this application does not authorize representation under s. 46.25 or 59.47 (14), or intervention as a party in any action, by the department of health and social services.

History: 1971 c. 220; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; 1979 c. 352 s. 39; 1985 a. 29.

Prenuptial and postnuptial agreements. Loeb, WBB March 1981.

767.09 Power of court in divorce and legal separation actions. (1) When a party requests a legal separation rather than a decree of divorce, the court shall grant the decree in that form unless the other party requests a divorce, in which case the court shall hear and determine which decree shall be granted. A decree of separation shall provide that in case of a reconciliation at any time thereafter, the parties may apply for a revocation of the judgment. Upon such application the court shall make such orders as may be just and reasonable.

(2) By stipulation of both parties, or upon motion of either party not earlier than one year after entry of a decree of legal separation, the court shall convert the decree to a decree of divorce.

History: 1977 c. 105; 1979 c. 32 s. 50.

Factors to be considered in ordering a divorce where plaintiff has asked for only a separation discussed. Husting v. Husting, 54 W (2d) 87, 194 NW (2d) 801.

767.10 Stipulation and property division. The parties in an action for an annulment, divorce or legal separation may, subject to the approval of the court, stipulate for a division of estate, for maintenance payments, for the support of children, for periodic family support payments under s. 767.261 or for custody and visitation, in case a divorce or legal separation is granted or a marriage annulled. A court may not approve a stipulation for child support or family support unless the stipulation provides for payment of child support, determined in a manner consistent with s. 767.25 or 767.51.

History: 1971 c. 220; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1985 a. 29.

A trial court is not required to give effect to a property division agreement entered into before divorce proceedings are instituted; it should make its own determination as to whether the agreement adequately provides for the parties. Ray v. Ray, 57 W (2d) 77, 203 NW (2d) 724.

Legislative reduction of the age of majority to 18 years in effect emancipated children of the divorced father who had reached that age and terminated both his parental rights and his legal obligation to provide support under the divorce judgment, since parental support past the age of majority is not a concept accepted in Wisconsin. Schmitz v. Schmitz, 70 W (2d) 882, 236 NW (2d) 657.

767.12 Trial procedure. (1) PROCEEDINGS. In actions affecting the family, all hearings and trials to determine whether judgment shall be granted, except hearings under s. 767.13 (5), shall be before the court. The testimony shall be taken by the reporter and shall be written out and filed with the record if so ordered by the court. Custody proceedings shall receive priority in being set for hearing.

(2) IRRETRIEVABLE BREAKDOWN. (a) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or if the parties have voluntarily lived apart continuously for 12 months or more immediately prior to commencement of the action and one party has so stated, the court, after hearing, shall make a finding that the marriage is irretrievably broken.

(b) If the parties have not voluntarily lived apart for at least 12 months immediately prior to commencement of the action and if only one party has stated under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to filing the petition and the prospect of reconciliation.

1. If the court finds no reasonable prospect of reconciliation, it shall make a finding that the marriage is irretrievably broken; or

2. If the court finds that there is a reasonable prospect of reconciliation, it shall continue the matter for further hearing not fewer than 30 nor more than 60 days later, or as soon thereafter as the matter may be reached on the court's calendar, and may suggest to the parties that they seek counseling. The court, at the request of either party or on its own motion, may order counseling. At the adjourned hearing, if either party states under oath or affirmation that the marriage is irretrievably broken, the court shall make a finding whether the marriage is irretrievably broken.

History: Sup. Ct. Order, 67 W (2d) 756; 1977 c. 105; 1979 c. 32 s. 50; 1979 c. 352 s. 39; 1983 a. 436.

Abolition of guilt in marriage dissolution: Wisconsin's adoption of no-fault divorce. 61 MLR 672 (1978).

767.125 Order for appearance of litigants. Unless nonresidence in the state is shown by competent evidence, service is by publication, or the court shall for other good cause otherwise order, both parties in actions affecting the family shall be required to appear upon the trial. An order of the court or family court commissioner to that effect shall accordingly be procured by the moving party, and shall be served upon the nonmoving party before the trial. In the case of a joint petition the order is not required.

History: 1977 c. 105; 1979 c. 32 s. 50; 1979 c. 196; 1979 c. 352 s. 39.

767.13 Family court commissioner; appointment; powers; oaths; assistants. (1) COUNTIES OTHER THAN MILWAUKEE. (a) *Appointment.* In each county, except in a county having a population of 500,000 or more, the circuit judges for the county, subject to the approval of the chief judge of the judicial administrative district, shall, by order filed in the office of the clerk of the circuit court on or before the first Monday of July of each year, appoint some reputable attorney of recognized ability and standing at the bar as the family court commissioner for the county.

(b) *Powers; civil service; oath; temporary appointment; assistants.* The family court commissioner, by virtue of the office and to the extent required for the performance of the duties, has the powers of a court commissioner. The family court commissioner is in addition to the maximum number of court commissioners permitted by s. 757.68. The office of the family court commissioner, or any assistant commissioner, may be placed under a county civil service system by resolution of the county board. Before entering upon the discharge of the duties the family court commissioner shall take and file the official oath. The person appointed shall continue to act until a successor is appointed and qualified, except that in the event of disability or extended absence the judges may appoint another reputable attorney to act as temporary family court commissioner. The county board may provide that one or more assistant family court commissioners shall be appointed by the circuit judges for the county, subject to the approval of the chief judge of the judicial administrative district. An assistant family court commissioner shall have

the same qualifications as the commissioner and shall take and file the official oath.

(2) MILWAUKEE COUNTY. (a) *Appointment; assistants; civil service.* In counties having a population of 500,000 or more, there is created in the classified civil service the office of family court commissioner and such additional assistant family court commissioners as the county board shall determine and authorize, who shall be appointed from the membership of the bar residing in the county by the chief judge of the judicial administrative district under ss. 63.01 to 63.17.

(b) *Oath; powers; salary; unavailability; duties.* Before entering upon the performance of their duties, the family court commissioner and assistant family court commissioners shall take and file the official oath. The family court commissioner and assistant family court commissioners shall, by virtue of their respective positions and to the extent required for the performance of their duties, each have the powers of a court commissioner. They shall receive such salary as may be fixed by the county board, shall perform their duties under the direction of the chief judge of the judicial administrative district or a designee and shall be furnished with quarters and necessary office furnishings and supplies. The county board shall provide them their necessary stenographic and investigational service. When the family court commissioner is unavailable, any assistant family court commissioner shall perform all the duties and have all the powers of the family court commissioner as directed by the commissioner or by the chief judge of the judicial administrative district or other judge as the chief judge may designate. In addition to the duties of the family court commissioner under this chapter, the family court commissioner shall perform other duties as the chief judge of the judicial administrative district, or other judge as the chief judge may designate, directs.

(3) MENOMINEE COUNTY. Menominee county shall be attached to Shawano county to the extent of office and functions of the family court commissioner, and the duly appointed family court commissioner of Shawano county shall serve as family court commissioner for Menominee county with all the duties, rights and power of the family court commissioner therein; and no family court commissioner shall be appointed in Menominee county, the county not being organized for that purpose.

(4) RETIRED JUDGES. In any county one or more retired or former judges or retired family court commissioners may be appointed as temporary or temporary assistant family court commissioners by a majority of the judges of the county subject to the approval of the chief judge of the judicial administrative district. The temporary or temporary assistant family court commissioners shall be compensated by the county.

(5) JUDGMENTS IN CERTAIN ACTIONS AFFECTING THE FAMILY. (a) *Divorce.* On authority delegated by a judge, which may be by a standard order, and with the approval of the chief judge of the judicial administrative district, a family court commissioner may preside at any hearing held to determine whether a judgment of divorce shall be granted, if both parties state that the marriage is irretrievably broken and that all material issues, including but not limited to division of property or estate, child custody, visitation or support, spousal maintenance and family support, are resolved or if one party does not participate in the action for divorce. The family court commissioner may grant and enter judgment in any action over which he or she presides under this paragraph unless the judgment modifies an agreement between the parties on material issues. If the family court commissioner does not approve an agreement between the parties on material issues, the action shall be certified to the court for trial.

(b) *Enforcement or revision of maintenance or child support.* Upon referral by a judge, a family court commissioner may conduct hearings and enter judgments in actions for enforcement of, or revision of judgment for, maintenance or child support.

(6) REVIEW OF THE DECISIONS OF THE FAMILY COURT COMMISSIONER. Upon the motion of any party any decision of the family court commissioner shall be reviewed by the judge of the branch of the court to which the case has been assigned. Upon the motion of any party any such review shall include a new hearing on the subject of the decision, order or ruling.

(7) COOPERATION. Each family court commissioner shall cooperate with the county and the department of health and social services to ensure that all dependent children receive reasonable and necessary child support.

History: 1975 c. 39, 199; 1977 c. 187 s. 135; 1977 c. 273; 1977 c. 323 s. 16; 1977 c. 449; 1979 c. 32 s. 50; 1979 c. 96, 196; 1983 a. 436; 1985 a. 29.

Family court commissioners, except those appointed under (4), are county employes and subject to mandatory retirement. State ex rel. Sheets v. Fay, 54 W (2d) 642, 196 NW (2d) 651.

Family court commissioner is without authority to charge $15 fee to hear order to show cause in domestic relations case. 61 Atty. Gen. 358.

767.14 Service on and appearance by family court commissioner. In any action affecting the family, each party shall, either within 20 days after making service on the opposite party of any petition or pleading or before filing such petition or pleading in court, serve a copy of the same upon the family court commissioner of the county in which the action is begun, whether such action is contested or not. No judgment in any such action shall be granted unless this section is complied with except when otherwise ordered by the court. Such commissioner may appear in an action under this chapter when appropriate; and shall appear when requested by the court.

History: 1977 c. 105; 1979 c. 32 s. 50; 1979 c. 352 s. 39.

767.145 Enlargement of time. (1) After the expiration of the period specified by the statute, the court may in its discretion, upon petition and without notice, extend the time within which service shall be made upon the family court commissioner.

(2) Except as provided in s. 767.456, extension of time under any other circumstances shall be governed by s. 801.15 (2), except that the court may, upon the petitioner's demonstration of good cause, and without notice, order one additional 60-day extension for service of the initial papers in the action.

History: Sup. Ct. Order, 67 W (2d) 775; 1979 c. 32 s. 50; 1979 c. 196; 1983 a. 447.

767.15 Service on child support agency. In any action affecting the family in which either party is a recipient of aid under s. 49.19 or 49.45, each party, unless represented by a child support agency, shall, either within 20 days after making service on the opposite party of any motion or pleading requesting the court or family court commissioner to order, or to modify a previous order, relating to child support, maintenance or family support, or before filing the motion or pleading in court, serve a copy of the motion or pleading upon the child support agency of the county in which the action is begun. No judgment in any such action shall be granted unless this section is complied with except as otherwise ordered by the court.

History: 1977 c. 418; 1979 c. 32 s. 50; 1979 c. 196; 1979 c. 352 s. 39; 1983 a. 27.

767.16 Family court commissioner or law partner; when interested; procedure. Neither a family court commissioner

nor a partner may appear in any action affecting the family in any court held in the county in which the family court commissioner is acting, except when authorized to appear by s. 767.14. In case the commissioner or a partner shall be in any way interested in such action, the presiding judge shall appoint some reputable attorney to perform the services enjoined upon such family court commissioner and such attorney, so appointed, shall take and file the oath and receive the compensation provided by law.

History: 1979 c. 32 ss. 50, 92 (4); 1979 c. 176; 1979 c. 352 s. 39.

767.17 Family court commissioner; salary. In counties having a population of less than 500,000, the county board shall by resolution provide an annual salary for the family court commissioner whether on a full or part-time basis and may furnish an office with necessary office furnishings, supplies and stenographic services and may also by resolution prescribe other duties not in conflict with the duties as family court commissioner.

History: 1979 c. 32 s. 50; 1979 c. 176.

See note to 59.47, citing 61 Atty. Gen. 443.

767.19 Record; impounding. (1) No record or evidence in any case shall be impounded, or access thereto refused, except by special written order of the court made in its discretion in the interests of public morals. And when impounded no officer or other person shall permit a copy of any of the testimony or pleadings, or the substance thereof, to be taken by any person other than a party to the action, or his or her attorney of record, without the special order of the court.

(2) The court may on its own motion, or on motion of any party to an action affecting the family, exclude from the courtroom all persons other than the parties, their attorneys and any guardians ad litem.

History: 1977 c. 105, 273; 1979 c. 32 s. 50; 1979 c. 352 s. 39.

767.20 Name of spouse. The court, upon granting a divorce, shall allow either spouse, upon request, to resume a former legal surname, if any.

History: 1975 c. 94; 1979 c. 32 s. 50.

Women's names in Wisconsin: In Re Petition of Kruzel. MacDougall, 1975 WBB No. 4.

767.21 Full faith and credit; comity. (1) ACTIONS IN COURTS OF OTHER STATES. Full faith and credit shall be given in all courts of this state to a judgment in any action affecting the family, except an action relating to child custody, by a court of competent jurisdiction in another state, territory or possession of the United States, when both spouses personally appear or when the respondent has been personally served.

(2) ACTIONS IN COURTS OF FOREIGN COUNTRIES. Any court of this state may recognize a judgment in any action affecting the family involving Wisconsin domiciliaries, except an action relating to child custody, by a court of competent jurisdiction in a foreign country, in accordance with the principles of international comity.

(3) CHILD CUSTODY ACTIONS. All matters relating to the effect of the judgment of another court concerning child custody shall be governed by ch. 822.

History: 1977 c. 105; 1979 c. 32 s. 50; 1979 c. 352 s. 39.

Full faith and credit is not applicable where a decree or judgment is obtained in a jurisdiction outside of the U.S. Estate of Steffke, 65 W (2d) 199, 222 NW (2d) 628.

767.22 Uniform divorce recognition act. (1) A divorce obtained in another jurisdiction shall be of no force or effect in this state, if the court in such other jurisdiction lacks subject matter jurisdiction to hear the case because both parties to the marriage were domiciled in this state at the time the proceeding for the divorce was commenced.

(2) Proof that a person obtaining a divorce in another jurisdiction was (a) domiciled in this state within 12 months prior to the commencement of the proceeding therefor, and resumed residence in this state within 18 months after the date of his departure therefrom, or (b) at all times after his departure from this state, and until his return maintained a place of residence within this state, shall be prima facie evidence that the person was domiciled in this state when the divorce proceeding was commenced.

(3) This section shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(4) This section may be cited as the Uniform Divorce Recognition Act.

History: 1977 c. 105; 1979 c. 32 s. 50.

Comity cannot be accorded a Mexican decree where no domicile existed in that foreign jurisdiction. Estate of Steffke, 65 W (2d) 199, 222 NW (2d) 628.

767.23 Temporary orders for support of spouse and children; suit money; attorney's fees. (1) Except as provided in ch. 822, in every action affecting the family, the court or family court commissioner may, during the pendency thereof, make just and reasonable temporary orders concerning the following matters:

(a) Granting legal custody of the minor children to the parties jointly, to one party or to a relative or agency specified under s. 767.24 (1) (c).

(am) Granting visitation rights to a party specified in s. 767.245.

(b) Prohibiting the removal of minor children from the jurisdiction of the court.

(c) Requiring either party or both parties to make payments for the support of minor children, which payment amounts may be expressed as a percentage of parental income or as a fixed sum.

(d) Requiring either party to pay for the maintenance of the other party. This maintenance may include the expenses and attorney fees incurred by the other party in bringing or responding to the action affecting the family.

(e) Requiring either party to pay family support under s. 767.261.

(f) Requiring either party to execute an assignment of income under s. 767.265.

(g) Requiring either party or both parties to pay debts or perform other actions in relation to the persons or property of the parties.

(h) Prohibiting either party from disposing of assets within the jurisdiction of the court.

(i) Requiring counseling of either party or both parties.

(j) Prohibiting either spouse from imposing any restraint on the personal liberty of the other spouse.

(1m) If a family court commissioner believes that a temporary restraining order or injunction under s. 813.12 is appropriate in an action, the court commissioner shall inform the parties of their right to seek the order or injunction and the procedure to follow. On a motion for such a restraining order or injunction, the family court commissioner shall submit the motion to the court within 5 working days.

(1n) Before making any temporary order under sub. (1), the court or family court commissioner shall consider those factors which the court is required by this chapter to consider before entering a final judgment on the same subject matter. A temporary order under sub. (1) may be based upon the written stipulation of the parties, subject to the approval of the court or the family court commissioner. Temporary orders made by the family court commissioner may be reviewed by the court as provided in s. 767.13 (6).

(2) Notice of motion for an order or order to show cause under sub. (1) may be served at the time the action is commenced or at any time thereafter and shall be accompanied by an affidavit stating the basis for the request for relief.

(3) Upon making any order for dismissal of an action affecting the family or for substitution of attorneys in an action affecting the family or for vacation of a judgment theretofore granted in any such action, the court shall prior to or in its order render and grant separate judgment in favor of any attorney who has appeared for a party to the action and in favor of any guardian ad litem for a party or a child for the amount of fees and disbursements to which the attorney or guardian ad litem is, in the court's judgment, entitled and against the party responsible therefor.

History: 1971 c. 149; 1971 c. 211 s. 126; 1971 c. 220, 307; 1975 c. 283; Sup. Ct. Order, 73 W (2d) xxxi; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 111, 196; 1979 c. 352 s. 39; 1983 a. 27; 1983 a. 204 s. 22; 1983 a. 447; 1985 a. 29 s. 3202 (9).

Where a guardian ad litem is appointed where the issue of custody of a child is disputed, his fee should be divided between both parties when their ability to pay is equal. Lacey v. Lacey, 45 W (2d) 378, 173 NW (2d) 142.

An order for attorney's fees is enforceable by contempt; if the judgment only refers to a stipulation for attorney's fees, it is not so enforceable. The court cannot enter a judgment in favor of the attorneys directly. Before a contempt order is issued the defendant must have notice of an application for it which must be made by the wife to whom the fees are payable. O'Connor v. O'Connor, 48 W (2d) 535, 180 NW (2d) 735.

Order directing the husband to contribute $2,000 to the wife's attorney's fees is not an abuse of discretion. Tesch v. Tesch, 63 W (2d) 320, 217 NW (2d) 647.

Denial of the wife's motion for attorneys' fees to prosecute the wife's appeal is held to constitute an abuse of discretion, since the issues in the case were vigorously contested and in no way frivolous. Markham v. Markham, 65 W (2d) 735, 223 NW (2d) 616.

See note to 813.025, citing In re Marriage of Sandy v. Sandy, 106 W (2d) 230, 316 NW (2d) 164 (Ct. App. 1982), aff'd, 109 W (2d) 564, 326 NW (2d) 761 (1982).

The federal tax consequences of divorce. Meldman, Ryan, 57 MLR 229.

767.24 Child custody. (1) In rendering a judgment of annulment, divorce or legal separation, or in rendering a judgment in an action under s. 767.02 (1) (e), the court shall make such provisions as it deems just and reasonable concerning the care, custody and education of the minor children of the parties, if any, according to the following provisions:

(a) The court may give the care and custody of such children to one of the parties to the action.

(b) The court may give the care and custody of such children to the parties jointly if the parties so agree and if the court finds that a joint custody arrangement would be in the best interest of the child or children. Joint custody under this paragraph means that both parties have equal rights and responsibilities to the minor child and neither party's rights are superior.

(c) 1. If the interest of any child demands it, and if the court finds that neither party is able to care for the child adequately or that neither party is fit and proper to have the care and custody of the child, the court may declare the child to be in need of protection or services and transfer legal custody of the child to a relative of the child, as defined in s. 48.02 (15), to a county department, as defined under s. 48.02 (2g), or to a licensed child welfare agency.

2. If the legal custodian appointed under subd. 1 is an agency, the agency shall report to the court on the status of the child at least once each year until the child reaches 18 years of age, is returned to the custody of a parent or is placed under the guardianship of an agency. The agency shall file an annual report no less than 30 days before the anniversary of the date of the order. An agency may file an additional report at any time if it determines that more frequent reporting is appropriate. A report shall summarize the child's permanency plan and the recommendations of the review panel under s. 48.38 (5), if any.

3. The court shall hold a hearing to review the permanency plan within 30 days after receiving a report under subd. 2. At least 10 days before the date of the hearing, the court shall provide notice of the time, date and purpose of the hearing to the agency that prepared the report, the child's parents, the child, if he or she is 12 years of age or over, and the child's foster parent or the operator of the facility in which the child is living.

4. Following the hearing, the court shall make all of the determinations specified under s. 48.38 (5) (c) and, if it determines that an alternative placement is in the child's best interest, may amend the order to transfer legal custody of the child to another relative, other than a parent, or to another agency specified under subd. 1.

5. The charges for care furnished to a child whose custody is transferred under this paragraph shall be pursuant to the procedure under s. 48.36 except as provided in s. 767.29 (3).

(d) The award of legal custody of a child under this section or s. 767.23 (1) (a) shall give to the custodian the rights and responsibilities specified in s. 48.02 (12) and the power and duty to authorize necessary medical, surgical, hospital, dental, institutional or psychiatric care for the child where there is no existing guardian for the child appointed under ch. 48 or 880; and the right to give or withhold consent for the child to marry under s. 765.02 (2), in addition to the consent of the parents or guardian of the child required therein.

(2) In making a custody determination, the court shall consider all facts in the best interest of the child and shall not prefer one potential custodian over the other on the basis of the sex of the custodian. The court shall consider reports of appropriate professionals where admitted into evidence when custody is contested. The court shall consider the following factors in making its determination:

(a) The wishes of the child's parent or parents as to custody;

(am) The wishes of the child as to his or her custody;

(b) The interaction and interrelationship of the child with his or her parent or parents, siblings, and any other person who may significantly affect the child's best interest;

(c) The child's adjustment to the home, school, religion and community;

(d) The mental and physical health of the parties, the minor children and other persons living in a proposed custodial household;

(e) The availability of public or private child care services; and

(f) Such other factors as the court may in each individual case determine to be relevant.

(3) Where the judgment determines the custody rights of the parties to their minor children, the judgment shall include notification of the contents of s. 946.715.

History: 1971 c. 149, 157, 211; 1975 c. 39, 122, 200, 283; 1977 c. 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; 1981 c. 391; 1985 a. 70, 176.

Impropriety of the award of custody of the child to the mother cannot be predicated on the guardian ad litem's contrary recommendation. Heiting v. Heiting, 64 W (2d) 110, 218 NW (2d) 334.

The award of custody to the father was reversible error where the trial court should have recognized the rule of comity and declined to exercise its jurisdiction. Sheridan v. Sheridan, 65 W (2d) 504, 223 NW (2d) 557.

See note to 767.05, citing LaChapell v. Mawhinney, 66 W (2d) 679, 225 NW (2d) 501.

While this section forbids the award of a child's custody to a parent solely on the basis of sex, it does not preclude consideration by the trial court of a natural preference for the mother as one of the factors to be considered in determining the best interests of the child. Scolman v. Scolman, 66 W (2d) 761, 226 NW (2d) 388.

Court authority to order a spouse to provide child support is limited by (1) to the minor children of the parties—those under the age of 18—absent a stipulation between the parties incorporated in the divorce judgment requiring support past the children's age of majority. Miller v. Miller, 67 W (2d) 435, 227 NW (2d) 626.

Legislative reduction of the age of majority to 18 years in effect emancipated children of the divorced father who had reached that age and terminated both his parental rights and his legal obligation to provide support under the divorce judgment, since parental support past the age of majority is not a concept accepted in Wisconsin. Schmitz v. Schmitz, 70 W (2d) 882, 236 NW (2d) 657.

Res judicata is not to be applied to custody matters with same strictness as to other matters. Kuesel v. Kuesel, 74 W (2d) 636, 247 NW (2d) 72.

See note to 767.045, citing Allen v. Allen, 78 W (2d) 263, 254 NW (2d) 244.

See note to 767.245, citing Bahr v. Galonski, 80 W (2d) 72, 257 NW (2d) 869.

Consideration of evidence concerning mother's attempts to frustrate father's visitation privileges was proper in awarding custody. Marotz v. Marotz, 80 W (2d) 477, 259 NW (2d) 524.

In contesting child custody where the award was by stipulation, full-scale hearing is necessary. Haugen v. Haugen, 82 W (2d) 411, 262 NW (2d) 769.

Court may not order custodial parent to live in designated part of state or else lose custody of children. In re Marriage of Groh v. Groh, 110 W (2d) 117, 327 NW (2d) 655 (1983).

See note to 767.01, citing In re Marriage of Biel v. Biel, 114 W (2d) 191, 336 NW (2d) 404 (Ct. App. 1983).

In custody dispute between parent and third party, unless court finds that parent is unfit or unable to care for child or that there are compelling reasons for denying custody to parent, court must grant custody to parent. Barstad v. Frazier, 118 W (2d) 549, 348 NW (2d) 479 (1984).

Order granting non-custodial parent week-long visitations on alternate weekly basis violated custodian's rights under 48.02 (12). In re Marriage of Westrate v. Westrate, 124 W (2d) 244, 369 NW (2d) 165 (Ct. App. 1985).

Custody—to which parent? Podell, Peck, First, 56 MLR 51.

The best interest of the child doctrine in Wisconsin custody cases. 64 MLR 343 (1980).

767.245 Visitation. (1) A parent is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger the child's physical, mental or emotional health.

(2) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; but the court shall not terminate a parent's visitation rights unless it finds that the visitation would endanger the child's physical, mental or emotional health.

(3) Visitation may not be denied for failure to meet financial obligations to the child or former spouse, nor shall visitation be granted for meeting such obligations.

(4) The court may grant reasonable visitation privileges to a grandparent or greatgrandparent of any minor child upon the grandparent's or greatgrandparent's petition to the court with notice to the parties if the court determines that it is in the best interests and welfare of the child and issue any necessary order to enforce the same.

(5) A parent denied visitation rights under this section may not have or exercise the rights of a parent or guardian under s. 118.125 with regard to the pupil records of the child as to whom visitation rights are denied.

(6) Whenever the court grants visitation rights to a parent, it shall order the child's custodian to provide to the parent having visitation rights 60 days' notice of the custodian's intention to establish legal residence outside this state or to remove the child from this state for a period of time exceeding 90 days. Upon motion by the parent having visitation rights and a finding by the court that it is against the best interests of the child for the custodian to so remove the child from this state, the court may deny permission to the custodian. Violation of a court order under this subsection may be deemed a change of circumstances under s. 767.32, allowing the court to modify the judgment with respect to custody, child support and visitation rights so as to permit withholding of a portion of the support payments to defray the added expense to the parent with visitation rights of exercising such rights or to modify a custody order.

(7) Any person with visitation or custodial rights may notify the family court commissioner of any problem relating to visitation or custody. The family court commissioner shall refer the matter for investigation by the department of family conciliation or, if such department does not exist within the county, to another appropriate social service agency.

History: 1971 c. 220; 1977 c. 105 ss. 35, 39; 1979 c. 32 ss. 50, 92 (4); 1983 a. 447, 450.

Although change of circumstances may not be sufficient to justify transfer of custody, such change may be sufficient to support change in visitation rights. See note to 767.045, citing Bahr v. Galonski, 80 W (2d) 72, 257 NW (2d) 869.

See note to 767.24, citing In re Marriage of Groh v. Groh, 110 W (2d) 117, 327 NW (2d) 655 (1983).

Court abused discretion by requiring custodial parent to prove under (6) that removal of children from state would not impair their best interests. Removal guidelines discussed. Marriage of Long v. Long, 127 W (2d) 521, 381 NW (2d) 350 (1986).

767.25 Child support. (1) Whenever the court approves a stipulation for child support under s. 767.10, enters a judgment of annulment, divorce or legal separation, or enters an order or a judgment in an action under s. 767.02 (1) (f) or (j) or 767.08, the court shall order either or both parents to pay an amount reasonable or necessary to fulfill a duty to support a child and shall specifically assign responsibility for and direct the manner of payment of the child's health care expenses. The support amount may be expressed as a percentage of parental income or as a fixed sum.

(1j) Except as provided in sub. (1m), the court shall determine child support payments by using the percentage standard established by the department of health and social services under s. 46.25 (9) (a).

(1m) Upon request by a party, the court may modify the amount of child support payments determined under sub. (1j) if, after considering the following factors, the court finds by clear and convincing evidence that use of the percentage standard is unfair to the child or to any of the parties:

(a) The financial resources of the child.

(b) The financial resources of both parents as determined under s. 767.255.

(bj) Maintenance received by either party.

(bp) The needs of each party in order to support himself or herself at a level equal to or greater than that established under 42 USC 9902 (2).

(bz) The needs of any person, other than the child, whom either party is legally obligated to support.

(c) The standard of living the child would have enjoyed had the marriage not ended in annulment, divorce or legal separation.

(d) The desirability that the custodian remain in the home as a full-time parent.

(e) The cost of day care if the custodian works outside the home, or the value of custodial services performed by the custodian if the custodian remains in the home.

(ej) If joint custody is awarded under s. 767.24 (1) (b), any physical custody arrangement ordered or decided upon.

(em) Extraordinary travel expenses incurred in exercising visitation rights under s. 767.245.

(f) The physical, mental and emotional health needs of the child, including the costs of health insurance and uninsured health care for the child.

(g) The child's educational needs.

(h) The tax consequences to each party.

(hm) The best interests of the child.

(i) Any other factors which the court in each case determines are relevant.

(1n) If the court finds under sub. (1m) that use of the percentage standard is unfair to the child or the requesting party, the court:

(a) May consider the guidelines for the determination of child support established by the department of health and social services under s. 46.25 (9) (b), in modifying the amount of child support payments determined under sub. (1j).

(b) Shall state in writing or on the record its reasons for finding that use of the percentage standard is unfair to the child or the party, its reasons for the amount of the modification and the basis for the modification.

(1r) An order under this section shall direct the person with custody of a minor child to contribute an amount determined

under s. 46.257 (6) (b) in the manner determined by the department of health and social services, if that person receives benefits under s. 46.257. This subsection applies between October 1, 1986 and September 30, 1994.

(2) The court may protect and promote the best interests of the minor children by setting aside a portion of the child support which either party is ordered to pay in a separate fund or trust for the support, education and welfare of such children.

(3) Violation of visitation rights by the custodial parent shall not constitute reason for failure to meet child support obligations.

(4) The court shall order either party or both to pay for the support of any child of the parties who is less than 19 years old and is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent.

(5) Liability for past support shall be limited to the period after commencement of the action.

(6) A party ordered to pay child support under this section shall pay simple interest at the rate of 1.5% per month on any amount unpaid, commencing the first day of the 2nd month after the month in which the amount was due. Interest under this subsection is in lieu of interest computed under s. 807.01 (4), 814.04 (4) or 815.05 (8) and is paid to the clerk of court under s. 767.29. The clerk of court shall apply all payments received for child support as follows:

(a) First, to payment of child support due within the calendar month during which the payment is received.

(b) Second, to payment of unpaid child support due before the payment is received.

(c) Third, to payment of interest accruing on unpaid child support.

History: 1971 c. 157; 1977 c. 29, 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; 1981 c. 20; 1983 a. 27; 1985 a. 29.

NOTE: This section is shown as affected by 1985 Wis. Act 29, eff. 7-1-87. Prior to 7-1-87, s. 767.25 reads:

"767.25 Child support. (1) Whenever the court approves a stipulation for child support under s. 767.10, enters a judgment of annulment, divorce or legal separation, or enters an order or a judgment in an action under s. 767.02 (1) (f) or (j) or 767.08, the court shall order either or both parents to pay an amount reasonable or necessary to fulfill a duty to support a child and shall specifically assign responsibility for and direct the manner of payment of the child's health care expenses. The support amount may be expressed as a percentage of parental income or as a fixed sum.

(1m) Except as provided in sub. (1p), in ordering payment of child support the court shall consider the guidelines for the determination of child support established by the department of health and social services and the following factors:

(a) The financial resources of the child.

(b) The financial resources of both parents as determined under s. 767.255.

(c) The standard of living the child would have enjoyed had the marriage not ended in annulment, divorce or legal separation.

(d) The desirability that the custodian remain in the home as a full-time parent.

(e) The cost of day care if the custodian works outside the home, or the value of custodial services performed by the custodian if the custodian remains in the home.

(f) The physical and emotional health needs of the child.

(g) The child's educational needs.

(h) The tax consequences to each party.

(i) Such other factors as the court may in each individual case determine to be relevant.

(1p) In lieu of determining child support payments under sub. (1m), the court may order either or both parents to pay an amount determined by using the percentage standard adopted under s. 767.395 (3).

(1r) An order under this section shall direct the person with custody of a minor child to contribute an amount determined under s. 46.257 (6) (b) in the manner determined by the department of health and social services, if that person receives benefits under s. 46.257. This subsection applies between October 1, 1986 and September 30, 1994.

(2) The court may protect and promote the best interests of the minor children by setting aside a portion of the child support which either party is ordered to pay in a separate fund or trust for the support, education and welfare of such children.

(3) Violation of visitation rights by the custodial parent shall not constitute reason for failure to meet child support obligations.

(4) The court shall order either party or both to pay for the support of any child of the parties who is less than 19 years old and is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent.

(5) Liability for past support shall be limited to the period after commencement of the action.

(6) A party ordered to pay child support under this section shall pay simple interest at the rate of 1.5% per month on any amount unpaid, commencing the first day of the 2nd month after the month in which the amount was due. Interest under this subsection is in lieu of interest computed under s. 807.01 (4), 814.04 (4) or 815.05 (8) and is paid to the clerk of court under s. 767.29. The clerk of court shall apply all payments received for child support as follows:

(a) First, to payment of child support due within the calendar month during which the payment is received.

(b) Second, to payment of unpaid child support due before the payment is received.

(c) Third, to payment of interest accruing on unpaid child support."

Where parents each own 1/2 interest in future proceeds of real estate and state contributes to child support, court may order only noncustodial parent to pay child support in form of accumulating real estate lien in favor of state. State ex rel. v. Reible, 91 W (2d) 394, 283 NW (2d) 427 (Ct. App. 1979).

Trial court abused its discretion by setting child support payments without considering needs of the children or father's ability to pay. Edwards v. Edwards, 97 W (2d) 111, 293 NW (2d) 160 (1980).

Sub. (4) has retroactive effect. Behnke v. Behnke, 103 W (2d) 449, 309 NW (2d) 21 (Ct. App. 1981).

Personal injury damage award to noncustodial spouse can be considered as change of circumstances justifying increased support. Sommer v. Sommer, 108 W (2d) 586, 323 NW (2d) 144 (Ct. App. 1982).

Sub. (6) imposes interest on arrearages existing on July 2, 1983, as well as on those accruing afterward. Marriage of Greenwood v. Greenwood, 129 W (2d) 388, 385 NW (2d) 213 (Ct. App. 1986).

No-fault divorce: Tax consequences of support, maintenance and property settlement. Case, 1977 WBB 11.

767.255 Property division. Upon every judgment of annulment, divorce or legal separation, or in rendering a judgment in an action under s. 767.02 (1) (h), the court shall divide the property of the parties and divest and transfer the title of any such property accordingly. A certified copy of the portion of the judgment which affects title to real estate shall be recorded in the office of the register of deeds of the county in which the lands so affected are situated. The court may protect and promote the best interests of the children by setting aside a portion of the property of the parties in a separate fund or trust for the support, maintenance, education and general welfare of any minor children of the parties. Any property shown to have been acquired by either party prior to or during the course of the marriage as a gift, bequest, devise or inheritance or to have been paid for by either party with funds so acquired shall remain the property of such party and may not be subjected to a property division under this section except upon a finding that refusal to divide such property will create a hardship on the other party or on the children of the marriage, and in that event the court may divest the party of such property in a fair and equitable manner. The court shall presume that all other property is to be divided equally between the parties, but may alter this distribution without regard to marital misconduct after considering:

(1) The length of the marriage.

(2) The property brought to the marriage by each party.

(2r) Whether one of the parties has substantial assets not subject to division by the court.

(3) The contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services.

(4) The age and physical and emotional health of the parties.

(5) The contribution by one party to the education, training or increased earning power of the other.

(6) The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the

party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.

(7) The desirability of awarding the family home or the right to live therein for a reasonable period to the party having custody of any children.

(8) The amount and duration of an order under s. 767.26 granting maintenance payments to either party, any order for periodic family support payments under s. 767.261 and whether the property division is in lieu of such payments.

(9) Other economic circumstances of each party, including pension benefits, vested or unvested, and future interests.

(10) The tax consequences to each party.

(11) Any written agreement made by the parties before or during the marriage concerning any arrangement for property distribution; such agreements shall be binding upon the court except that no such agreement shall be binding where the terms of the agreement are inequitable as to either party. The court shall presume any such agreement to be equitable as to both parties.

(12) Such other factors as the court may in each individual case determine to be relevant.

History: 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; 1983 a. 186; 1985 a. 37.

Note: See notes in 1985 Wis. Act 37, marital property trailer bill.

Accounts receivable of medical clinic in which defendant husband was partner, were properly viewed by trial court as salary of defendant. Johnson v. Johnson, 78 W (2d) 137, 254 NW (2d) 198.

Service-connected disability pension is to be considered as earned income and not as an asset to be divided between the parties. Leighton v. Leighton, 81 W (2d) 620, 261 NW (2d) 457.

Methods of valuing pension rights discussed. Bloomer v. Bloomer, 84 W (2d) 124, 267 NW (2d) 235 (1978).

Support of stepchildren is relevant factor in dividing marital property. Fuerst v. Fuerst, 93 W (2d) 121, 286 NW (2d) 861 (Ct. App. 1979).

Trial court did not exercise required discretion in valuing pension fund. Heatwole v. Heatwole, 103 W (2d) 613, 309 NW (2d) 380 (Ct. App. 1980).

See note to 767.26, citing In re Marriage of Lundberg, 107 W (2d) 1, 318 NW (2d) 918 (1982).

Federal pension in lieu of social security must be included in marital property division. In re Marriage of Mack v. Mack, 108 W (2d) 604, 323 NW (2d) 153 (Ct. App. 1982).

Unless divorce decree specifically terminates spouse as beneficiary of life insurance policy and insurance company is notified, spouse's beneficiary status is not affected by divorce decree. Bersch v. VanKleeck, 112 W (2d) 594, 334 NW (2d) 114 (1983).

Court may consider cross-purchase formula in partnership agreement in determining value of marital estate, including professional goodwill. In re Marriage of Lewis v. Lewis, 113 W (2d) 172, 336 NW (2d) 171 (Ct. App. 1983).

Lien on real estate awarded in divorce judgment was mortgage, not judgment lien, even though term "mortgage" was not used in court order. Wozniak v. Wozniak, 121 W (2d) 330, 359 NW (2d) 147 (1984).

This section does not mandatorily require judge to terminate joint tenancy. In re Marriage of: Lutzke v. Lutzke, 122 W (2d) 24, 361 NW (2d) 640 (1985).

Use of gift money to buy home as joint tenants changed character of money from separate property to marital property. In re Marriage of Weiss v. Weiss, 122 W (2d) 688, 365 NW (2d) 608 (Ct. App. 1985).

Prenuptial agreement entered in 1973 was enforceable and equitable at divorce in 1982. Hengel v. Hengel, 122 W (2d) 737, 365 NW (2d) 16 (Ct. App. 1985).

Premarial agreement intended to apply at death was not applicable under (11). In re Marriage of Levy v. Levy, 130 W (2d) 523, 388 NW (2d) 170 (1986).

Federal law precludes state court from dividing military nondisability retired pay pursuant to state community property laws. McCarty v. McCarty, 453 US 210 (1981).

Insured's beneficiary designation under servicemen's group life insurance policy prevailed over constructive trust imposed by state court. Ridgeway v. Ridgeway, 454 US 46 (1981).

ERISA did not preempt Wisconsin court order awarding spouse 1/2 of beneficiary's interest in pension. Sav. & Profit Sharing Fund of Sears Emp. v. Gago, 717 F (2d) 1038 (1983).

Dilemma v. Paradox: Valuation of an advanced degree upon dissolution of a marriage. Loeb and McCann, 66 MLR 495 (1983).

The recognition and valuation of professional goodwill in the marital estate. 66 MLR 697 (1983).

No-fault divorce: Tax consequences of support, maintenance and property settlement. Case, 1977 WBB 11.

Prenuptial and postnuptial agreements. Loeb, WBB March 1981.

767.26 Maintenance payments. Upon every judgment of annulment, divorce or legal separation, or in rendering a judgment in an action under s. 767.02 (1) (g) or (j), the court may grant an order requiring maintenance payments to either party for a limited or indefinite length of time after considering:

(1) The length of the marriage.

(2) The age and physical and emotional health of the parties.

(3) The division of property made under s. 767.255.

(4) The educational level of each party at the time of marriage and at the time the action is commenced.

(5) The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.

(6) The feasibility that the party seeking maintenance can become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and, if so, the length of time necessary to achieve this goal.

(7) The tax consequences to each party.

(8) Any mutual agreement made by the parties before or during the marriage, according to the terms of which one party has made financial or service contributions to the other with the expectation of reciprocation or other compensation in the future, where such repayment has not been made, or any mutual agreement made by the parties before or during the marriage concerning any arrangement for the financial support of the parties.

(9) The contribution by one party to the education, training or increased earning power of the other.

(10) Such other factors as the court may in each individual case determine to be relevant.

History: 1971 c. 220; 1973 c. 12 s. 37; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196.

Allowance of $2,300 as a contribution to the wife's attorney's fees incurred in the litigation is not deemed excessive where it was obvious that the trial court reasonably believed that a considerable portion of the attorney-fee liability was attributable to the husband who, represented by 4 successive attorneys or firms, caused a needlessly protracted trial, made numerous defense motions, and prosecuted a meritless appeal—an element which, together with others, constituted a firm basis for fixing such contribution. Martin v. Martin, 46 W (2d) 218, 174 NW (2d) 468.

Award of 40% of $45,000 estate approved. Leeder v. Leeder, 46 W (2d) 464, 175 NW (2d) 262.

Award in lieu of alimony to the wife from the total assets of the parties (amounting to some $28,000) of a large percentage of the marital estate was not excessive, where the record revealed that the marriage had endured for 17 years, the wife was dying of cancer, was hospitalized several times and in need of medical treatment for the rest of her life, and by such an award the husband was freed from paying the substantial medical expenses she would thereafter incur. Lasnicka v. Lasnicka, 46 W (2d) 614, 176 NW (2d) 297.

A provision in a judgment as to education of children past 21, inserted pursuant to stipulation of the parties, cannot later be challenged and can be enforced by contempt proceedings. Bliwas v. Bliwas, 47 W (2d) 635, 178 NW (2d) 35.

An award of approximately one half of the husband's net income for the support of 4 children sustained. Dittberner v. Dittberner, 54 W (2d) 671, 196 NW (2d) 643.

While the supreme court in Lacey, 45 W (2d) 378, admonished trial courts to indicate in the decision the basis on which the property was to be divided and the reasons for doing so, failure is not deemed reversible error if the division was reasonable. Vier v. Vier, 62 W (2d) 636, 215 NW (2d) 432.

Award to the wife of approximately 22% of the husband's assets was not inappropriate. Rosenheimer v. Rosenheimer, 63 W (2d) 1, 216 NW (2d) 25.

While arrearages under a temporary order for alimony and attorney fees and costs which the husband is required to pay do not constitute part of a wife's division of the estate, they are, nevertheless, a charge against the entire estate. Tesch v. Tesch, 63 W (2d) 320, 217 NW (2d) 647.

Necessitated by modification herein of the values found by the trial court, the cash award to the wife of $17,000, which represented approximately one third of the marital estate based on the trial court's figures, is increased to $25,000. Markham v. Markham, 65 W (2d) 735, 223 NW (2d) 616.

The present value of a spouse's retirement or pension plan is an asset to be included in the division of property pursuant to judgment of divorce. Pinkowski v. Pinkowski, 67 W (2d) 176, 226 NW (2d) 518.

In a divorce action between a husband and wife married 26 years and both in their late forties, where the wife was employed during the first 4 or 5 years of marriage while the husband completed his medical education and thereafter tended the parties' home and 3 children, one of whom still lives with the wife, the trial court abused its discretion in awarding her an amount constituting 39% of the net estate, and the wife's award is raised to an amount approximating 48% thereof. Parsons v. Parsons, 68 W (2d) 744, 229 NW (2d) 629.

Obligation to support children is factor in determining amount of maintenance payments. Besaw v. Besaw, 89 W (2d) 509, 279 NW (2d) 192 (1979).

Trial court abuse discretion by denying mother's choice to remain at home to care for small children. Hartung v. Hartung, 102 W (2d) 58, 306 NW (2d) 16 (1981).

Trial court abused discretion by terminating maintenance without sufficiently addressing factors under this section. Vander Perren v. Vander Perren, 105 W (2d) 219, 313 NW (2d) 813 (1982).

Compensation for person who supports spouse while spouse is in school can be achieved through both property division and maintenance payments. In re Marriage of Lundberg, 107 W (2d) 1, 318 NW (2d) 918 (1982).

Support award was inadequate and, consequently, an abuse of discretion. In Matter of Marriage of Jasper v. Jasper, 107 W (2d) 59, 318 NW (2d) 792 (1982).

Trial court may begin maintenance evaluation with proposition that dependent partner may be entitled to 50% of total earnings of both parties. Bahr v. Bahr, 107 W (2d) 72, 318 NW (2d) 391 (1982).

Trial court may not consider marital misconduct as relevant factor in granting maintenance payments. Dixon v. Dixon, 107 W (2d) 492, 319 NW (2d) 846 (1982).

Maintenance payments to former wife were improperly discontinued solely upon ground of cohabitation with another man. Van Gorder v. Van Gorder, 110 W (2d) 188, 327 NW (2d) 674 (1983).

Three formulas approved for calculating maintenance or property division award in cases where one spouse has contributed to other spouse's pursuit of advanced educational degree. Marriage of Haugan v. Haugan, 117 W (2d) 200, 343 NW (2d) 796 (1984).

The federal tax consequences of divorce. Meldman, Ryan, 57 MLR 229.

No-fault divorce: Tax consequences of support, maintenance and property settlement. Case, 1977 WBB 11.

767.261 Family support. The court may make a financial order designated "family support" as a substitute for child support orders under s. 767.25 and maintenance payment orders under s. 767.26. A party ordered to pay family support under this section shall pay simple interest at the rate of 1.5% per month on any amount unpaid, commencing the first day of the 2nd month after the month in which the amount was due. Interest under this section is in lieu of interest computed under s. 807.01 (4), 814.04 (4) or 815.05 (8) and is paid to the clerk of court under s. 767.29. The clerk of court shall apply all payments received for child support as follows:

(1) First, to payment of child support due within the calendar month during which the payment is received.

(2) Second, to payment of unpaid child support due before the payment is received.

(3) Third, to payment of interest accruing on unpaid child support.

History: 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1983 a. 27; 1985 a. 29.

Offset of excess child support payments against arrears in alimony may be permissible. Anderson v. Anderson, 82 W (2d) 115, 261 NW (2d) 817.

767.262 Award of attorney's fees. (1) The court, after considering the financial resources of both parties, may do the following:

(a) Order either party to pay a reasonable amount for the cost to the other party of maintaining or responding to an action affecting the family and for attorney fees to either party.

(b) If one party receives services under s. 46.25 or services provided by the state or county as a result of an assignment of income under s. 49.19, order the other party to pay any fee chargeable under s. 46.25 (6) or the cost of services rendered by the state or county under s. 49.19.

(2) Any amount ordered under sub. (1) may include sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment.

(3) The court may order that the amount be paid directly to the attorney or to the state or the county providing services under s. 46.25 or 49.19, who may enforce the order in its name.

(4) No court may order payment of costs under this section by the state or any county which may be a party to the action.

History: 1977 c. 105; 1979 c. 32 s. 50; 1979 c. 352 s. 39; 1983 a. 27.

An allowance of $1,000 attorneys fees on appeal, after the award of a generous property settlement, constitutes a penalty for appealing. Molloy v. Molloy, 46 W (2d) 682, 176 NW (2d) 292.

Attorney fees on appeal depend on the wife's need, the husband's ability to pay and whether there is reasonable ground for the appeal. Klipstein v. Klipstein, 47 W (2d) 314, 177 NW (2d) 57.

767.263 Notice of change of employer and change of address. Each order for child support or maintenance payments shall include an order that the payer and payee notify the clerk of court of any change of employer or change of address within 10 days of such change.

History: 1977 c. 105; 1979 c. 32 s. 50.

767.265 Assignments. (1) Each order entered on or after February 1, 1978, for child support under s. 767.23 or 767.25, for maintenance payments under s. 767.23 or 767.26, for family support under s. 767.261, for support by a spouse under s. 767.02 (1) (f) or for maintenance payments under s. 767.02 (1) (g), each court-approved stipulation for child support under s. 767.10 entered into on or after July 2, 1983, and each order for child or spousal support entered under s. 940.27 (7) constitutes an assignment of all commissions, earnings, salaries, wages, pension benefits, benefits under ch. 102 or 108 and other money due or to be due in the future to the clerk of the court where the action is filed. The assignment shall be sufficient to meet the maintenance payments, child support payments or family support payments imposed by the court for the support of the spouse or minor children or both and to defray arrearages in payments due at the time the assignment takes effect. Except as provided in sub. (2m), the assignment takes effect if the payer so requests or when the requirement of sub. (2) has been satisfied, or, at the discretion of the court or family court commissioner, may take effect immediately.

(1m) Any person who is entitled to a payment of support ordered prior to February 1, 1978, by the court or family court commissioner under s. 767.23, 767.25, 767.26 or 767.261 may apply to the court or court commissioner for an assignment. Upon receipt of the application, the court or family court commissioner shall order an assignment. Except as provided in sub. (2m), the court or family court commissioner may order an assignment to take effect immediately or after the requirements of sub. (2) are satisfied. This subsection does not apply after June 30, 1987, or the day before the effective date of the 1987-89 biennial budget act, whichever is later.

(2) If the court or family court commissioner orders that an assignment under sub. (1) or (1m) shall take effect after the requirements of this subsection are satisfied or if the court or family court commissioner receives notice of assignment or withholding required under a similar law of another state, the family court commissioner, upon his or her own motion or upon application of the person entitled to receive payments, shall send a notice by certified mail to the last-known address of any payer who has failed to make a required maintenance payment or child support payment within 10 days of its due date. The notice shall be postmarked no later than 10 days after the date on which the application was filed and shall inform the recipient that an assignment shall go into effect 10 days after the date on which the notice was sent. The payer may, within that 10-day period, request a hearing on the issue of whether the assignment should take effect, in which case the assignment shall be held in abeyance pending the outcome of the hearing. The family court commissioner shall hold a hearing requested under this section within 10 working days after the date of the request. If at the hearing the payer establishes that the assignment is not proper because of a mistake of fact, the family court commissioner may direct that the assignment not take effect. Either party may, within 15 working days of the date of the decision by the family court commissioner under this section, seek review of the decision by the court with jurisdiction over the action. This subsection does not apply after June 30, 1987, or the day before the

effective date of the 1987-89 biennial budget act, whichever is later.

(2m) If a court with jurisdiction over a proceeding to obtain child support is located in a county which has entered into an agreement with the department of health and social services under s. 46.25 (10) (a) 1, any assignment of support under sub. (1) or (1m) takes effect immediately, unless the payer establishes that irreparable harm is likely to occur. This subsection does not apply after June 30, 1987, or the day before the effective date of the 1987-89 biennial budget act, whichever is later.

(3) An assignment in effect under this section or under a similar law of another state is binding upon any party from whom the payer receives money one week after service upon it of a true copy of the order, by personal service or by registered or certified mail, until further order of the court. An assignment under this section has priority over any other assignment, garnishment or similar legal process under state law. Except as provided in sub. (3m), for each payment the party from whom the payer receives money shall receive $1 which shall be deducted from the money to be paid to the payer. Section 241.09 does not apply to assignments under this section. Except as provided in sub. (3m), if the party from whom the payer receives money fails to make the assignment after receipt of the order as provided in this section, it may be fined not more than $200 and may be required to pay the amount assigned to the clerk of the court. If an employer who receives an assignment under this section fails to notify the clerk of circuit court that an employe has terminated employment within 10 days of that termination, the employer may be fined not more than $200. No employer may use an assignment under this section as a basis for denial of employment, discharge of an employe or any disciplinary action against an employe. An employer who denies employment or discharges or disciplines an employe in violation of this subsection may be fined not more than $200 and may be required to make full restitution to the aggrieved person, including reinstatement and back pay. Compliance by the party from whom the payer receives money with the order operates as a discharge of its liability to the payer as to that portion of the payer's commission, earnings, salaries, wages, benefits or other money so affected. This subsection does not apply after June 30, 1987, or the day before the effective date of the 1987-89 biennial budget act, whichever is later.

(3m) Benefits under ch. 108 may be assigned only in the manner provided in s. 108.13 (3). All assignments of benefits under ch. 108 shall be for an amount certain. When such benefits are assigned, no fee may be deducted from the amount assigned and no fine may be levied for failure to execute an assignment.

(4) In this section, "employer" includes the state and its political subdivisions.

(5) Nothing in this section prevents a court or family court commissioner from ordering a payer to execute an assignment when appropriate.

History: 1971 c. 110; 1975 c. 94 s. 91 (3); 1975 c. 199; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196, 221; 1981 c. 20, 186; 1983 a. 27, 384; 1985 a. 29.

NOTE: Following is s. 767.265 as affected by 1985 Wis. Act 29, ss. 2370, 2373 and 2375 to 2383, to take effect on the effective date of the 1987-89 budget. It also reflects the repeal of subs. (1m), (2) and (2m), as affected by 1983 Wis. Act 27, effective on 7-1-87 or on the effective date of the 1987-89 budget, whichever is later:

"767.265 Assignments. (1) Each order for child support under s. 767.23 or 767.25, for maintenance payments under s. 767.23 or 767.26, for family support under s. 767.261, for support by a spouse under s. 767.02 (1) (f) or for maintenance payments under s. 767.02 (1) (g), each court-approved stipulation for child support under s. 767.10 and each order for child or spousal support entered under s. 940.27 (7) constitutes an assignment of all commissions, earnings, salaries, wages, pension benefits, benefits under ch. 102 or 108 and other money due or to be due in the future to the clerk of the court where the action is filed. The assignment requires withholding sufficient to meet the payments required of the party under the order or stipulation, including any arrearages due.

(2h) If a court-ordered assignment does not require immediately effective withholding and a payer fails to make a required maintenance, child support, spousal support or family support payment within 10 days after its due date, or if the court or family court commissioner receives notice of assignment for withholding required under similar laws of another state, within 20 days after the payment's due date or within 10 days after receipt of notice for withholding under laws of another state the court or family court commissioner shall send a notice by certified or registered mail to the last-known address of the payer. The notice shall inform the payer that an assignment shall go into effect 10 days after the date on which the notice was sent. The payer may, within that 10-day period, by motion request a hearing on the issue of whether the assignment should take effect, in which case the assignment shall be held in abeyance pending the outcome of the hearing. The court or family court commissioner shall hold a hearing requested under this section within 10 working days after the date of the request. If at the hearing the payer establishes that the assignment is not proper because of a mistake of fact, the court or family court commissioner may direct that the assignment not take effect. If the payer does not request a hearing or the court or family court commissioner finds the assignment is proper, the court or family court commissioner shall send notice of the assignment to the person from whom the payer receives or will receive money. Either party may, within 15 working days after the date of the decision by a family court commissioner under this section, seek review of the decision by the court with jurisdiction over the action.

(2r) Upon entry of each order for child support, maintenance, family support or support by a spouse and upon approval of each stipulation for child support, unless the court finds that income withholding is likely to cause the payer irreparable harm, the court shall provide notice of the assignment by personal service or certified or registered mail to the person from whom the payer receives or will receive money. If the clerk of court does not receive the money from the person notified, the court shall provide notice of the assignment to any other person from whom the payer receives or will receive money. Notice under this subsection may be a notice of the court, a copy of the executed assignment or a copy of that part of the court order directing payment.

(3) An assignment in effect under this section or under a similar law of another state is binding upon any party from whom the payer receives money one week after service upon it of a true copy of the order, by personal service or by registered or certified mail, until further order of the court. An assignment under this section has priority over any other assignment, garnishment or similar legal process under state law. Except as provided in sub. (3m), for each payment the party from whom the payer receives money shall receive $1 which shall be deducted from the money to be paid to the payer. Section 241.09 does not apply to assignments under this section. Except as provided in sub. (3m), if the party from whom the payer receives money fails to make the assignment after receipt of the order as provided in this section, it may be fined not more than $200 and may be required to pay the amount assigned to the clerk of the court. If an employer who receives an assignment under this section fails to notify the clerk of circuit court that an employe has terminated employment within 10 days of that termination, the employer may be fined not more than $200. No employer may use an assignment under this section as a basis for denial of employment, discharge of an employe or any disciplinary action against an employe. An employer who denies employment or discharges or disciplines an employe in violation of this subsection may be fined not more than $200 and may be required to make full restitution to the aggrieved person, including reinstatement and back pay. Compliance by the party from whom the payer receives money with the order operates as a discharge of its liability to the payer as to that portion of the payer's commission, earnings, salaries, wages, benefits or other money so affected. This subsection does not apply after June 30, 1987, or the day before the effective date of the 1987-89 biennial budget act, whichever is later.

(3h) A person who receives notice of assignment under this section or similar laws of another state shall withhold the amount specified in the notice from any money that person pays to the payer later than one week after receipt of notice of assignment. Within 10 days after the day the person pays money to the payer, the person shall send the amount withheld to the clerk of court of the jurisdiction providing notice or, in the case of an amount ordered withheld for health care payments, to the appropriate health care insurer, provider or plan. Except as provided in sub. (3m), for each payment the person from whom the payer receives money shall receive $1 which shall be deducted from the money to be paid to the payer. Section 241.09 does not apply to assignments under this section.

(3m) Benefits under ch. 108 may be assigned and withheld only in the manner provided in s. 108.13 (3). Any order to withhold benefits under ch. 108 shall be for an amount certain. When money is to be withheld from these benefits, no fee may be deducted from the amount withheld and no fine may be levied for failure to withhold the money.

(4) A withholding assignment or order under this section has priority over any other assignment, garnishment or similar legal process under state law.

(6) Except as provided in sub. (3m), if the person from whom the payer receives money fails to withhold the money after receipt of notice as provided in this section, the person may be fined not more than $100 for each payment not withheld and may be required to pay to the clerk of the court the amount assigned. If an employer who receives an assignment under this section fails to notify the clerk of court within 10 days after an employe is terminated or otherwise temporarily or permanently leaves employment, the employer may be fined not more than $100. No employer may use an assignment under this section as a basis for the

denial of employment to a person, the discharge of an employe or any disciplinary action against an employe. An employer who denies employment or discharges or disciplines an employe in violation of this subsection may be fined not more than $500 and may be required to make full restitution to the aggrieved person, including reinstatement and back pay. An aggrieved person may apply to the district attorney or to the department of industry, labor and human relations for enforcement of this subsection. Compliance by the person from whom the payer receives money with the order operates as a discharge of the person's liability to the payer as to that portion of the payer's commission, earnings, salaries, wages, benefits or other money so affected.

(7) A person who receives more than one notice of assignment under sub. (3h) may send all money withheld to the clerk of court in a combined payment, accompanied by any information the clerk of court requires.

(8) In this section, "employer" includes the state and its political subdivisions."

Mandatory wage assignment provisions of this section are constitutional. 68 Atty. Gen. 106.

767.27 Disclosure of assets required. (1) In any action affecting the family, except an action to affirm marriage under s. 767.02 (1) (a), the court shall require each party to furnish, on such standard forms as the court may require, full disclosure of all assets owned in full or in part by either party separately or by the parties jointly. Such disclosure may be made by each party individually or by the parties jointly. Assets required to be disclosed shall include, but shall not be limited to, real estate, savings accounts, stocks and bonds, mortgages and notes, life insurance, interest in a partnership or corporation, tangible personal property, income from employment, future interests whether vested or nonvested, and any other financial interest or source. The court shall also require each party to furnish, on the same standard form, information pertaining to all debts and liabilities of the parties. The form used shall contain a statement in conspicuous print that complete disclosure of assets and debts is required by law and deliberate failure to provide complete disclosure constitutes perjury. The court may on its own initiative and shall at the request of either party require the parties to furnish copies of all state and federal income tax returns filed by them for the past 2 years, and may require copies of such returns for prior years.

(2) Disclosure forms required under this section shall be filed within 90 days after the service of summons or the filing of a joint petition or at such other time as ordered by the court or family court commissioner. Information contained on such forms shall be updated on the record to the date of hearing.

(3) (a) Except as provided in par. (b), information disclosed under this section shall be confidential and may not be made available to any person for any purpose other than the adjudication, appeal, modification or enforcement of judgment of an action affecting the family of the disclosing parties.

(b) The clerk of circuit court shall provide information from court records to the department of health and social services under s. 59.395 (7).

(4) Failure by either party timely to file a complete disclosure statement as required by this section shall authorize the court to accept the statement of the other party as accurate.

(5) If any party deliberately or negligently fails to disclose information required by sub. (1) and in consequence thereof any asset or assets with a fair market value of $500 or more is omitted from the final distribution of property, the party aggrieved by such nondisclosure may at any time petition the court granting the annulment, divorce or legal separation to declare the creation of a constructive trust as to all undisclosed assets, for the benefit of the parties and their minor or dependent children, if any, with the party in whose name the assets are held declared the constructive trustee, said trust to include such terms and conditions as the court may determine. The court shall grant the petition upon a finding of a failure to disclose such assets as required under sub. (1).

History: 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; 1979 c. 352 s. 39; 1985 a. 29.

767.275 Disposition of assets prior to action. In any action affecting the family, except an action to affirm marriage under s. 767.02 (1) (a), any asset with a fair market value of $500 or more which would be considered part of the estate of either or both of the parties if owned by either or both of them at the time of the action, but which was transferred for inadequate consideration, wasted, given away or otherwise unaccounted for by one of the parties within one year prior to the filing of the petition or the length of the marriage, whichever is shorter, shall be rebuttably presumed to be part of the estate for the purposes of s. 767.255 and shall be subject to the disclosure requirement of s. 767.27. Transfers which resulted in an exchange of assets of substantially equivalent value need not be specifically disclosed where such assets are otherwise identified in the statement of net worth.

History: 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 352 s. 39.

767.28 Maintenance, custody and support when divorce or separation denied. In a judgment in an action for divorce or legal separation, although such divorce or legal separation is denied, the court may make such order for the custody of any of the minor children and for the maintenance of either spouse and support of such children by either spouse out of property or income, as the nature of the case may render just and reasonable.

History: 1971 c. 220; 1979 c. 32 s. 50.

767.29 Maintenance payments, clerk of court, family court commissioner, fees and compensation. (1) All orders or judgments providing for temporary or permanent maintenance payments or support of children shall direct the payment of all such sums to the clerk of the court for the use of the person for whom the same has been awarded, except as otherwise determined by the department of health and social services under s. 46.257 (6). A party securing an order for temporary maintenance payments or support money shall forthwith file the order, together with all pleadings in the action, with the clerk of the court. The clerk shall disburse the money so received under the judgment or order and take receipts therefor. All moneys received or disbursed under this section shall be entered in a record kept by the clerk, which shall be open to inspection by the department of health and social services for the administration of the child and spousal support and establishment of paternity program under s. 46.25, the parties to the action and their attorneys, and the family court commissioner. If the maintenance payments or support money adjudged or ordered to be paid shall not be paid to the clerk at the time provided in the judgment or order, the clerk or the family court commissioner of the county shall take such proceedings as either of them deems advisable to secure the payment of the sum including enforcement by contempt proceedings under ch. 785 or by other means. Copies of any order issued to compel the payment shall be mailed to counsel who represented each party when the maintenance payments or support money was awarded. In case any fees of officers in any of the proceedings, including the compensation of the family court commissioner at the rate of $50 per day unless the commissioner is on a salaried basis, is not collected from the person proceeded against, the fees shall be paid out of the county treasury upon the order of the presiding judge and the certificate of the clerk of the court.

(2) If any party entitled to maintenance payments or support money, or both, is receiving public assistance under

ch. 49, the party may assign the party's right thereto to the county department under s. 46.215, 46.22 or 46.23 granting such assistance. Such assignment shall be approved by order of the court granting the maintenance payments or support money, and may be terminated in like manner; except that it shall not be terminated in cases where there is any delinquency in the amount of maintenance payments and support money previously ordered or adjudged to be paid to the assignee without the written consent of the assignee or upon notice to the assignee and hearing. When an assignment of maintenance payments or support money, or both, has been approved by the order, the assignee shall be deemed a real party in interest within s. 803.01 but solely for the purpose of securing payment of unpaid maintenance payments or support money adjudged or ordered to be paid, by participating in proceedings to secure the payment thereof. Notwithstanding assignment under this subsection, and without further order of the court, the clerk of court, upon receiving notice that a party or a minor child of the parties is receiving aid under s. 49.19, shall forward all support assigned under s. 49.19 (4) (h) 1 or 49.45 (19) to the department.

(3) If maintenance payments or support money, or both, is ordered to be paid for the benefit of any person, who is committed by court order to an institution or is in confinement, or whose legal custody is vested by court order under ch. 48 in an agency, department or relative, the court or family court commissioner may order such maintenance payments or support money to be paid to the relative or agency, institution, welfare department or other entity having the legal or actual custody of said person, and to be used for the latter's care and maintenance, without the appointment of a guardian under ch. 880.

History: 1971 c. 41 s. 12; Sup. Ct. Order, 67 W (2d) 775; 1975 c. 82, 200; 1975 c. 401 s. 4; 1977 c. 105 s. 59; 1977 c. 271, 418, 447; 1979 c. 32 ss. 50, 92 (4); 1979 c. 257 s. 17; 1981 c. 20 s. 2202 (20) (m); 1983 a. 27, 302; 1985 a. 29, 176.

Public welfare agency is entitled to collect unpaid alimony and support money which had accumulated prior to the effective date of assignment under (2) and prior to assignor's receipt of welfare assistance. Schiavo v. Schiavo, 71 W (2d) 136, 237 NW (2d) 702.

Defense of laches is not available in an action or proceeding brought to secure enforcement of a child-support order in a divorce action. Paterson v. Paterson, 73 W (2d) 150, 242 NW (2d) 907.

See note to 785.03, citing In re Marriage of Biel v. Biel, 130 W (2d) 335, 387 NW (2d) 295 (Ct. App. 1986).

767.30 Enforcement of payments ordered. (1) If the court orders any payment for support or maintenance under s. 767.08, child support, family support or maintenance under s. 767.23, child support under s. 767.25, maintenance under s. 767.26, family support under s. 767.261, attorney fees under s. 767.262, paternity obligations under s. 767.51 or child or spousal support under s. 940.27 (7), the court may provide that any payment be paid in the amounts and at the times as it considers expedient.

(2) The court may impose liability for any payment listed under sub. (1) as a charge upon any specific real estate of the party liable or may require that party to give sufficient security for payment. However, no such charge upon real estate may become effectual until the order or judgment imposing liability or a certified copy of it is recorded in the office of the register of deeds in the county in which the real estate is situated.

(3) If the party fails to pay a payment ordered under sub. (1) or to give security under sub. (2), the court may by any appropriate remedy enforce the judgment, or the order as if it were a final judgment, including any past due payment and interest. Appropriate remedies include but are not limited to:

(a) Execution of the order or judgment.

(b) Contempt of court under ch. 785.

(c) Money judgment for past due payments.

(d) Satisfaction under s. 811.23 of any property attached under ch. 811.

(e) Garnishment under ch. 812.

History: 1971 c. 220; 1975 c. 401 s. 4; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196, 221; 1979 c. 257 s. 17; 1979 c. 355; 1983 a. 27; 1985 a. 29.

A court is justified in requiring the creation of a trust to secure the payment of support money where the husband has a record of failing to obey prior court orders. Foregger v. Foregger, 48 W (2d) 512, 180 NW (2d) 578.

See note to 767.25, citing State ex rel. v. Reible, 91 W (2d) 394, 283 NW (2d) 427 (Ct. App. 1979).

Court had power to order father to look for additional or alternative employment or be held in contempt. Proper contempt procedures discussed. Marriage of Dennis, 117 W (2d) 249, 344 NW (2d) 128 (1984).

767.305 Enforcement; contempt proceedings. In all cases where a party has incurred a financial obligation under s. 767.23, 767.25, 767.255, 767.26, 767.261 or 767.262 and has failed within a reasonable time or as ordered by the court to satisfy such obligation, and where the wage assignment proceeding under s. 767.265 is inapplicable, impractical or unfeasible, the court may on its own initiative, and shall on the application of the receiving party, issue an order requiring the payer to show cause at some reasonable time therein specified why he or she should not be punished for such misconduct as provided in ch. 785.

History: 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; 1979 c. 257 s. 17.

767.31 Trustee may be appointed. The court may appoint a trustee, when deemed expedient, to receive any payments ordered, to invest and pay over the income for the maintenance of the spouse entitled thereto or the support and education of any of the minor children, or to pay over the principal sum in such proportions and at such times as the court directs. The trustee shall give such bond, with such sureties as the court requires, for the faithful performance of his or her trust.

History: 1971 c. 220; 1979 c. 32 s. 50; 1979 c. 196.

767.32 Revision of judgment. (1) After a judgment providing for child support under s. 767.25, maintenance payments under s. 767.26 or family support payments under s. 767.261, or for the appointment of trustees under s. 767.31 the court may, from time to time, on the petition of either of the parties, or upon the petition of the department of health and social services, a county department under s. 46.215, 46.22 or 46.23 or a child support agency if an assignment has been made under s. 49.19 (4) (h) or 49.45 (19) or if either party or their minor children receives aid under ch. 49, and upon notice to the family court commissioner, revise and alter such judgment respecting the amount of such maintenance or child support and the payment thereof, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any judgment respecting any of the matters which such court might have made in the original action, except that a judgment which waives maintenance payments for either party shall not thereafter be revised or altered in that respect nor shall the provisions of a judgment with respect to final division of property be subject to revision or modification. Any change in child support because of alleged change in circumstances shall take into consideration each parent's earning capacity and total economic circumstances. In any action under this section, receipt of aid to families with dependent children under s. 49.19 or a substantial change in the cost of living by either party or as measured by the federal bureau of labor statistics may be sufficient to justify a revision of judgment, except that a change in an obligor's cost of living is not in itself sufficient if payments are expressed as a percentage of income.

(2) Whenever the welfare of any such child will be promoted thereby, the court granting such judgment shall always

have the power to change the care and custody of any such child, either by giving it to or taking it from any parent, relative or agency. No order changing the custody of any child shall be entered until after notice of such application has been given the parents of such child, if they can be found, and also to the relative or agency that then has the custody of such child. The court may order custody transferred to the department of health and social services only in those cases where the department agrees to accept custody. Any modification of a custody order which removes a child from the care of a parent having custody of the child shall be based on a finding that such removal is necessary to the child's best interest as shown by substantial evidence supporting a change in custody under s. 767.24 (2).

(3) After a final judgment requiring maintenance payments has been rendered and the payee has remarried, the court shall, on application of the payer with notice to the payee and upon proof of remarriage, vacate the order requiring such payments.

(4) In any case in which the state is a real party in interest under s. 767.075, the department of health and social services shall review the support obligation periodically and whenever circumstances so warrant, petition the court for revision of the judgment with respect to the support obligation.

History: 1971 c. 220; 1977 c. 105 ss. 38, 48, 49; 1977 c. 418; 1979 c. 32 ss. 50, 92 (4); 1981 c. 20 s. 2202 (20) (m); 1981 c. 314 s. 146; 1983 a. 27; 1985 a. 176.

The fact that a child needs more support at 6 than at 2 is sufficient to justify an increase in payments if the father is able to make them. Klipstein v. Klipstein, 47 W (2d) 314, 177 NW (2d) 57.

Even though the mother took the children out of the state without court approval or letting the father know where he could visit them, the court may not suspend payment of a support allowance without a hearing as to the effect on the children. Krause v. Krause, 58 W (2d) 499, 206 NW (2d) 589.

Even assuming the parties' agreement as to child support gave rise to contractual obligations, these obligations remained subject to modification by the court under this section. Vaccaro v. Vaccaro, 67 W (2d) 477, 227 NW (2d) 62.

While a divorced party owes no duty of sexual fidelity to the former spouse, cohabitation by the party can be acknowledged as a change of circumstances affecting the former spouse's responsibility to provide alimony, with the manner and extent of the cohabitation and surrounding circumstances to be considered in determining whether such alimony payments should be modified. Taake v. Taake, 70 W (2d) 115, 233 NW (2d) 449.

Child support provision reducing payments proportionately as each of several minor children attains majority is not against public policy. Severson v. Severson, 71 W (2d) 382, 238 NW (2d) 116.

Trial court abused discretion in denying former husband's motion to terminate alimony, where court failed to consider former wife's increased estate as result of inheritance. Lemm v. Lemm, 72 W (2d) 457, 241 NW (2d) 593.

Judgment's prohibition against modification of amount or term of limited maintenance violated this section. Dixon v. Dixon, 107 W (2d) 492, 319 NW (2d) 846 (1982).

See note to 767.24, citing In re Marriage of Groh v. Groh, 110 W (2d) 117, 327 NW (2d) 655 (1983).

See note to 767.26, citing Van Gorder v. Van Gorder, 110 W (2d) 188, 327 NW (2d) 674 (1983).

Criteria for change of custody discussed. In re Marriage of Millikin v. Millikin, 115 W (2d) 16, 339 NW (2d) 573 (1983).

Where stipulation required maintenance payments during wife's lifetime, husband was estopped from requesting termination of payments under (3) when wife remarried. Marriage of Rintelman v. Rintelman, 118 W (2d) 587, 348 NW (2d) 498 (1984).

Court may revise judgment incorporating stipulation regarding limited maintenance if petition to revise is filed before expiration of maintenance obligation. Fobes v. Fobes, 124 W (2d) 72, 368 NW (2d) 643 (1985).

Petition for revision filed 20 days after receipt of final scheduled maintenance payment was properly dismissed as untimely. In re Marriage of Lippstreu v. Lippstreu, 125 W (2d) 415, 373 NW (2d) 53 (Ct. App. 1985).

767.33 Annual adjustments in child support order. (1) An order for child support under s. 767.23 or 767.25 may provide for an adjustment in the amount to be paid based on a change in the obligor's earnings or in the cost of living or both. The order may specify the date on which the annual adjustment becomes effective. No adjustment may be made unless the order so provides and the party receiving payments applies for an adjustment as provided in sub. (2). An adjustment under this section may be made only once in any year.

(1m) This section applies only to an order under s. 767.23 or 767.25 in which payment is expressed as a fixed sum. It does not apply to such an order in which payment is expressed as a percentage of parental income.

(2) An adjustment under sub. (1) may be made only if the party receiving payments applies to the family court commissioner for the adjustment. If the order specifies the date on which the annual adjustment becomes effective, the application to the family court commissioner must be made at least 20 days before the effective date of the adjustment. The family court commissioner, upon application by the party receiving payments, shall send a notice by certified mail to the last-known address of the obligor. The notice shall be postmarked no later than 10 days after the date on which the application was filed and shall inform the obligor that an adjustment in payments will become effective on the date specified in the order or, if no date is specified in the order, 10 days after the date on which the notice is sent. The obligor may, after receipt of notice and before the effective date of the adjustment, request a hearing on the issue of whether the adjustment should take effect, in which case the adjustment shall be held in abeyance pending the outcome of the hearing. The family court commissioner shall hold a hearing requested under this subsection within 10 working days after the request. If at the hearing the obligor establishes that extraordinary circumstances beyond his or her control prevent fulfillment of the adjusted child support obligation, the family court commissioner may direct that all or part of the adjustment not take effect until the obligor is able to fulfill the adjusted obligation. If at the hearing the obligor does not establish that extraordinary circumstances beyond his or her control prevent fulfillment of the adjusted obligation, the adjustment shall take effect as of the date it would have become effective had no hearing been requested. Either party may, within 15 working days of the date of the decision by the family court commissioner under this subsection, seek review of the decision by the court with jurisdiction over the action.

History: 1981 c. 20; 1983 a. 27.

767.37 Effect of judgment. (1) (a) In any action affecting the family, if the court orders maintenance payments or other allowances for a party or children or retains jurisdiction in such matters, the written judgment shall include a provision that disobedience of the court order with respect to the same is punishable under ch. 785 by commitment to the county jail or house of correction until such judgment is complied with and the costs and expenses of the proceedings are paid or until the party committed is otherwise discharged, according to law. The findings of fact and conclusions of law and the written judgment shall be drafted by the attorney for the moving party, and shall be submitted to the court and filed with the clerk of the court within 30 days after judgment is granted; but if the respondent has been represented by counsel, the findings, conclusions and judgment shall first be submitted to respondent's counsel for approval and if the family court commissioner has appeared at the trial of the action, such papers shall also be sent to the family court commissioner for approval. After any necessary approvals are obtained, the findings of fact, conclusions of law and judgment shall be submitted to the court. Final stipulations of the parties may be appended to the judgment and incorporated by reference therein.

(c) At the time of filing any judgment for an annulment, divorce or legal separation, the attorney for the moving party shall present to the clerk of court 2 true copies thereof in addition to the original judgment, and until such copies are presented the clerk may refuse to accept such judgment for filing. After the judgment is filed, the clerk shall mail a copy forthwith to each party to the action at the last-known address, and the court record shall show such mailing.

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

(3) When a judgment of divorce is granted it shall be effective immediately except as provided in s. 765.03 (2). Every judge who grants a judgment of divorce shall inform the parties appearing in court that the judgment is effective immediately except as provided in s. 765.03 (2).

History: 1971 c. 220; 1975 c. 41, 199, 200; 1975 c. 401 s. 4; 1975 c. 421; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 175 ss. 41, 53; 1979 c. 196; 1979 c. 257 s. 17; 1979 c. 352 ss. 23, 39; 1979 c. 355 s. 241.

Sub. (2) does not authorize vacating or modifying a judgment as to paternity of children determined in the original judgment. E..... v. E....., 57 W (2d) 436, 204 NW (2d) 503.

Sub. (2) provides no authority for reopening divorce judgment as it relates to property division. Conrad v. Conrad, 92 W (2d) 407, 284 NW (2d) 674 (1979).

Death of party within 6 months of divorce judgment did not void judgment or divest court of jurisdiction to order property division. In re Marriage of Roeder v. Roeder, 103 W (2d) 411, 308 NW (2d) 904 (Ct. App. 1981).

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

History: 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 352.

767.39 Maintenance payments or other allowances pending appeal. (1) In actions affecting the family pending in an appellate court, no allowance for suit money, counsel fees or disbursements in the court, nor for temporary maintenance payments to the spouse or the children during the pendency of the appeal will be made in the court.

(2) Allowances specified in sub. (1), if made at all, shall be made by the proper trial court upon motion made and decided after the entry of the order or judgment appealed from and prior to the return of the record to an appellate court, provided, that if the allowance is ordered before the appeal is taken the order shall be conditioned upon the taking of the appeal and shall be without effect unless and until the appeal is perfected.

History: 1975 c. 94; 1977 c. 105; 1977 c. 187 s. 89; 1979 c. 32 s. 50; 1979 c. 352 s. 39.

767.40 Contempt proceedings. All contempt orders in which confinement is imposed shall be issued by a judge.

History: 1977 c. 323; 1979 c. 32 s. 50.

767.42 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 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 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 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 it 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 seized under this section returns and supports the abandoned spouse or children or gives security to the county, with its approval, that the spouse or children shall not thereafter be chargeable to the county, the court shall discharge the warrant and order the restoration of the property seized and remaining unappropriated, or the unappropriated proceeds, after deducting the expenses of the proceedings.

History: Sup. Ct. Order, 67 W (2d) 773; 1977 c. 449; 1979 c. 352; 1985 a. 29 ss. 1115, 3200 (23); 1985 a. 332.

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

(a) The child.

(b) The child's natural mother.

(c) A man presumed to be the child's father under s. 891.41.

(d) A man alleged or alleging himself to be the father of the child.

(e) The personal representative of a person specified under pars. (a) to (d) if that person has died.

(f) The legal or physical custodian of the child.

(g) This state whenever assignment is made under s. 49.19 (4) (h) 1 or 49.45 (19), including the delegates of the state as specified in sub. (6).

(2) Regardless of its terms, an agreement made after July 1, 1981, other than an agreement approved by the court between an alleged or presumed father and the mother or child, does not bar an action under this section. Whenever the court approves an agreement in which one of the parties agrees not to commence an action under this section, the court shall first determine whether or not the agreement is in the best interest of the child. The court shall not approve any provision waiving the right to bring an action under this section if this provision is contrary to the best interests of the child.

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

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

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

(5m) Unless a man is either presumed the child's father under s. 891.41 (1) or (2) (b) or adjudicated the child's father either under s. 767.51 or by final order or judgment of a court of competent jurisdiction in another state, no order or temporary order may be entered for child support, custody or visitation until the man is adjudicated the father using the procedure set forth in ss. 767.45 to 767.60. The exclusive procedure for establishment of child support obligations, child custody or visitation rights for a man who is neither presumed the child's father under s. 891.41 (1) or (2) (b) nor adjudicated the father is by an action under ss. 767.45 to 767.60. No person may waive the use of this procedure. If a presumption under s. 891.41 exists, a party denying paternity has the burden of rebutting the presumption.

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

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

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

(7) The clerk of court shall provide without charge, to each person bringing an action under this section, except to the state under sub. (1) (g), a document setting forth the percentage standard established by the department of health and social services under s. 46.25 (9) (a) and listing the factors which a court may consider under s. 767.51 (5).

History: 1979 c. 352; 1981 c. 20 s. 2202 (20) (m); 1983 a. 447; 1985 a. 29.

Paternity proceeding may not be maintained posthumously. In re Estate of Blumreich, 84 W (2d) 545, 267 NW (2d) 870 (1978).

See note to Art. I, sec. 9, citing In re Paternity of R.W.L. 116 W (2d) 150, 341 NW (2d) 682 (1984).

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

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

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

(4) SERVICE. The summons and petition shall be served in the manner provided in s. 801.11 (1) (a) or (b) or, notwithstanding s. 990.001 (13), by registered or certified mail, with return receipt signed by the respondent.

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

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

Summons

THE STATE OF WISCONSIN,
To said respondent:

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

Date:
Time:
Room:
Judge:
Address:

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

Dated: ....., 19 .....

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

(6) DOCUMENT. The summons served on the respondent shall be accompanied by a document, provided without charge by the clerk of court, setting forth the percentage standard established by the department of health and social services under s. 46.25 (9) (a) and listing the factors which a court may consider under s. 767.51 (5).

History: 1979 c. 352; 1981 c. 314; 1983 a. 447; 1985 a. 29.

767.456 Enlargement of time in a paternity proceeding. The time for service of summons and petition under s. 801.02 (1) in a paternity proceeding may be extended as provided in either sub. (1) or (2):

(1) Upon the petitioner's demonstration of good cause, the court may without notice order one additional 60-day extension for service of the summons and petition.

(2) The time for service may be extended until the date the summons and petition are actually served, if both of the following apply:

(a) There are reasonable grounds to believe that before the time for service under s. 801.02 (1) or sub. (1) expired the respondent knew that the mother was pregnant and that the respondent may be the father.

(b) Due diligence was exercised in attempting to serve the respondent, before he was actually served.

History: 1983 a. 447.

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

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

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

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

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

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

History: 1979 c. 352; 1983 a. 447 s. 34.

767.46 Pretrial paternity proceedings. (1) A pretrial hearing shall be held before the court or family court commissioner. A record of the proceeding shall be kept, in accordance with s. 757.55 (2). At the pretrial hearing the parties may present and cross-examine witnesses, request blood tests and present other evidence relevant to the determination of paternity.

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

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

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

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

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

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

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

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

History: 1979 c. 352; 1983 a. 447.

Court may order putative father to take blood test only after determining at pretrial hearing that paternity probably can be established at trial and that establishment of paternity is in best interests of child. State ex rel. Scott v. Slocum, 109 W (2d) 397, 326 NW (2d) 118 (Ct. App. 1982).

Notwithstanding 804.12 (2) (a) 4., court may find party in civil contempt for refusing to submit to blood test. Contempt Finding: In re Paternity of T.P.L. 120 W (2d) 328, 354 NW (2d) 759 (Ct. App. 1984).

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

(2) WHEN RESPONDENT FAILS TO APPEAR. If the respondent has been personally served and fails to appear on the return date specified in the summons or on the date set for the trial, the court or family court commissioner may enter judgment and appropriate orders for support and custody, if the petitioner proves the facts alleged in the petition at a hearing, notice of which was sent to the respondent, and if either of the following applies:

(a) There are reasonable grounds to believe the respondent is outside of the state and more than 6 months have elapsed since the return date.

(b) An order for arrest under s. 818.02 (1) (f) has been entered and the respondent has not been apprehended within 6 months after entry of that order.

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

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

History: 1979 c. 352; 1983 a. 447.

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

(a) Evidence of sexual intercourse between the mother and alleged father at any possible time of conception or evidence of a relationship between the mother and alleged father at any time.

(b) An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy.

(c) Blood test results under ss. 767.48 and 885.23.

(d) The statistical probability of the alleged father's paternity based upon the blood tests.

(e) Medical, scientific or genetic evidence relating to the alleged father's paternity of the child based on tests performed by experts.

(f) All other evidence relevant to the issue of paternity of the child, except as provided in subs. (2), (2m) and (3).

(2) Testimony relating to sexual relations or possible sexual relations of the mother any time other than the possible time of conception of the child is inadmissible in evidence, unless offered by the mother.

(2m) Medical and genetic information filed with the department of health and social services or the court under s. 48.425 (1) (am) or (2) is not admissible to prove the paternity of the child.

(3) In an action against an alleged father, evidence offered by him with respect to an identified man who is not subject to the jurisdiction of the court concerning that man's sexual intercourse with the mother at or about the presumptive time of conception of the child is admissible in evidence only after the alleged father has undergone and made available to the court blood tests as provided in s. 767.48.

(4) No person may be prosecuted or subjected to any penalty or forfeiture for or on account of any pleading, any matter testified to or evidence given relating to the paternity of the child in any paternity proceeding, except for perjury committed in giving the testimony.

(5) Except as provided in sub. (6), upon refusal of any witness, including a party, to testify under oath or produce evidence, the court or family court commissioner may order the witness to testify under oath and produce evidence concerning all relevant facts. The refusal of a witness, including a witness who has immunity under sub. (4), to obey an order to testify or produce evidence is a contempt of the court.

(6) (a) Whenever the state brings the action to determine paternity pursuant to an assignment under s. 49.19 (4) (h) 1 or 49.45 (19), the natural mother of the child may not be compelled to testify about the paternity of the child if it has been determined that the mother has good cause for refusing to cooperate in establishing paternity as provided in 42 USC 602 (a) (26) (B) and the federal regulations promulgated pursuant to this statute, as of July 1, 1981, and pursuant to any rules promulgated by the department of health and social services which define good cause in accordance with the federal regulations, as authorized by 42 USC 602 (a) (26) (B) in effect on July 1, 1981.

(b) Nothing in par. (a) prevents the state from bringing an action to determine paternity pursuant to an assignment under s. 49.19 (4) (h) 1 or 49.45 (19) where evidence other than the testimony of the mother may establish the paternity of the child.

(7) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.

(8) The party bringing an action for the purpose of determining paternity or for the purpose of declaring the nonexistence of paternity presumed under s. 891.41 shall have the burden of proving the issues involved by clear and satisfactory preponderance of the evidence.

(9) Where a child is conceived by artificial insemination, the husband of the mother of the child at the time of the conception of the child is the natural father of the child, as provided in s. 891.40.

History: 1979 c. 352; 1981 c. 20 s. 2202 (20) (m); 1981 c. 359 ss. 13, 17; 1983 a. 447.

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

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

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

(4) Discovery shall be conducted as provided in ch. 804, except that no discovery may be obtained later than 30 days before the trial. No discovery may solicit information relating to the sexual relations of the mother occurring at any time other than the probable time of conception.

(5) The statute of limitations for commencing actions concerning paternity is as provided in s. 893.88.

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

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

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

History: 1979 c. 352; 1981 c. 391; 1983 a. 447.

767.48 Blood tests in paternity actions. (1) The court or family court commissioner may, and upon request of a party shall, require the child, mother, alleged father, or any male witness who testifies or will testify about his sexual relations with the mother at a possible time of conception to submit to blood tests. The tests shall be performed by an expert qualified as an examiner of genetic markers present on blood cells and components, appointed by the court. A report completed and certified by the court-appointed expert stating blood test results and the statistical probability of the alleged father's paternity based upon the blood tests is admissible as evidence without expert testimony and may be entered into the record at the trial or pretrial hearing if, at least 10 days before the trial or pretrial hearing, the party offering the report files it with the court and notifies all other parties of that filing.

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

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

(4) Whenever the results of the blood tests exclude the alleged father as the father of the child this evidence shall be conclusive evidence of nonpaternity and the court shall dismiss the action. Whenever the results of the tests exclude any male witness from possible paternity the tests shall be conclusive evidence of nonpaternity of the male witness. If any party refuses to submit to the blood test this fact shall be disclosed to the fact finder. This refusal is a contempt of the court for failure to produce evidence under s. 767.47 (5). If the action was brought by the child's mother but she refuses to submit herself or the child to blood tests, the action shall be dismissed.

(5) The fees and costs for blood tests performed upon any person listed under sub. (1) shall be paid for by the county except as follows:

(a) At the close of the proceeding the court may order either or both parties to reimburse the county if the court finds that they have sufficient resources to pay the costs of the blood tests.

(b) If 2 or more identical series of blood tests are performed upon the same person, the court may require the person requesting the 2nd or subsequent series of tests to pay for it in advance.

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

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

History: 1979 c. 352; 1983 a. 447.

767.50 Trial. The trial shall be divided into 2 parts. The first part shall deal with the determination of paternity and the initial establishment of support. The 2nd part shall deal with custody, visitation and related issues. At the first part of the trial, the main issue shall be whether the alleged or presumed father is or is not the father of the mother's child, but if the child was born to the mother while she was the lawful wife of a specified man there shall first be determined, as provided in s. 891.39, the prior issue of whether the husband was not the father of the child. The trial shall be by jury, unless the defendant waives the right to trial by jury in writing or by statement in open court, on the record, with the approval of the court and the complainant. The court may direct, and if requested by either party, before the introduction of any testimony in the party's behalf, shall direct the jury to find a special verdict as to any of the issues specified in this section except that the court shall make all the findings enumerated in s. 767.51 (2) to (5). If the mother is dead, becomes insane, cannot be found within the jurisdiction or fails to commence or pursue the action, the proceeding does not abate if any of the persons under s. 767.45 (1) makes a motion to continue. The testimony of the mother taken at the pretrial hearing may in any such case be read in evidence if it is competent, relevant and material.

History: 1979 c. 352 s. 10; 1983 a. 27, 447.

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

(2) If the judgment or order of the court is at variance with the child's birth certificate, the judge shall order the clerk of court to file with the state registrar a report showing the names, dates and birth places of the child and the father and the maiden name of the mother on a form designated by the state registrar, along with the fee set forth in s. 69.22 (5), which the clerk of court shall collect.

(3) The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. Unless the court orders otherwise, if there is no presumption of paternity under s. 891.41 (1) the mother shall have legal custody of the child. The court shall order either party or both to pay for the support of any child of the parties who is less than 19 years old and is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent. The judgment or order shall specifically assign responsibility for and direct the manner of payment of the child's health care expenses. The judgment or order may direct the father to pay or contribute to the reasonable expenses of the mother's pregnancy and confinement during pregnancy and may direct either party to pay or contribute to the costs of blood tests, attorney fees and other costs. Contributions to the costs of blood tests shall be paid to the county which paid for the blood tests.

(4) Support judgments or orders ordinarily shall be for periodic payments which may vary in amount if appropriate. The payment amount may be expressed as a percentage of the parent's income or as a fixed sum. The father's liability for past support of the child shall be limited to support for the period after commencement of action.

(4m) Except as provided in sub. (5), the court shall determine child support payments by using the percentage standard established by the department of health and social services under s. 46.25 (9) (a).

(5) Upon request by a party, the court may modify the amount of child support payments determined under sub. (4m) if, after considering the following factors, the court finds by clear and convincing evidence that use of the percentage standard is unfair to the child or to the requesting party:

(a) The needs of the child.

(am) The physical, mental and emotional health needs of the child, including the costs of health insurance and uninsured health care for the child.

(b) The standard of living and circumstances of the parents, including whether a parent receives maintenance payments under s. 767.26 and the needs of each party in order to support himself or herself at a level equal to or greater than that established under 42 USC 9902 (2).

(c) The relative financial means of the parents.

(d) The earning ability of the parents.

(e) The need and capacity of the child for education, including higher education.

(f) The age of the child.

(g) The financial resources and the earning ability of the child.

(gm) Any physical custody arrangement ordered or decided upon.

(gp) Extraordinary travel expenses incurred in exercising visitation privileges.

(h) The responsibility of the parents for the support of others.

(i) The value of services contributed by the custodial parent.

(im) The best interests of the child.

(j) Any other factors which the court in each case determines are relevant to the best interests of the child.

(5d) If the court finds under sub. (5) that use of the percentage standard is unfair to the child or the requesting party, the court:

(a) May consider the guidelines for the determination of child support established by the department of health and social services under s. 46.25 (9) (b), in modifying the amount of child support payments determined under sub. (4m).

(b) Shall state in writing or on the record its reasons for finding that use of the percentage standard is unfair to the child or the party, its reasons for the amount of the modification and the basis for the modification.

(5p) A party ordered to pay child support under this section shall pay simple interest at the rate of 1.5% per month on any amount unpaid, commencing the first day of the 2nd month after the month in which the amount was due. Interest under this subsection is in lieu of interest computed under s. 807.01 (4), 814.04 (4) or 815.05 (8) and is paid to the clerk of court under s. 767.29. The clerk of court shall apply all payments received for child support as follows:

(a) First, to payment of child support due within the calendar month during which the payment is received.

(b) Second, to payment of unpaid child support due before the payment is received.

(c) Third, to payment of interest accruing on unpaid child support.

(5r) An order under this section shall direct the person with custody of a minor child to contribute an amount determined under s. 46.257 (6) (b) in the manner determined by the department of health and social services, if the person receives benefits under s. 46.257. This subsection applies between October 1, 1986 and September 30, 1994.

(6) Sections 767.24, 767.245, 767.263, 767.265, 767.29, 767.30, 767.305, 767.31 and 767.32, where applicable, shall apply to a judgment or order under this section.

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

History: 1979 c. 352; 1983 a. 27, 192, 447; 1985 a. 29; 1985 a. 315 s. 22.

NOTE: This section is shown as affected by 1985 Wis. Act 29, eff. 7-1-87 and by 1985 Wis. Act 315, s. 22. Following is s. 767.51 prior to 7-1-87:

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

(2) If the judgment or order of the court is at variance with the child's birth certificate, the judge shall order the clerk of court to file with the state registrar a report showing the names, dates and birth places of the child and the father and the maiden name of the mother on a form designated by the state registrar, along with the fee set forth in s. 69.22 (5), which the clerk of court shall collect.

(3) The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. Unless the court orders otherwise, if there is no presumption of paternity under s. 891.41 (1) the mother shall have legal custody of the child. The court shall order either party or both to pay for the support of any child of the parties who is less than 19 years old and is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent. The judgment or order shall specifically assign responsibility for and direct the manner of payment of the child's health care expenses. The judgment or order may direct the father to pay or contribute to the reasonable expenses of the mother's pregnancy and confinement during pregnancy and may direct either party to pay or contribute to the costs of blood tests, attorney fees and other costs. Contributions to the costs of blood tests shall be paid to the county which paid for the blood tests.

(4) Support judgments or orders ordinarily shall be for periodic payments which may vary in amount if appropriate. The payment amount may be expressed as a percentage of the parent's income or as a fixed sum. The father's liability for past support of the child shall be limited to support for the period after commencement of action.

(5) Except as provided in sub. (5m), in determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider the guidelines for determination of child support established by the department of health and social services, and any relevant facts, including but not limited to:

(a) The needs of the child.

(b) The standard of living and circumstances of the parents.

(c) The relative financial means of the parents.

(d) The earning ability of the parents.

(e) The need and capacity of the child for education, including higher education.

(f) The age of the child.

(g) The financial resources and the earning ability of the child.

(h) The responsibility of the parents for the support of others.

(i) The value of services contributed by the custodial parent.

(5m) In lieu of determining child support payments under sub. (5), the court may order a parent to pay an amount determined by using the percentage standard adopted under s. 767.395 (3).

(5p) A party ordered to pay child support under this section shall pay simple interest at the rate of 1.5% per month on any amount unpaid, commencing the first day of the 2nd month after the month in which the amount was due. Interest under this subsection is in lieu of interest computed under s. 807.01 (4), 814.04 (4) or 815.05 (8) and is paid to the clerk of court under s. 767.29. The clerk of court shall apply all payments received for child support as follows:

(a) First, to payment of child support due within the calendar month during which the payment is received.

(b) Second, to payment of unpaid child support due before the payment is received.

(c) Third, to payment of interest accruing on unpaid child support.

(5r) An order under this section shall direct the person with custody of a minor child to contribute an amount determined under s. 46.257 (6) (b) in the manner determined by the department of health and social services, if the person receives benefits under s. 46.257. This subsection applies between October 1, 1986 and September 30, 1994.

(6) Sections 767.24, 767.245, 767.263, 767.265, 767.29, 767.30, 767.305, 767.31 and 767.32, where applicable, shall apply to a judgment or order under this section.

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

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

(2) Any appointed attorney appearing on behalf of a party in a paternity action shall represent that party in all issues and proceedings relating to the paternity determination and the initial establishment of support, but may not represent the party in any proceeding relating to custody, visitation or related issues.

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

History: 1979 c. 352; 1983 a. 27.

767.53 Paternity hearings and records; confidentiality. Any hearing, discovery proceeding or trial relating to paternity determination shall be closed to any person other than those necessary to the action or proceeding. Any record of the proceedings shall be placed in a closed file, except that:

(1) Access to the record of any pending or past proceeding involving the paternity of the same child shall be allowed to the child's parents, the parties and their attorneys or their authorized representatives.

(2) The clerk of circuit court shall provide information from court records to the department of health and social services under s. 59.395 (7).

History: 1979 c. 352; 1983 a. 447; 1985 a. 29.

767.60 Determination of marital children. In any case where the father and mother of any nonmarital child shall enter into a lawful marriage or a marriage which appears and they believe is lawful, except where the parental rights of the mother were terminated prior thereto, that child shall thereby become a marital child, shall be entitled to a change in birth certificate under s. 69.15 (3) (b) and shall enjoy all the rights and privileges of a marital child as if he or she had been born during the marriage of the parents; and this section shall be taken to apply to all cases prior to its date, as well as those subsequent thereto but no estate already vested shall be divested by this section and ss. 765.05 to 765.24 and 852.05. The issue of all marriages declared void under the law shall, nevertheless, be marital issue.

History: 1979 c. 32 ss. 48, 92 (2); 1979 c. 352; 1981 c. 314 s. 146; 1983 a. 447; 1985 a. 315.

767.65 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 this chapter 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 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 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; 1985 a. 29 ss. 1120 to 1123.

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).

Under URESA, resident with legal but not physical custody of child may be required to pay child support to other parent residing outside state with child. State of Louisiana ex rel. Eaton v. Leis, 120 W (2d) 271, 354 NW (2d) 209 (Ct. App. 1984).

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.