CHAPTER 767

ACTIONS AFFECTING THE FAMILY

767.001 Definitions. In this chapter:

(1) "Joint legal custody" means the condition under which both parties share legal custody and neither party's legal custody rights are superior, except with respect to specified decisions as set forth by the court or the parties in the final judgment or order.

(2) "Legal custody" means:

(a) With respect to any person granted legal custody of a child, other than a county agency or a licensed child welfare agency under par. (b), the right and responsibility to make major decisions concerning the child, except with respect to specified decisions as set forth by the court or the parties in the final judgment or order.

(b) With respect to a county agency specified in s. 48.56 (1) or a licensed child welfare agency granted legal custody of a child, the rights and responsibilities specified under s. 48.02 (12).

(2m) "Major decisions" includes, but is not limited to, decisions regarding consent to marry, consent to enter military service, consent to obtain a motor vehicle operator's license, authorization for nonemergency health care and choice of school and religion.

(3) "Mediation" means a cooperative process involving the parties and a mediator, the purpose of which is to help the parties, by applying communication and dispute resolution skills, define and resolve their own disagreements, with the best interest of the child as the paramount consideration.

(4) "Mediator" means a person with special skills and training in dispute resolution.

(5) "Physical placement" means the condition under which a party has the right to have a child physically placed with that party and has the right and responsibility to make, during that placement, routine daily decisions regarding the child's care, consistent with major decisions made by a person having legal custody.

(6) "Sole legal custody" means the condition under which one party has legal custody.

History: 1987 a. 355.

NOTE: 1987 Wis. Act 355, which created this section, contains explanatory notes.

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) In an action to establish paternity or to establish or enforce a child support obligation, in regard to a child who is

the subject of the action, a person is subject to the jurisdiction of the courts of this state if any of the following circumstances exists:

(a) The person has the necessary minimum contact with this state for the exercise of jurisdiction under s. 801.05 or 801.07 (5).

(b) The person engaged in sexual intercourse with the child's mother in this state during the child's period of conception or the affected child was conceived in this state.

(c) The affected child resides in this state.

(d) The person resides or has resided with the child in this state.

(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; Stats. 1979 s. 767.01; 1987 a. 27.

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, 1981 stats., was abuse of discretion. In re Marriage of Biel v. Biel, 114 W (2d) 191, 336 NW (2d) 404 (Ct. App. 1983).

Where alleged conception occurred in Florida and alleged non-resident father visited state only once following birth for unspecified purpose, child's residence in state is insufficient contact to subject alleged father to court's jurisdiction. State ex rel. N.R.Z. v. G.L.C., 152 W (2d) 97, 447 NW (2d) 533 (1989).

Sub. (2) (c) circumstances raise rebuttable presumption that jurisdiction over person is constitutional, due process concerns must still be met upon objection. State ex rel. N.R.Z. v. G.L.C., 152 W (2d) 97, 447 NW (2d) 533 (1989.)

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; Stats. 1979 s. 767.015.

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 or order in an action affecting the family granted in this state or elsewhere.

(j) For periodic family support payments.

(k) Concerning periods of physical placement or 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 department of health and social services for services on behalf of the minor child under s. 46.25. This application does not authorize 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; Stats. 1979 s. 767.02; 1985 a. 29; Sup. Ct. Order, 141 W (2d) xvii; 1987 a. 355, 403, 413; 1989 a. 212.

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.

Post-divorce judgment venue in multicounty situations. Whipple. WBB Oct. 1987.

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

767.025 Filing procedures for enforcement or modification of judgments or orders in actions affecting the family. The following filing procedures shall apply to all enforcement or modification petitions, motions or orders to show cause filed for actions affecting the family under s. 767.02 (1) (i):

(1) Except as provided in sub. (2), if a petition, motion or order to show cause requesting enforcement or modification of a judgment or order 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 or party bringing the motion or order to show cause shall send a copy of the petition, motion or order to show cause and summons to the clerk of the court in which the judgment was rendered. If a question arises as to which court should exercise jurisdiction, a conference involving both judges, all counsel and guardians ad litem may be convened under s. 807.13 (3) to resolve the question. The petitioner shall send a copy of any order rendered pursuant to this petition, motion or order to show cause to the clerk of the court in which the original judgment or order was rendered.

(2) (a) If the petition, motion or order to show cause is for enforcement or modification of a child support, family support or maintenance order, the petition, motion or order to show cause shall be filed in the county in which the original judgment or order was rendered or in the county where the minor children reside unless any of the following applies:

1. All parties, including the state or its delegate if support, support arrearages, costs or expenses are assigned under ch. 49, stipulate to filing in another county.

2. The court in the county which rendered the original judgment or order orders, upon good cause shown, the enforcement or modification petition, motion or order to show cause to be filed in another county.

(b) If the parties have stipulated to filing in another county under par. (a) 1, the petitioner or party bringing the motion or order to show cause shall send a copy of the petition, motion or order to show cause and the summons to the clerk of court in the county in which the original judgment or order was rendered.

(c) If the court in the county which rendered the original judgment or order orders the petition, motion or order to show cause to be filed in another county under par. (a) 2, the petitioner or party bringing the motion or order to show cause shall attach a copy of the order when filing the petition, motion or order to show cause in the other county.

(3) If an enforcement or modification petition, motion or order to show cause is filed in a county other than the county in which the original judgment or order was rendered under sub. (2) (a), the clerk of court from the court that rendered the original judgment or order shall send a copy of any payment records associated with the original judgment or order of child support, family support or maintenance to the clerk of court in the county in which the petition, motion or order to show cause is filed.

History: 1989 a. 212.

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); Stats. 1979 s. 767.03.

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; Stats. 1979 s. 767.04.

767.045 Guardian ad litem for minor children. (1) APPOINTMENT. (a) The court shall appoint a guardian ad litem for a minor child in any action affecting the family if any of the following conditions exists:

1. The court has reason for special concern as to the welfare of a minor child.

2. The legal custody or physical placement of the child is contested.

(b) The court may appoint a guardian ad litem for a minor child in any action affecting the family if the child's legal custody or physical placement is stipulated to be with any person or agency other than a parent of the child or, if at the time of the action, the child is in the legal custody of, or physically placed with, any person or agency other than the child's parent by prior order or by stipulation in this or any other action.

(2) TIME FOR APPOINTMENT. The court shall appoint a guardian ad litem under sub. (1) (a) 1 or (b) whenever the court deems it appropriate. The court shall appoint a guardian ad litem under sub. (1) (a) 2 at the time specified in s. 767.11 (12) (b), unless upon motion by a party or its own motion, the court determines that earlier appointment is necessary.

(3) QUALIFICATIONS. The guardian ad litem shall be an attorney admitted to practice in this state. No person who is an interested party in a proceeding, appears as counsel in a proceeding on behalf of any party or is a relative or representative of an interested party may be appointed guardian ad litem in that proceeding.

(4) RESPONSIBILITIES. The guardian ad litem shall be an advocate for the best interests of a minor child as to legal custody, physical placement and support. The guardian ad litem shall function independently, in the same manner as an attorney for a party to the action, and shall consider, but shall not be bound by, the wishes of the minor child or the positions of others as to the best interests of the minor child. The guardian ad litem shall consider the factors under s. 767.24 (5) and custody studies under s. 767.11 (14). The guardian ad litem shall review and comment to the court on any mediation agreement and stipulation made under s. 767.11 (12). Unless the child otherwise requests, the guardian ad litem shall communicate to the court the wishes of the child as to the child's legal custody or physical placement under s. 767.24 (5) (b). The guardian ad litem has none of the rights or duties of a general guardian.

(5) TERMINATION AND EXTENSION OF APPOINTMENT. The appointment of a guardian ad litem under sub. (1) terminates upon the entry of the court's final order or upon the termination of any appeal in which the guardian ad litem participates. The guardian ad litem may appeal, may participate in an appeal or may do neither. If an appeal is taken by any party and the guardian ad litem chooses not to participate in that appeal, he or she shall file with the appellate court a statement of reasons for not participating. Irrespective of the guardian ad litem's decision not to participate in an appeal, the appellate court may order the guardian ad litem to participate in the appeal. At any time, the guardian ad litem, any party or the person for whom the appointment is made may request in writing that the court extend or terminate the appointment or reappointment. The court may extend that appointment, or reappoint a guardian ad litem appointed under this section, after the final order or after the termination of the appeal, but the court shall specifically state the scope of the responsibilities of the guardian ad litem during the period of that extension or reappointment.

(6) FEES. The guardian ad litem shall be compensated at a rate that the court determines is reasonable. The court shall order either or both parties to pay all or any part of the fee of the guardian ad litem. In addition, upon motion by the guardian ad litem, the court shall order either or both parties to pay the fee for an expert witness used by the guardian ad litem, if the guardian ad litem shows that the use of the expert is necessary to assist the guardian ad litem in performing his or her functions or duties under this chapter. If either or both parties are unable to pay, the court may direct that the county of venue pay the fees, in whole or in part, and may direct that any or all parties reimburse the county, in whole or in part, for the payment. The court may order a separate judgment for the amount of the reimbursement in favor of the county and against the party or parties responsible for the reimbursement. The court may enforce its orders under this subsection by means of its contempt power.

History: Sup. Ct. Order, 50W (2d) vii; 1977 c. 105, 299; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; 1979 c. 352 s. 39; Stats. 1979 s. 767.045; 1987 a. 355; Sup. Ct. Order, 151 W (2d) lvii.

Judicial Council Note, 1990: This section clarifies and expands s. 767.045, as it was amended by 1987 Wisconsin Act 355. It also incorporates the substance of s. 809.85 into it. Sub. (1) (a) specifies the situations in which the court is required to appoint a guardian ad litem. Sub. (1) (a) 1 reflects the desirability of broad discretion for the court to appoint a guardian ad litem. Of special note is sub. (1) (b). While the court has always had the discretion to appoint a guardian ad litem in such situations, the committee concluded that it is desirable to specifically identify these situations as requiring special attention.

Sub. (2) is the present law which takes into account the need for mediation.

Sub. (4) defines the role of the guardian ad litem. It clarifies that the responsibility is as an advocate for the best interests of the child. It emphasizes the need for the guardian ad litem to function independently, while giving broad consideration to the views of others, including the children, social work-

ers and the like. It also specifies that the guardian ad litem shall function in the same manner as the lawyer for a party. Among other things, this means that the guardian ad litem communicates with the court and other lawyers in the same manner as a lawyer for a party, presents information on relevant issues through the presentation of evidence or in other appropriate ways and generally functions as the lawyer for a party. In this case the "party" is the best interests of the children. Sub. (4) also enumerates specific duties to emphasize their particular importance.

The discretion for the guardian ad litem to communicate the wishes of the child in sub. (4) was added in 1987 Wisconsin Act 355, as was much of sub. (6). These are unchanged.

Sub. (5) specifies that the appointment terminates at the final order or the conclusion of the appeal unless the court otherwise directs. The court may reappoint or continue the appointment of the guardian ad litem after this but is required to state the scope of the responsibilities for such period. [Re Order effective Jan. 1, 1990]

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.

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; Stats. 1979 s. 767.05; 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).

Sub. (7) prohibition on commencement of action under 766.70 while divorce, annulment or legal separation action is pending does not violate equal protection and is constitutional. In re Marriage of Haack v. Haack, 149 W (2d) 243, 440 NW (2d) 794 (Ct. App. 1989).

See note to 801.05, citing In re Marriage of McAleavy v. McAleavy, 150 W (2d) 26, 440 NW (2d) 566 (1989).

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) (a) In connection with a judgment of divorce or legal separation, the court finds that the marriage is irretrievably broken under s. 767.12 (2), unless par. (b) applies.

(b) In connection with a judgment of legal separation, the court finds that the marital relationship is broken under s. 767.12 (3); and

(3) To the extent it has jurisdiction to do so, the court has considered, approved or made provision for legal 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); Stats. 1979 s. 767.07; 1987 a. 355; 1989 a. 132.

Divorce judgment didn't bar wife's action against husband for torts allegedly committed during marriage. Stuart v. Stuart, 143 W (2d) 347, 421 NW (2d) 505 (1988).

767.075 State is real party in interest. (1) The state is a real party in interest within the meaning of s. 803.01 for purposes of establishing paternity, securing reimbursement of aid paid, future support and costs as appropriate in an action affecting the family in any of the following circumstances:

(a) An action to establish paternity whenever there is a completed application for legal services filed with the child support program under s. 46.25 or whenever s. 767.45 (6m) applies.

(b) An action to establish or enforce a child support or maintenance obligation whenever there is a completed application for legal services filed with the child support program under s. 46.25.

(c) Whenever aid under s. 49.19 or 49.45 is provided to a dependent child.

(d) Whenever a petition is filed under s. 767.65, including a petition for collection of arrearages.

(2) (a) Except as provided in par. (b), in any action affecting the family under a child support enforcement program, an attorney acting under s. 46.25 or 59.07 (97), including any district attorney or corporation counsel, represents only the state. Child support services provided by an attorney as specified in sub. (1) do not create an attorney-client relationship with any other party.

(b) Paragraph (a) does not apply to an attorney employed by the department of health and social services under s. 46.25 or a county under s. 59.07 (97), including district attorneys and corporation counsels, who acts as the guardian ad litem of the minor child for the purpose of establishing paternity.

History: 1977 c. 418; 1979 c. 32 s. 50; 1979 c. 352 s. 39; Stats. 1979 s. 767.075; 1983 a. 27 s. 2202 (57); 1987 a. 413; 1989 a. 31.

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

767.077 Support for dependent child. The state or its delegate under s. 46.25 (7) shall bring an action for support of a minor child under s. 767.02 (1) (f) or, if appropriate, for paternity determination and child support under s. 767.45 whenever the child's right to support is assigned to the state under s. 49.19 (4) (h) 1. b if all of the following apply:

(1) The child has been deprived of parental support by reason of the continued absence of a parent from the home.

(2) A court has not issued an order under s. 767.25 requiring the parent who is absent from the home to support the child.

History: 1987 a. 27.

767.078 Order in case involving dependent child. (1) (a) In this subsection, "case involving a dependent child" means an action which meets all of the following criteria:

1. Is an action for modification of a child support order under s. 767.32 or an action in which an order for child support is required under s. 767.25 (1) or 767.51 (3).

2. The child's right to support is assigned to the state under s. 49.19 (4) (h) 1. b.

3. The child has been deprived of parental support by reason of the continued absence of a parent from the home.

(b) Except as provided in par. (c), in a case involving a dependent child, if the child's parent who is absent from the home is not employed, the court shall order that parent to do one or more of the following:

1. Register for work at a public employment office established under s. 101.23.

2. Apply for jobs.

3. Participate in a job training program.

(c) An order is not required under par. (b) if the court makes written findings that there is good cause for not issuing the order.

(2) Subsection (1) does not limit the authority of a court to issue an order, other than an order under sub. (1), regarding employment of a parent in an action for modification of a child support order under s. 767.32 or an action in which an order for child support is required under s. 767.25 (1) or 767.51 (3).

History: 1987 a. 27.

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 program designee under s. 59.07 (97) or the state department of health and social services is a real party in interest under s. 767.075 and shall initiate an action under this section, for the purpose of obtaining support and maintenance. Any attorney employed by the state or any subdivision thereof may initiate an action under this section. 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); Stats. 1979 s. 767.08; 1981 c. 317; 1983 a. 27; 1985 a. 29, 176; 1987 a. 413; 1989 a. 212.

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 Information from family court commissioner. (1) Upon the filing of an action affecting the family, the family court commissioner shall inform the parties of any services, including referral services, offered by the family court commissioner and by the director of family court counseling services under s. 767.11.

(2) Upon request of a party to an action affecting the family, including a revision of judgment or order under s. 767.32 or 767.325:

(a) The family court commissioner shall, with or without charge, provide the party with written information on the following, as appropriate to the action commenced:

1. The procedure for obtaining a judgment or order in the action.

2. The major issues usually addressed in such an action.

3. Community resources and family court counseling services available to assist the parties.

4. The procedure for setting, modifying and enforcing child support awards or modifying and enforcing legal custody or physical placement judgments or orders.

(b) The family court commissioner shall provide a party, for inspection or purchase, with a copy of the statutory provisions in this chapter generally pertinent to the action.

History: 1977 c. 105, 271, 447, 449; 1979 c. 32 s. 50; 1987 a. 355.

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; Stats. 1979 s. 767.082.

767.083 Waiting period in certain actions. No petition for divorce or legal separation may be brought to trial until the happening of whichever of the following events occurs first:

(1) 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

(2) 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; Stats. 1979 s. 767.083; 1987 a. 355.

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) If the relief requested is a divorce or a legal separation in which the parties do not file a petition under s. 767.12 (3), that the marriage is irretrievably broken, or, alternatively, that both parties agree that the marriage is irretrievably broken.

(cm) If the relief requested is a legal separation and the parties have filed a petition under s. 767.12 (3), that both parties agree that the marital relationship is 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, legal custody and physical placement 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 59.458 (2), 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. (a) Except as provided in par. (b), if only one party initiates the action and the parties have minor children, the summons served on the other party:

1. Shall include notification of the availability of information under s. 767.081 (2) and of the contents of s. 948.31.

2. 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. 767.25 (1m).

(b) If service is by publication, notification regarding s. 948.31 may consist of references to the statute numbers and titles, and information relating to 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 59.458 (2), 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; Stats. 1979 s. 767.085; 1985 a. 29; 1987 a. 332 s. 64; 1987 a. 355, 403; 1989 a. 31, 56, 132.

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; Stats. 1979 s. 767.09.

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.

If requirements of (2) are met, conversion to divorce decree is mandatory. Bartz v. Bartz, 153 W (2d) 756, 452 NW (2d) 160 (Ct. App. 1989).

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 legal custody and physical placement, 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); Stats. 1979 s. 767.10; 1985 a. 29; 1987 a. 355.

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.

767.11 Family court counseling services. (1) DIRECTOR. (a) Except as provided in par. (b) and subject to approval by the chief judge of the judicial administrative district, the circuit judge or judges in each county shall designate a person meeting the qualifications under sub. (4) as the director of family court counseling services in that county.

(b) If 2 or more contiguous counties enter into a cooperative agreement under sub. (3) (b), the circuit judges for the counties involved shall, subject to approval by the chief judge of the judicial administrative district, designate a person meeting the qualifications under sub. (4) as the director of family court counseling services for those counties.

(c) A county or counties may designate a family court commissioner as the director under par. (a) or (b).

(2) DUTIES. A director of family court counseling services designated under sub. (1) shall administer a family court counseling office if such an office is established under sub. (3) (a) or (b). Regardless of whether such an office is established, the director shall:

(a) Employ staff to perform mediation and to perform any legal custody and physical placement study services authorized under sub. (14), arrange and monitor staff training, and assign and monitor staff case load.

(b) Contract under sub. (3) (c) with a person or public or private entity to perform mediation and to perform any legal custody and physical placement study services authorized under sub. (14).

(c) Supervise and perform mediation and any legal custody and physical placement study services authorized under sub. (14), and evaluate the quality of any such mediation or study services.

(d) Administer and manage funding for family court counseling services.

(3) MEDIATION PROVIDED. Mediation shall be provided in every county in this state by any of the following means:

(a) A county may establish a family court counseling office to provide mediation in that county.

(b) Two or more contiguous counties may enter into a cooperative agreement to establish one family court counseling office to provide mediation in those counties.

(c) A director of family court counseling services designated under sub. (1) may contract with any person or public or private entity, located in a county in which the director administers family court counseling services or in a contiguous county, to provide mediation in such a county.

(4) MEDIATOR QUALIFICATIONS. Every mediator assigned under sub. (6) shall have not less than 25 hours of mediation training or not less than 3 years of professional experience in dispute resolution.

(5) MEDIATION REFERRALS. (a) In any action affecting the family, including a revision of judgment or order under s. 767.32 or 767.325, in which it appears that legal custody or physical placement is contested, the court or family court commissioner shall refer the parties to the director of family court counseling services for possible mediation of those contested issues. The court or the family court commissioner shall inform the parties that there is no privilege of confidentiality when the mediator also conducts the legal custody or physical placement study under sub. (14).

(b) If both parties to any action affecting the family wish to have joint legal custody of a child, either party may request the court or family court commissioner to refer the parties to the director of family court counseling services for assistance in resolving any problem relating to joint legal custody and physical placement of the child. Upon request, the court shall so refer the parties.

(c) A person who is awarded periods of physical placement, a child of such a person, a person with visitation rights or a person with physical custody of a child may notify the family court commissioner of any problem he or she has relating to any of these matters. Upon notification, the family court commissioner may refer any person involved in the matter to the director of family court counseling services for assistance in resolving the problem.

(6) ACTION UPON REFERRAL. Whenever a court or family court commissioner refers a party to the director of family court counseling services for possible mediation, the director shall assign a mediator to the case. The mediator shall provide mediation if he or she determines it is appropriate. If the mediator determines mediation is not appropriate, he or she shall so notify the court. Whenever a court or family court commissioner refers a party to the director of family court counseling services for any other family court counseling service, the director shall take appropriate action to provide the service.

(7) PRIVATE MEDIATOR. The parties to any action affecting the family may, at their own expense, receive mediation services from a mediator other than one who provides services under sub. (3). Parties who receive services from such a mediator shall sign and file with the director of family court counseling services and with the court or family court commissioner a written notice stating the mediator's name and the date of the first meeting with the mediator.

(8) INITIAL SESSION OF MEDIATION REQUIRED. (a) Except as provided in par. (b), in any action affecting the family, including an action for revision of judgment or order under s.

767.32 or 767.325, in which it appears that legal custody or physical placement is contested, the parties shall attend at least one session with a mediator assigned under sub. (6) or contracted with under sub. (7) and, if the parties and the mediator determine that continued mediation is appropriate, no court may hold a trial of or a final hearing on legal custody or physical placement until after mediation is completed or terminated.

(b) A court may, in its discretion, hold a trial or hearing without requiring attendance at the session under par. (a) if the court finds that attending the session will cause undue hardship or would endanger the health or safety of one of the parties. In making its determination of whether attendance at the session would endanger the health or safety of one of the parties, the court shall consider evidence of the following:

1. That a party engaged in abuse of the child, as defined in s. 48.981 (1) (a) and (b) or 813.122 (1) (a).

2. Interspousal battery as described under s. 940.19 or domestic abuse as defined in s. 813.12 (1) (a).

3. That either party has a significant problem with alcohol or drug abuse.

4. Any other evidence indicating that a party's health or safety will be endangered by attending the session.

(c) The initial session under par. (a) shall be a screening and evaluation mediation session to determine whether mediation is appropriate and whether both parties wish to continue in mediation.

(9) PROHIBITED ISSUES IN MEDIATION. If mediation is provided by a mediator assigned under sub. (6), no issue relating to property division, maintenance or child support may be considered during the mediation unless all of the following apply:

(a) The property division, maintenance or child support issue is directly related to the legal custody or physical placement issue.

(b) The parties agree in writing to consider the property division, maintenance or child support issue.

(10) POWERS AND DUTIES OF MEDIATOR. A mediator assigned under sub. (6) shall be guided by the best interest of the child and may do any of the following, at his or her discretion:

(a) Include the counsel of any party or any appointed guardian ad litem in the mediation.

(b) Interview any child of the parties, with or without a party present.

(c) Require a party to provide written disclosure of facts relating to any legal custody or physical placement issue addressed in mediation, including any financial issue permitted to be considered.

(d) Suspend mediation when necessary to enable a party to obtain an appropriate court order or appropriate therapy.

(e) Terminate mediation if a party does not cooperate or if mediation is not appropriate or if any of the following facts exist:

1. There is evidence that a party engaged in abuse of the child, as defined in s. 48.981 (1) (a) and (b) or 813.122 (1) (a).

2. There is evidence of interspousal battery as described under s. 940.19 or domestic abuse as defined in s. 813.12 (1) (a).

3. Either party has a significant problem with alcohol or drug abuse.

4. Other evidence which indicates one of the parties' health or safety will be endangered if mediation is not terminated.

(11) CONFIDENTIALITY; PRIVILEGE. (a) The privilege for confidential communications under this section is governed by s. 905.035. Admissibility of evidence in a compromise or compromise negotiation in mediation is subject to s. 904.08.

(b) Nothing in this subsection prevents the gathering of nonidentifying information for statistical or other research purposes or educational efforts in cooperation with other states or the federal government or for other dispute resolution programs.

(12) MEDIATION AGREEMENT. (a) Any agreement which resolves issues of legal custody or periods of physical placement between the parties reached as a result of mediation under this section shall be prepared in writing, reviewed by the attorney, if any, for each party and by any appointed guardian ad litem, and submitted to the court to be included in the court order as a stipulation. Any reviewing attorney or guardian ad litem shall certify on the mediation agreement that he or she reviewed it and the guardian ad litem, if any, shall comment on the agreement based on the best interest of the child. The mediator shall certify that the agreement is in the best interest of the child. The court may approve or reject the agreement, based on the best interest of the child. The court shall state in writing its reasons for rejecting an agreement.

(b) If after mediation under this section the parties do not reach agreement on legal custody or periods of physical placement, the parties or the mediator shall so notify the court. The court shall promptly appoint a guardian ad litem under s. 767.045. After the appointment the court shall, if appropriate, refer the matter for a legal custody or physical placement study under sub. (14). If the parties come to agreement on legal custody or physical placement after the matter has been referred for a study, the study shall be terminated. The parties may return to mediation at any time before any trial of or final hearing on legal custody or periods of physical placement. If the parties return to mediation, the county shall collect any applicable fee under s. 814.615.

(13) POWERS OF COURT OR FAMILY COURT COMMISSIONER. Except as provided in sub. (8), referring parties to mediation under this section does not affect the power of the court or family court commissioner to make any necessary order relating to the parties during the course of the mediation.

(14) LEGAL CUSTODY AND PHYSICAL PLACEMENT STUDY. (a) A county or 2 or more contiguous counties shall provide legal custody and physical placement study services. The county or counties may elect to provide these services by any of the means set forth in sub. (3) with respect to mediation. Regardless of whether a county so elects, whenever legal custody or physical placement of a minor child is contested and mediation under this section is not used or does not result in agreement between the parties, or at any other time the court considers it appropriate, the court may order a person or entity designated by the county to investigate the following matters relating to the parties:

1. The conditions of the child's home.

2. Each party's performance of parental duties and responsibilities relating to the child.

3. Any other matter relevant to the best interest of the child.

(b) The person or entity investigating the parties under par. (a) shall complete the investigation and submit the results to the court. The court shall make the results available to both parties. The report shall be a part of the record in the action unless the court orders otherwise.

(c) No person who provided mediation to the parties under this section may investigate the parties under this subsection, unless each party personally so consents by stipulation after receiving notice from the person who provided mediation that consent waives the privilege under sub. (11) and s. 905.035.

(15) APPLICABILITY. This section applies to each county on the date established by that county, or on June 1, 1989, whichever is earlier.

History: 1987 a. 355; 1989 a. 56.

NOTE: 1987 Wis. Act 355, which created this section, contains explanatory notes.

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.

(3) BREAKDOWN OF MARITAL RELATIONSHIP. If both of the parties by petition or otherwise have stated under oath or affirmation that the marital relationship is broken, the court, after hearing, shall make a finding that the marital relationship is broken.

History: Sup. Ct. Order, 67 W (2d) 756; 1977 c. 105; 1979 c. 32 s. 50; 1979 c. 352 s. 39; Stats. 1979 s. 767.12; 1983 a. 436; 1989 a. 132.

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; Stats. 1979 s. 767.125.

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.

(c) *Appointment of hearing examiners.* In a county having a population of 500,000 or more, the chief judge of the judicial administrative district may appoint hearing examiners to act as family court commissioners in cases for the determination of paternity under s. 767.45, including postjudgment enforcement actions, in which a party has assigned child support rights under s. 49.19 or 49.45 or has applied for services under s. 46.25. This paragraph does not apply after June 30, 1989.

(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 ap-

pointed 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, legal custody, physical placement, child 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 judgment.* On authority delegated by a judge, which may be by a standard order, a family court commissioner may conduct hearings and enter judgments in actions for enforcement of, or revision of judgment for, maintenance, child support, custody, physical placement or visitation.

(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; Stats. 1979 s. 767.13; 1983 a. 436; 1985 a. 29; 1987 a. 27, 355; Sup. Ct. Order, filed 10-31-90, eff. 1-1-91.

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.

Party may record proceedings, but commissioner may limit recording to extent it interferes with achievement of reasonable settlement. Forsythe v. Family Court Com'r., 131 W (2d) 322, 388 NW (2d) 580 (1986).

Upon motion under (6), trial court must hold new hearing and may not rely upon proceedings before court commissioner. Marriage of Long v. Wasielewski, 147 W (2d) 57, 432 NW (2d) 615 (Ct. App. 1988).

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; Stats. 1979 s. 767.14.

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; Stats. 1979 s. 767.145; 1983 a. 447.

767.15 Service on child support program. (1) In any action affecting the family in which either party is a recipient of aid under s. 49.19 or 49.45, each party 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 program designee under s. 59.07 (97) of the county in which the action is begun.

(2) In any appeal of any action affecting the family in which support or maintenance of a child of any party is at issue, the person who initiates the appeal shall notify the department of health and social services of the appeal by sending a copy of the notice of appeal to the department.

(3) No judgment in any action affecting the family may be granted unless this section is complied with or a court orders otherwise.

History: 1977 c. 418; 1979 c. 32 s. 50; 1979 c. 196; 1979 c. 352 s. 39; Stats. 1979 s. 767.15; 1983 a. 27; 1987 a. 413.

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; Stats. 1979 s. 767.16.

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; Stats. 1979 s. 767.17.

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; Stats. s. 767.19.

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; Stats. 1979 s. 767.20.

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. Full faith and credit shall also be given in all courts of this state to the amount of arrearages owed for nonpayment or late payment of a child support, family support or maintenance payment under an order issued by a court of competent jurisdiction in another state, territory or possession of the United States. A court in this state may not adjust the amount of arrearages owed except as provided in s. 767.32 (1m).

(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; Stats. 1979 s. 767.21; 1989 a. 212.

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; Stats. 1979 s. 767.22.

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) Upon request of one party, granting legal custody of the minor children to the parties jointly, to one party solely or to a relative or agency specified under s. 767.24 (3). The court or family court commissioner may order joint legal custody without the agreement of the other party and without the findings required under s. 767.24 (2) (b) 2. This order may not have a binding effect on a final custody determination.

(am) Granting periods of physical placement to a party specified in s. 767.24 (4).

(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.

(k) Requiring either party or both parties to maintain minor children as beneficiaries on a health insurance policy or plan.

(1g) Notwithstanding 1987 Wisconsin Act 355, section 73, as affected by 1987 Wisconsin Act 364, the parties may agree to the adjudication of a temporary order under this section in an action affecting the family that is pending on May 3, 1988.

(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) (a) 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.

(b) Upon making any order for dismissal of an action affecting the family or for vacation of a judgment granted in any such order, the court shall, prior to or in its order of dismissal or vacation, also preserve the right of the state or a political subdivision of the state to collect any arrearages, by an action under this chapter or under ch. 785, owed to the state if either party in the case was a recipient of aid under ch. 49.

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; Stats. 1979 s. 767.23; 1983 a. 27; 1983 a. 204 s. 22; 1983 a. 447; 1985 a. 29 s. 3202 (9); 1987 a. 355, 364, 413; 1989 a. 212.

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.

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

767.24 Custody and physical placement. (1) GENERAL PROVISIONS. 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 legal custody and physical placement of any minor child of the parties, as provided in this section.

(2) CUSTODY TO PARTY; JOINT OR SOLE. (a) Subject to par. (b), based on the best interest of the child and after considering the factors under sub. (5), the court may give joint legal custody or sole legal custody of a minor child.

(b) The court may give joint legal custody only if it finds that doing so is in the child's best interest and that either of the following applies:

1. Both parties agree to joint legal custody.

2. The parties do not agree to joint legal custody, but one party requests joint legal custody and the court specifically finds all of the following:

a. Both parties are capable of performing parental duties and responsibilities and wish to have an active role in raising the child.

b. No conditions exist at that time which would substantially interfere with the exercise of joint legal custody.

c. The parties will be able to cooperate in the future decision making required under an award of joint legal custody. In making this finding the court shall consider, along with any other pertinent items, any reasons offered by a party objecting to joint legal custody. Evidence that either party engaged in abuse of the child as defined in s. 48.981 (1) (a) and (b) or 813.122 (1) (a) or evidence of interspousal battery as described under s. 940.19 or domestic abuse as defined in s. 813.12 (1) (a) creates a rebuttable presumption that the parties will not be able to cooperate in the future decision making required. This presumption may be rebutted by clear and convincing evidence that the abuse will not interfere with the parties' ability to cooperate in the future decision making required.

(3) CUSTODY TO AGENCY OR RELATIVE. (a) If the interest of any child demands it, and if the court finds that neither parent is able to care for the child adequately or that neither parent 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. If the court transfers legal custody of a child under this subsection, in its order the court shall notify the parents of any applicable grounds for termination of parental rights under s. 48.415.

(b) If the legal custodian appointed under par. (a) 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.

(c) The court shall hold a hearing to review the permanency plan within 30 days after receiving a report under par. (b). 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.

(d) 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 par. (a).

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

(4) ALLOCATION OF PHYSICAL PLACEMENT. (a) Except as provided under par. (b), if the court orders sole or joint legal custody under sub. (2), the court shall allocate periods of physical placement between the parties in accordance with this subsection. In determining the allocation of periods of physical placement, the court shall consider each case on the basis of the factors in sub. (5).

(b) A child is entitled to periods of physical placement with both parents unless, after a hearing, the court finds that physical placement with a parent would endanger the child's physical, mental or emotional health.

(c) No court may deny periods of physical placement for failure to meet, or grant periods of physical placement for meeting, any financial obligation to the child or the former spouse.

(cm) If a court denies periods of physical placement under this section, the court shall give the parent that was denied periods of physical placement the warning provided under s. 48.356.

(d) If the court grants periods of physical placement to more than one parent, it shall order a parent with legal custody and physical placement rights to provide the notice required under s. 767.327 (1).

(5) FACTORS IN CUSTODY AND PHYSICAL PLACEMENT DETERMINATIONS. In determining legal custody and periods of physical placement, the court shall consider all facts relevant to the best interest of the child. The court may not prefer one

potential custodian over the other on the basis of the sex or race of the custodian. The court shall consider reports of appropriate professionals if admitted into evidence when legal custody or physical placement is contested. The court shall consider the following factors in making its determination:

(a) The wishes of the child's parent or parents.

(b) The wishes of the child, which may be communicated by the child or through the child's guardian ad litem or other appropriate professional.

(c) 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.

(d) The child's adjustment to the home, school, religion and community.

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

(f) The availability of public or private child care services.

(g) Whether one party is likely to unreasonably interfere with the child's continuing relationship with the other party.

(h) Whether there is evidence that a party engaged in abuse of the child, as defined in s. 48.981 (1) (a) and (b) or 813.122 (1) (a).

(i) Whether there is evidence of interspousal battery as described under s. 940.19 or domestic abuse as defined in s. 813.12 (1) (a).

(j) Whether either party has or had a significant problem with alcohol or drug abuse.

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

(6) FINAL ORDER. (a) If legal custody or physical placement is contested, the court shall state in writing why its findings relating to legal custody or physical placement are in the best interest of the child.

(am) In making an order of joint legal custody, upon the request of one parent the court shall specify major decisions in addition to those specified under s. 767.001 (2m).

(b) Notwithstanding s. 767.001 (1), in making an order of joint legal custody, the court may give one party sole power to make specified decisions, while both parties retain equal rights and responsibilities for other decisions.

(c) In making an order of joint legal custody and periods of physical placement, the court may specify one parent as the primary caretaker of the child and one home as the primary home of the child, for the purpose of determining eligibility for aid under s. 49.19 or for any other purpose the court considers appropriate.

(d) No party awarded joint legal custody may take any action inconsistent with any applicable physical placement order, unless the court expressly authorizes that action.

(e) In an order of physical placement, the court shall specify the right of each party to the physical control of the child in sufficient detail to enable a party deprived of that control to implement any law providing relief for interference with custody or parental rights.

(7) ACCESS TO RECORDS. (a) Except under par. (b) or unless otherwise ordered by the court, access to a child's medical, dental and school records is available to a parent regardless of whether the parent has legal custody of the child.

(b) A parent who has been denied periods of physical placement with a child under this section is subject to s. 118.125 (2) (m) with respect to that child's school records, s. 51.30 (5) (bm) with respect to the child's court or treatment records, s. 55.07 with respect to the child's records relating to protective services and s. 146.835 with respect to the child's patient health care records.

(8) NOTICE IN JUDGMENT. A judgment which determines the legal custody or physical placement rights of any person to a minor child shall include notification of the contents of s. 948.31.

(9) APPLICABILITY. Notwithstanding 1987 Wisconsin Act 355, section 73, as affected by 1987 Wisconsin Act 364, the parties may agree to the adjudication of a custody or physical placement order under this section in an action affecting the family that is pending on May 3, 1988.

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; Stats. 1979 s. 767.24; 1981 c. 391; 1985 a. 70, 176; 1987 a. 332 s. 64; 1987 a. 355, 364, 383, 403; 1989 a. 56 s. 259; 1989 a. 359.

NOTE: 1987 Wis. Act 355, which made many changes in this section, contains a "legislative declaration" in section 1 and explanatory notes.

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 rights of certain persons. (1) Upon petition by a grandparent, greatgrandparent, stepparent or person who has maintained a relationship similar to a parent-child relationship with the child, the court may grant reasonable visitation rights to that person if the parents have notice of the hearing and if the court determines that visitation is in the best interest of the child.

(2) Whenever possible, in making a determination under sub. (1), the court shall consider the wishes of the child.

History: 1971 c. 220; 1977 c. 105 ss. 35, 39; 1979 c. 32 ss. 50, 92 (4); Stats. 1979 s. 767.245; 1983 a. 447, 450; 1987 a. 355.

Biological grandparents have no right to visitation following child's termination of parental rights to grandchild and subsequent adoption by stepparent; provision applies in actions affecting the marriage. In re Marriage of Soergel, 154 W (2d) 564, 453 NW (2d) 624 (1990).

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 do all of the following:

(a) Order either or both parents to pay an amount reasonable or necessary to fulfill a duty to support a child. The support amount may be expressed as a percentage of parental income or as a fixed sum.

(b) Ensure that the parties have stipulated which party, if either is eligible, will claim each child as an exemption for federal income tax purposes under 26 USC 151 (c) (1) (B), or as an exemption for state income tax purposes under s. 71.07 (8) (b) or under the laws of another state. If the parties are unable to reach an agreement about the tax exemption for each child, the court shall make the decision in accordance with state and federal tax laws. In making its decision, the court shall consider whether the parent who is assigned responsibility for the child's health care expenses under sub. (4m) is covered under a health insurance policy or plan, including a self-insured plan, that is not subject to s. 632.897 (10) and that conditions coverage of a dependent child on whether the child is claimed by the insured parent as an exemption for purposes of federal or state income taxes.

(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 the greater weight of the credible 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) The award of substantial periods of physical placement to both parents.

(em) Extraordinary travel expenses incurred in exercising the right to periods of physical placement under s. 767.24.

(f) The physical, mental and emotional health needs of the child, including any costs for health insurance as provided for under sub. (4m).

(g) The child's educational needs.

(h) The tax consequences to each party.

(hm) The best interests of the child.

(hs) The earning capacity of each parent, based on each parent's education, training and work experience and the availability of work in or near the parent's community.

(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 legal 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 physical placement rights by the custodial parent does 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.

(4m) (a) In this subsection, "health insurance" does not include medical assistance provided under ch. 49.

(b) In addition to ordering child support for a child under sub. (1), the court shall specifically assign responsibility for and direct the manner of payment of the child's health care expenses. In making this assignment, the court shall consider whether or not a child is covered under a parent's health insurance policy or plan at the time 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 availability of health insurance to each parent through an employer or other organization, the extent of coverage available to a child and the costs to the parent for the coverage of the child. A parent may be required to initiate or continue health care insurance coverage for a child under this paragraph. If a parent is required to do so, he or she shall provide copies of necessary program or policy identification to the custodial parent and is liable for any health care costs for which he or she receives direct payment from an insurer. This paragraph shall not be construed to limit the authority of the court to enter or modify support orders containing provisions for payment of medical expenses, medical costs, or insurance premiums which are in addition to and not inconsistent with this paragraph.

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

(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.

(7) An order of joint legal custody under s. 767.24 does not affect the amount of child support ordered.

History: 1971 c. 157; 1977 c. 29, 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.25; 1981 c. 20; 1983 a. 27; 1985 a. 29; 1987 a. 27, 37, 355, 413; 1989 a. 31, 212.

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).

Federal Supplemental Security Income may not be considered economic resource for purposes of computing child support obligation; however, seek-work order may be appropriate. Marriage of Langlois v. Langlois, 150 W (2d) 101, 441 NW (2d) 286 (Ct. App. 1989).

Educational grants and loans, AFDC, and other child support are not economic resources for purposes of computing child support obligation. Marriage of Thibadeau v. Thibadeau, 150 W (2d) 109, 441 NW (2d) 281 (Ct. App. 1989).

See note to 767.32, citing Marriage of Kuchenbecker v. Schultz, 151 W (2d) 868, 447 NW (2d) 80 (Ct. App. 1989).

Federal preemption doctrine does not prohibit states from requiring payment of child support out of veterans' disability benefits. Rose v. Rose, 481 US 619 (1987).

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

A practitioner's approach to child support. Bailey. WBB June 1987.

767.253 Seek-work orders. In an action for modification of a child support order under s. 767.32 or an action in which an order for child support is required under s. 767.25 (1) or 767.51 (3), the court may order either or both parents of the child to seek employment or participate in an employment or training program.

History: 1989 a. 212.

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 physical placement for the greater period of time.

(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; Stats. 1979 s. 767.255; 1983 a. 186; 1985 a. 37; 1987 a. 355.

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).

Premarital 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).

Test adopted to determine whether agreement under (11) is inequitable. In re Marriage of Button v. Button, 131 W (2d) 84, 388 NW (2d) 546 (1986).

Premarital agreement was inequitable because parties did not fairly and reasonably disclose assets nor did they have independent knowledge of one another's financial status. Schumacher v. Schumacher, 131 W (2d) 332, 388 NW (2d) 912 (1986).

Personal injury claim for medical malpractice is property subject to division. Marriage of Richardson v. Richardson, 139 W (2d) 778, 407 NW (2d) 231 (1987).

Trial court permitted to consider former inherited status of divisible property though it has lost exempt status through commingling. Marriage of Schwartz v. Linders, 145 W (2d) 258, 426 NW (2d) 97 (Ct. App. 1988).

Increase in value of inherited property attributable to non-owning spouse's efforts is divisible property not subject to non-owning spouse's showing that failure to divide will result in hardship. In re Marriage of Haldemann, 145 W (2d) 296, 426 NW (2d) 107 (Ct. App. 1988).

Chapter 766, Marital Property Act, does not supplant divorce property division provisions. In re Marriage of Kuhlman v. Kuhlman, 146 W (2d) 588, 432 NW (2d) 295 (Ct. App. 1988).

Gifted and inherited property are subject to division in cases of hardship; party seeking division bears burden of showing that failure to divide will result in financial privation. In re Marriage of Popp v. Popp, 146 W (2d) 778, 432 NW (2d) 600 (Ct. App. 1988).

Presumption exists that injured party is entitled to all future payments under structured settlement, but they are subject to 767.255 factors. In re Marriage of Krebs v. Krebs, 148 W (2d) 51, 435 NW (2d) 240 (1989).

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.

Drafting enforceable marital agreements. Garczynski. WBB Sept. 1986.

The marital property act does not change Wisconsin's divorce law. Weisberger. WBB May 1987.

Transmutation: Finding extra property to divide in divorce. Kessler. Wis. Law. Aug. 1990.

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; Stats. 1979 s. 767.26.

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).

Circuit court abused its discretion in setting amount and duration of maintenance award. In re Marriage of LaRocque, 139 W (2d) 23, 406 NW (2d) 736 (1987).

This section doesn't prohibit percentage maintenance award. In re Marriage of Poindexter, 142 W (2d) 517, 419 NW (2d) 223 (1988).

Alcoholic spouse's refusal of treatment is relevant to trial court's determination regarding request for permanent maintenance. Marriage of DeLaMatter v. DeLaMatter, 151 W (2d) 576, 445 NW (2d) 676 (Ct. App. 1989).

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); Stats. 1979 s. 767.261; 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; Stats. 1979 s. 767.262; 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; change of address; change in ability to pay. Each order for child support, family support or maintenance payments shall include an order that the payer and payee notify the clerk of court of any change of address within 10 days of such change. Each order for child support, family support or maintenance payments shall also include an order that the payer notify the clerk of court, within 10 days, of any change of employer and of any substantial change in the amount of his or her income such that his or her ability to pay child support, family support or maintenance is affected. The order shall also include a statement that clarifies that notification of any substantial change in the amount of the payer's income will not result in a change of the order unless a revision of the order is sought.

History: 1977 c. 105; 1979 c. 32 s. 50; Stats. 1979 s. 767.263; 1989 a. 212.

767.265 Income withholding. (1) Each order for child support under s. 767.23, 767.25 or 767.51 (3), for maintenance payments under s. 767.23 or 767.26, for family support under s. 767.261, for costs ordered under s. 767.51 (3), 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. 948.22 (7) constitutes an assignment of all commissions, earnings, salaries, wages, pension benefits, benefits under ch. 102 or 108, lottery prizes that are payable in instalments 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 for an amount sufficient to ensure payment under the order or stipulation and to pay any arrearages due at a periodic rate not to exceed 50% of the amount of support due under the order or stipulation so long as the addition of the amount toward arrearages does not leave the party at an income below the poverty line established under 42 USC 9902 (2).

(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 cause the assignment to go into effect and shall send a notice by regular mail to the last-known address of the payer. The notice shall inform the payer that an assignment is in effect and that the payer may, within a 10-day period, by motion request a hearing on the issue of whether the assignment should remain in effect. 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 be withdrawn. If the payer does not request a hearing, 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 regular mail to the last-known address of 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.

(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 an amount equal to the person's necessary disbursements, not to exceed $3, 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 (4). 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) (a) Except as provided in sub. (3m), if the person from whom the payer receives money fails to withhold the money or send the money to the clerk of court after receipt of notice as provided in this section, the person may be proceeded against under the principal action under ch. 785 for contempt of court.

(b) 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 proceeded against under the principal action under ch. 785 for contempt of court.

(c) 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 paragraph may be fined not more than $500 and may be required to make full restitution to the aggrieved person, including reinstatement and back pay. Except as provided in this paragraph, restitution shall be in accordance with s. 973.20. An aggrieved person may apply to the district attorney or to the department of industry, labor and human relations for enforcement of this paragraph.

(d) 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.

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; Stats. 1979 s. 767.265; 1981 c. 20, 186; 1983 a. 27, 384; 1985 a. 29; 1987 a. 38 s. 136; 1987 a. 332 s. 64; 1987 a. 398, 403; 1989 a. 31, 56, 212, 336.

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.

(1m) In any action affecting the family which involves a minor child, the court shall require, in addition to the disclosure under sub. (1), that each party furnish the court with information regarding the types and costs of any health insurance policies or plans which are offered through each party's employer or other organization. This disclosure shall include a copy of any health care policy or plan which names the child as a beneficiary at the time that the disclosure is filed under sub. (2).

(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; Stats. 1979 s. 767.27; 1985 a. 29; 1987 a. 413.

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; Stats. 1979 s. 767.275.

767.28 Maintenance, legal 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 legal custody of and periods of physical placement with 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; Stats. 1979 s. 767.28; 1987 a. 355.

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; Stats. 1979 s. 767.29; 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).

Sub. (1) specifically authorizes family court commissioner to initiate contempt action to enforce child support orders pursuant to 785.06. State ex rel. Stedman v. Rohner, 149 W (2d) 146, 438 NW (2d) 585 (1989).

Commissioner acts in public interest, not as private advocate, when bringing remedial contempt proceeding to enforce existing order or judgment under (1). 76 Atty. Gen. 21.

767.295 Community work experience program orders and child support orders in certain cases. (1) In this section, "custodial parent" means a parent who lives with his or her child for substantial periods of time.

(2) (a) In an action for modification of a child support order under s. 767.32 or an action in which an order for child support is required under s. 767.25 (1) or 767.51 (3) in a county which contracts under s. 46.253 (2), the court shall order a parent who lives in that county and who is not a custodial parent to register for a community work experience program under s. 46.253, if all of the following conditions are met:

1. The parent is able to work full time.

2. The parent works, on average, less than 32 hours per week, and is not participating in an employment or training program which meets guidelines established by the department of health and social services.

3. The parent's actual weekly gross income averages less than 40 times the federal minimum hourly wage.

(b) Under this subsection, the parent is presumed to be able to work full time. The parent has the burden of proving that he or she is not able to work full time.

(c) Except as provided under par. (d), if the court determines that the conditions under par. (a) exist, it shall order the parent to pay child support equal to the amount determined by applying the percentage standard established under s. 46.25 (9) (a) to the income a person would earn by working 40 hours per week for the federal minimum hourly wage under 29 USC 206 (a) (1). The child support obligation calculated under this paragraph continues until the parent makes timely payment in full for 3 consecutive months or until the person participates in the program under s. 46.253 for 16 weeks, whichever comes first. The court shall provide in its order that the parent must make child support payments calculated under s. 767.25 (1j) or (1m) or 767.51 (4m) or (5) after the obligation to make payments calculated under this paragraph ceases.

(d) An order is not required if the court determines, based on written findings, that there is good cause not to issue the order.

History: 1987 a. 413.

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. 948.22 (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; Stats. 1979 s. 767.30; 1983 a. 27; 1985 a. 29; 1987 a. 332 s. 64.

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; Stats. 1979 s. 767.305.

Contempt is appropriate means to enforce child support arrears after child has reached majority. Marriage of Griffin v. Reeve, 141 W (2d) 699, 416 NW (2d) 612 (1987).

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; Stats. 1979 s. 767.31.

767.32 Revision of certain judgments. (1) After a judgment providing for child support under s. 767.25 or 767.51, 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, motion or order to show cause of either of the parties, or upon the petition, motion or order to show cause of the department of health and social services, a county department under s. 46.215, 46.22 or 46.23 or a child support program designee under s. 59.07 (97) 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. A consideration of a parent's earning capacity under this subsection shall be based on each parent's education, training and work experience and the availability of work in or near the parent's community. 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.

(1m) In an action under sub. (1) to revise a judgment providing for child support, maintenance payments or family support payments, the court may not revise the amount of child support, maintenance payments or family support payments due prior to the date that notice of the action is given to the respondent, except to correct previous errors in calculations.

(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.

(5) A summons or petition, motion or order to show cause under this section shall include notification of the availability of information under s. 767.081 (2).

History: 1971 c. 220; 1977 c. 105 ss. 38, 48, 49; 1977 c. 418; 1979 c. 32 ss. 50, 92 (4); Stats. 1979 s. 767.32; 1981 c. 20 s. 2202 (20) (m); 1981 c. 314 s. 146; 1983 a. 27; 1985 a. 176; 1987 a. 27, 355, 413; 1989 a. 212.

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 man-

ner 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).

"Millikin standard" did not apply to transfer of physical placement of child under existing joint custody arrangement. In re Marriage of Abel v. Johnson, 135 W (2d) 219, 400 NW (2d) 22 (Ct. App. 1986).

State family court may modify payor spouse's support obligation following payor's discharge in bankruptcy. In re Marriage of Eckert v. Eckert, 144 W (2d) 770, 424 NW (2d) 759 (Ct. App. 1988).

Orders assigning health care responsibility pursuant to 767.25 (4m) are subject to revision under 767.32. Marriage of Kuchenbecker v. Schultz, 151 W (2d) 868, 447 NW (2d) 80 (Ct. App. 1989).

Court must exercise its discretion in determining whether to terminate child support obligation during period of incarceration, considering nature of offense, likelihood of future income and other relevant factors. Parker v. Parker, 152 W (2d) 1, 447 NW (2d) 64 (Ct. App. 1989).

It is within trial court's discretion to apply WAC sec. HSS 80 percentage standards to child support revision; if applied to remarried parent, gross income for purposes of base must be computed as if remarried parent is still single. Trial court retains discretion to adjust percentage calculation based on circumstances. In re Marriage of Abitz v. Abitz, 155 W (2d) 161, 455 NW (2d) 609 (1990).

Sub. (1m) applies prospectively only and arrearages accruing under support order entered before August 1, 1987, may be modified, reduced or eliminated; trial court may grant credit against arrearages for expenditures made for child in manner other than that prescribed in support order under some circumstances. In re Marriage of Schulz v. Ystad, 155 W (2d) 574, 456 NW (2d) 312 (1990).

767.325 Revision of legal custody and physical placement orders. Except for matters under s. 767.327 or 767.329, the following provisions are applicable to modifications of legal custody and physical placement orders:

(1) SUBSTANTIAL MODIFICATIONS. (a) *Within 2 years after initial order.* Except as provided under sub. (2), a court may not modify any of the following orders before 2 years after the initial order is entered under s. 767.24, unless a party seeking the modification, upon petition, motion, or order to show cause shows by substantial evidence that the modification is necessary because the current custodial conditions are physically or emotionally harmful to the best interest of the child:

1. An order of legal custody.

2. An order of physical placement if the modification would substantially alter the time a parent may spend with his or her child.

(b) *After 2-year period.* 1. Except as provided under par. (a) and sub. (2), upon petition, motion or order to show cause by a party, a court may modify an order of legal custody or an order of physical placement where the modification would substantially alter the time a parent may spend with his or her child if the court finds all of the following:

a. The modification is in the best interest of the child.

b. There has been a substantial change of circumstances since the entry of the last order affecting legal custody or the last order substantially affecting physical placement.

2. With respect to subd. 1, there is a rebuttable presumption that:

a. Continuing the current allocation of decision making under a legal custody order is in the best interest of the child.

b. Continuing the child's physical placement with the parent with whom the child resides for the greater period of time is in the best interest of the child.

3. A change in the economic circumstances or marital status of either party is not sufficient to meet the standards for modification under subd. 1.

(2) MODIFICATION OF SUBSTANTIALLY EQUAL PHYSICAL PLACEMENT ORDERS. Notwithstanding sub. (1):

(a) If the parties have substantially equal periods of physical placement pursuant to a court order and circumstances make it impractical for the parties to continue to have substantially equal physical placement, a court, upon petition, motion or order to show cause by a party, may modify such an order if it is in the best interest of the child.

(b) In any case in which par. (a) does not apply and in which the parties have substantially equal periods of physical placement pursuant to a court order, a court, upon petition, motion or order to show cause of a party, may modify such an order based on the appropriate standard under sub. (1). However, under sub. (1) (b) 2, there is a rebuttable presumption that having substantially equal periods of physical placement is in the best interest of the child.

(3) MODIFICATION OF OTHER PHYSICAL PLACEMENT ORDERS. Except as provided under subs. (1) and (2), upon petition, motion or order to show cause by a party, a court may modify an order of physical placement which does not substantially alter the amount of time a parent may spend with his or her child if the court finds that the modification is in the best interest of the child.

(4) DENIAL OF PHYSICAL PLACEMENT. Upon petition, motion or order to show cause by a party or on its own motion, a court may deny a parent's physical placement rights at any time if it finds that the physical placement rights would endanger the child's physical, mental or emotional health.

(5) REASONS FOR MODIFICATION. If either party opposes modification or termination of a legal custody or physical placement order under this section the court shall state, in writing, its reasons for the modification or termination.

(6) NOTICE. No court may enter an order for modification under this section until notice of the petition, motion or order to show cause requesting modification has been given to the child's parents, if they can be found, and to any relative or agency having custody of the child.

(7) TRANSFER TO DEPARTMENT. The court may order custody transferred to the department of health and social services only if that department agrees to accept custody.

(8) PETITION, MOTION OR ORDER TO SHOW CAUSE. A petition, motion or order to show cause under this section shall include notification of the availability of information under s. 767.081 (2).

(9) APPLICABILITY. Notwithstanding 1987 Wisconsin Act 355, section 73, as affected by 1987 Wisconsin Act 364, the parties may agree to the adjudication of a modification of a legal custody or physical placement order under this section in an action affecting the family that is pending on May 3, 1988.

History: 1987 a. 355, 364.

NOTE: 1987 Wis. Act 355, which created this section, contains explanatory notes.

767.327 Moving the child's residence within or outside the state. (1) NOTICE TO OTHER PARENT. (a) If the court grants periods of physical placement to more than one parent, it shall order a parent with legal custody of and physical placement rights to a child to provide not less than 60 days

written notice to the other parent, with a copy to the court, of his or her intent to:

1. Establish his or her legal residence outside the state and remove the child from this state for a period of time exceeding 90 consecutive days.

2. Establish his or her legal residence and remove the child, within this state, at a distance of 150 miles or more from the other parent.

(b) The parent shall send the notice under par. (a) by certified mail. The notice shall state the parent's proposed action and that the other parent may object within the time specified in sub. (2).

(2) OBJECTION TO MOVE; MEDIATION. Within 15 days after receiving the notice under sub. (1), the other parent may send to the parent, with a copy to the court, a written notice of objection to the proposed action. The court or family court commissioner shall promptly refer the parents for mediation or other family court counseling services under s. 767.11 and may appoint a guardian ad litem. Unless the parents agree to extend the time period, if mediation or counseling services do not resolve the dispute within 30 days after referral, the matter shall proceed under subs. (3) to (5).

(3) STANDARDS FOR MODIFICATION IF MOVE CONTESTED. (a) 1. Except as provided under par. (b), if the parent proposing the move has sole legal or joint legal custody of the child and the child resides with that parent for the greater period of time, the parent objecting to the move may file a petition, motion or order to show cause for modification of the legal custody or physical placement order affecting the child. The court may modify the legal custody or physical placement order if the court finds all of the following:

a. The modification is in the best interest of the child.

b. The move will result in a substantial change of circumstances since the entry of the last order affecting legal custody or the last order substantially affecting physical placement.

2. With respect to subd. 1:

a. There is a rebuttable presumption that continuing the current allocation of decision making under a legal custody order or continuing the child's physical placement with the parent with whom the child resides for the greater period of time is in the best interest of the child.

b. A change in the economic circumstances or marital status of either party is not sufficient to meet the standards for modification under that subdivision.

3. Under this paragraph, the burden of proof is on the parent objecting to the move.

(b) 1. If the parents have joint legal custody and have substantially equal periods of physical placement with a child, either parent may file a petition, motion or order to show cause for modification of the legal custody or physical placement order. The court may modify an order of legal custody or physical placement if the court finds all of the following:

a. Circumstances make it impractical for the parties to continue to have substantially equal periods of physical placement.

b. The modification is in the best interest of the child.

2. Under this paragraph, the burden of proof is on the parent filing the petition or motion.

(4) GUARDIAN AD LITEM; PROMPT HEARING. After a petition, motion or order to show cause is filed under sub. (3), the court shall appoint a guardian ad litem and hold a hearing as soon as possible.

(5) FACTORS IN COURT'S DETERMINATION. In making its determination under sub. (3), the court shall consider all of the following factors:

(a) Whether the purpose of the proposed action is reasonable.

(b) The nature and extent of the child's relationship with the other parent and the disruption to that relationship which the proposed action may cause.

(c) The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent.

(6) NOTICE REQUIRED FOR OTHER REMOVALS. (a) Unless the parents agree otherwise, a parent with legal custody and physical placement rights shall notify the other parent before removing the child from his or her primary residence for a period of not less than 14 days.

(b) Notwithstanding par. (a), if notice is required under sub. (1), a parent shall comply with sub. (1).

(c) Except as provided in par. (b), subs. (1) to (5) do not apply a notice provided under par. (a).

(7) APPLICABILITY. Notwithstanding 1987 Wisconsin Act 355, section 73, as affected by 1987 Wisconsin Act 364, the parties may agree to the adjudication of a modification of a legal custody or physical placement order under this section in an action affecting the family that is pending on May 3, 1988.

History: 1987 a. 355, 364.

767.329 Revisions agreed to by stipulation. If after an initial order is entered under s. 767.24, the parties agree to a modification in an order of physical placement or legal custody and file a stipulation with the court that specifies the agreed upon modification, the court shall incorporate the terms of the stipulation into a revised order of physical placement or legal custody.

History: 1987 a. 355.

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 ex-

traordinary 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; Stats. 1979 s. 767.37.

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; Stats. 1979 s. 767.38.

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 record is transmitted to the court of appeals.

History: 1975 c. 94; 1977 c. 105; 1977 c. 187 s. 89; 1979 c. 32 s. 50; 1979 c. 352 s. 39; Stats. 1979 s. 767.39; Sup. Ct. Order, 146 W (2d) xv.

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; Stats. 1979 s. 767.40.

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 or motion for the purpose of determining the paternity of a child or for the purpose of rebutting the presumption of paternity under s. 891.405 or 891.41:

(a) The child.

(b) The child's natural mother.

(c) A man presumed to be the child's father under s. 891.405 or 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 the circumstances specified in s. 767.075 (1) apply, including the delegates of the state as specified in sub. (6).

(h) This state as provided under sub. (6m).

(j) A parent of a person listed under par. (b), (c) or (d), if the parent is liable or is potentially liable for maintenance of a child of a dependent person under s. 49.90 (1) (a) 2.

(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) (a) In this subsection, "any alleged father" includes any male who has engaged in sexual intercourse with the child's mother during a possible time of conception of the child.

(b) 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) Except as provided under s. 767.458 (3), unless a man is either presumed the child's father under s. 891.41 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, legal custody or physical placement 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, legal custody or physical placement rights for a man who is neither presumed the child's father under s. 891.41 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 attorney responsible for support enforcement under s. 59.458 (1) shall provide the representation for the state as specified under s. 767.075 (1) in cases brought under this section.

(b) The attorney under s. 59.458 (1) is the only county attorney who may provide representation when the state delegates its authority under sub. (1) (g).

(c) The attorney under s. 59.458 (1) or any state attorney acting under par. (b) may not represent the state as specified under s. 767.075 (1) 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.

(6m) The attorney designated under sub. (6) (a) shall commence an action under this section on behalf of the state within 6 months after receiving notification under s. 69.03 (15) that no father is named on the birth certificate of a child who is a resident of the county if paternity has not been adjudicated, except in situations under s. 69.14 (1) (g) and (h) and as provided by the department of health and social services by rule.

(6p) The attorney designated under sub. (6) (a) shall give priority to those cases brought under this section in which the attorney has good reason to believe that a man presumed to

be the father of the child has acknowledged paternity under s. 69.15 (3) (b) 1 or 3.

(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) or (6m), 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; 1987 a. 27, 355, 399, 413; 1989 a. 31, 212.

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).

Paternity action may not be brought against deceased putative father. Paternity of N. L. B., 140 W (2d) 400, 411 NW (2d) 144 (Ct. App. 1987).

Under facts of case, nonbiological father wasn't equitably estopped from denying paternity or child support. Marriage of A. J. N. & J. M. N., 141 W (2d) 99, 414 NW (2d) 68 (Ct. App. 1987).

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 the 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 enter a default judgment finding you to be the father. A default judgment will take effect 30 days after it is served on or mailed to you, unless within those 30 days you present to the court or a family court commissioner evidence of good cause for failure to appear. 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. Appearance is not required if you complete the attached waiver of first appearance statement and send it to the court at least 10 days prior to the date of your scheduled appearance in this summons.

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

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

(5g) NOTICE. The notice to respondent shall be attached to the summons. The notice shall be in boldface type and substantially the following form:

NOTICE TO RESPONDENT

1. You have been named in a petition alleging paternity. A judgment of paternity would legally designate the child as your child, grant parental rights to you, create the right of inheritance for the child, obligate you to pay child support until the child reaches the age of 18, or the age 19 if the child is enrolled full-time in high school or its equivalent, and make your failure to pay child support punishable by imprisonment as a contempt of court or as a criminal violation.

2. You have the right to be represented by an attorney. If you are unable to afford an attorney, the court will appoint one for you. In order to determine whether you are entitled to have an attorney appointed for you, you may call the following telephone number .....

3. You may request blood tests which will indicate the probability that you are or are not the father of the child. The court or family court commissioner will order blood tests on request by you, the state or any other party. Any person who refuses to take court-ordered blood tests may be punished for contempt of court.

4. The petitioner has the burden of proving by clear and satisfactory preponderance of the evidence that you are the father. However, if blood tests show that you are not excluded as the father and that the statistical probability of your being the father is 99.0% or higher, you are rebuttably presumed to be the father.

5. The following defenses are available to you:

(a) That you were sterile or impotent at the time of conception.

(b) That you did not have sexual intercourse with the mother of the child during the conceptive period as provided in s. 891.395.

(c) That another man did have sexual intercourse with the mother of the child during the conceptive period.

6. You have the right to request a jury trial.

7. If you fail to appear at any stage of the proceeding, including a scheduled blood test, the court will enter a default judgment finding you to be the father. A default judgment will take effect 30 days after it is served on or mailed to you at your address on file with the court, unless within those 30 days you present to the court or a family court commissioner evidence of good cause for your failure to appear or your failure to have undergone a blood test. You need not appear at the time and place specified in the summons if you complete the attached waiver of first appearance statement and deliver it to the court by the date specified in the waiver of first appearance statement.

8. You must keep the clerk of court informed of your current address at all times.

(5r) WAIVER OF FIRST APPEARANCE. The waiver of first appearance statement shall be attached to the summons. The waiver of first appearance statement shall be in boldface type and substantially the following form:

WAIVER OF FIRST APPEARANCE

1. I understand that by signing this waiver and agreeing to its terms I am not required to appear at the time and place specified in the summons. If I do not sign this statement, I am required to appear at the time and place specified in the summons.

2. I understand that I will be notified by the court of all future stages in the proceeding and agree to appear at those stages. If I fail to appear at any stage, including a scheduled blood test, the court will enter a default judgment finding me to be the father. A default judgment will take effect 30 days after it is served on or mailed to me, unless within those 30 days I present to the court or a family court commissioner

evidence of good cause for my failure to appear or my failure to have undergone a blood test.

3. I enter the following plea (check only one):

..... I agree that I am the child's father.

..... I deny that I am the child's father.

..... I agree that I am the child's father, subject to confirmation by a blood test.

If I enter a plea agreeing that I am the child's father, a judgment of paternity will be entered against me. If I enter a plea denying that I am the child's father or a plea agreeing that I am the child's father, subject to a blood test, I agree to undergo a blood test.

4. I have read the summons and the notice or have had them read to me.

5. This waiver of first appearance statement is valid only if it is delivered to the court on or before .....

6. I will keep the clerk of court informed of my address at all times. The following is my current address:

.....
Street address and apartment number

.....
City State Zip Code

.....
Date Signature of Respondent

(5w) EXCEPTION. Subsections (5) to (5r) do not apply in an action brought by a man alleging himself to be the father of the child.

(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; 1987 a. 27, 413.

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 Time of first appearance. (1) The first appearance under s. 767.458 may not be held any sooner than 30 days after service or receipt of the summons and petition.

(2) A first appearance of a respondent is not required if, at least 10 days prior to the scheduled appearance, the respondent waives his first appearance by filing a completed waiver of first appearance statement under s. 767.455 (5r).

History: 1987 a. 27.

767.458 First appearance. (1) At the first court appearance where the respondent is present, the court or family court commissioner shall inform the parties of the following:

(a) 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;

(b) 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;

(c) Except as provided under sub. (1m), 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;

(d) Except as provided under sub. (1m), the court or family court commissioner will order blood tests upon the request of any party; and

(e) 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.

(1m) In an action to establish the paternity of a child who was born to a woman while she was married, where a man other than the woman's husband alleges that he, not the husband, is the child's father, a party may allege that a judicial determination that a man other than the husband is the father is not in the best interest of the child. If the judge or court commissioner determines that a judicial determination of whether a man other than the husband is the father is not in the best interest of the child, no blood tests may be ordered and the action shall be dismissed.

(2) At the first appearance, if it appears from a sufficient petition or affidavit of the child's mother that there is probable cause to believe that any of the males named has had sexual intercourse with the mother during a possible time of the child's conception, the court or family court commissioner may, or upon the request of any party shall, order any of the named persons to submit to blood tests. The tests shall be conducted in accordance with s. 767.48.

(3) At the first appearance, if a statement acknowledging paternity under s. 69.15 (3) (b) 1 or 3 is on file, the court or family court commissioner may enter an order for child support, legal custody or physical placement and, if the respondent who filed the statement does not dispute his paternity, may enter a judgment of paternity.

History: 1979 c. 352; 1983 a. 447 s. 34; Stats. 1983 s. 767.457; 1987 a. 27 ss. 2136t, 2137d, 2137e; Stats. 1987 s. 767.458; 1987 a. 403, 413.

Before dismissing petition without considering merits, trial court must conduct hearing to determine child's best interests pursuant to (1m). In re Paternity of T.R.B., 154 W. (2d) 637, 454 NW (2d) 561 (Ct. App. 1990).

767.46 Pretrial paternity proceedings. (1) A pretrial hearing shall be held before a judge, family court commissioner or court commissioner under s. 757.69 (3) (g). A record or minutes of the proceeding shall be kept. At the pretrial hearing the parties may present and cross-examine witnesses, request blood tests and present other evidence relevant to the determination of paternity.

(2) On the basis of the information produced at the pretrial hearing, the judge or family court commissioner conducting the hearing shall evaluate the probability of determining the existence or nonexistence of paternity in a trial and 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 legal custody of the child, periods of physical placement of the child 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; 1987 a. 27; Sup. Ct. Order, 141 W (2d) xxxix; 1987 a. 355.

Judicial Council Note, 1988: This section mandates pretrial hearings in paternity proceedings. Under sub. (6), the informal hearing may be terminated and set for trial if the judge or family court commissioner finds it unlikely that all parties would accept a recommendation under this section and similarly, under sub. (5), if the guardian ad litem or any party refuses to accept the final recommendation. This amends sub. (1), to emphasize that this is an informal hearing before a judge, not a court in session, or before a court commissioner and that, while the hearing may be on the record, minutes alone are sufficient. [Re Order effective Jan. 1, 1988]

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 proceed. (1) WHEN PETITIONER FAILS TO APPEAR OR IS UNABLE TO PROCEED. If a petitioner, other than the state, fails to appear and plead on the date set for the pretrial hearing or the date set for the trial or if the state is the petitioner and is unable to proceed 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. (a) If a respondent is the alleged father and fails to appear at the first appearance, unless the first appearance is not required under s. 767.457 (2), scheduled blood test, pretrial hearing or trial, the court or family court commissioner shall enter an order adjudicating the respondent to be the father and appropriate orders for support, legal custody and physical placement. The orders shall be either served on the respondent or mailed by registered or certified mail, to the last-known address of the respondent. The orders shall take effect 30 days after service or the date on which the orders were mailed unless, within that time, the respondent presents to the court or court commissioner evidence of good cause for failure to appear or failure to have undergone a blood test.

(b) A default judgment may not be entered under par. (a) if there is more than one person alleged in the petition to be the father, unless only one of those persons fails to appear and all of the other male respondents have been excluded as the father.

(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:

(a) At any time upon motion or petition for good cause shown.

(b) Upon a motion under s. 806.07.

(c) Within one year after the judgment upon motion or petition, except that a respondent may not reopen more than one default judgment on a particular case under this paragraph.

(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; 1987 a. 27, 403, 413; 1989 a. 31, 56, 212.

767.466 Motion to reopen judgment based on statement acknowledging paternity. A judgment which adjudicates a person to be the father of a child and which was based upon a statement acknowledging paternity may, if no trial was conducted, be reopened under any of the following circumstances:

(1) At any time upon motion or petition for good cause shown.

(2) Upon a motion under s. 806.07.

(3) Within one year after entry of the judgment upon motion or petition.

History: 1987 a. 413.

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).

(1m) If the child was born in this state, the petitioner shall present a certified copy of the child's birth certificate or a printed copy of the record from the birth data base of the state registrar to the court, so that the court is aware of whether a name has been inserted on the birth certificate as the father of the child, at the earliest possible of the following:

(a) The initial appearance.

(b) The pretrial hearing.

(c) The trial.

(d) Prior to the entry of the judgment under s. 767.51.

(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) (a) No person may be prosecuted or subjected to any penalty or forfeiture for or on account of any testimony or evidence given relating to the paternity of the child in any

paternity proceeding, except for perjury committed in giving the testimony.

(b) The immunity provided under par. (a) is subject to the restrictions under s. 972.085.

(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. 891.405 or 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; 1987 a. 413; 1989 a. 31, 122, 212.

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, 891.405 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; 1989 a. 212.

767.48 Blood tests in paternity actions. (1) (a) The court or family court commissioner may, and upon request of a party shall, require the child, mother, any male for whom there is probable cause to believe that he had sexual intercourse with the mother during a possible time of the child's conception, 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. Probable cause of sexual intercourse during a possible time of conception may be established by a sufficient petition or affidavit of the child's mother filed with the court, or after an examination under oath of a complainant or witness, when the court or family court commissioner determines such an examination is necessary.

(b) The blood 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.

(1m) Under sub. (1), if the blood tests show that the alleged father is not excluded and that the statistical probability of the alleged father's parentage is 99.0% or higher, the alleged father shall be rebuttably presumed to be the child's parent.

(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. Testimony relating to sexual intercourse or possible sexual intercourse of the mother with any person excluded as a possible father, as a result of a blood test, is inadmissible as evidence. 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; 1987 a. 27.

Where initial blood tests excluded alleged father and state moved for additional tests under (2), court erred in denying motion and dismissing action under (4). In re Paternity of S. J. K., 132 W (2d) 262, 392 NW (2d) 97 (Ct. App. 1986).

Chain of custody, or authentication, must be established prior to admission of evidence under (1) (b). In re Paternity of J. S. C., 135 W (2d) 820, 400 NW (2d) 48 (Ct. App. 1986).

Where respondent failed to introduce evidence regarding test, trial court properly barred respondent from attacking test during closing argument. In re Paternity of M. J. B., 144 W (2d) 638, 425 NW (2d) 404 (1988).

See note to 904.01, citing State v. Hartman, 145 W (2d) 1, 426 NW (2d) 320 (1988).

DNA test results are admissible when procedures meet requirements for blood tests under (1) (b). In re Paternity of J.L.K. 151 W (2d) 566, 445 NW (2d) 673 (Ct. App. 1989).

From here to paternity: Using blood analysis to determine parentage. Haas. WBB July 1988.

767.50 Trial. (1) The trial shall be divided into 2 parts. The first part shall deal with the determination of paternity. The 2nd part shall deal with child support, legal custody, periods of physical placement 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 first part of the trial shall be by jury only if the defendant verbally requests a jury trial either at the initial appearance or pretrial hearing or requests a jury trial in writing prior to the pretrial hearing. 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, in cases where there is a 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. The issues of child support, custody and visitation and related issues shall be determined by the court either immediately after the first part of the trial or at a later hearing before the court or a family court commissioner.

(2) If a jury is requested under sub. (1), the jury shall consist of 6 persons. No verdict is valid or received unless agreed to by at least 5 of the jurors.

History: 1979 c. 352 s. 10; Stats. 1979 s. 767.50; 1983 a. 27, 447; 1987 a. 27, 355, 403.

Preponderance of the evidence standard of proof in paternity actions meets due process requirement. Rivera v. Minnich, 483 US 574 (1987).

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) The clerk of court shall file with the state registrar, within 30 days after the entry of the order or judgment, 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 legal custody and guardianship of the child, periods of physical placement, 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 the mother shall have sole 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 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.

(3m) (a) In this subsection, "health insurance" does not include medical assistance provided under ch. 49.

(b) In addition to ordering child support for a child under sub. (3), the court shall specifically assign responsibility for and direct the manner of payment of the child's health care expenses. In making this assignment, the court shall consider whether or not a child is covered under a parent's health insurance policy or plan at the time the court enters a paternity judgment under this paragraph, the availability of health insurance to each parent through an employer or other organization, the extent of coverage available to a child and the costs to the parent for the coverage of the child. A parent may be required to initiate or continue health care insurance coverage for a child under this paragraph. If a parent is required to do so, he or she shall provide copies of necessary program or policy identification to the custodial parent and is liable for any health care costs for which he or she receives direct payment from an insurer. This paragraph shall not be construed to limit the authority of the court to enter or modify support orders containing provisions for payment of medical expenses, medical costs, or insurance premiums which are in addition to and not inconsistent with this paragraph.

(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 the birth of the child.

(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 the greater weight of the credible 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 any costs for health insurance as provided for under sub. (3m).

(b) The standard of living and circumstances of the parents, including whether a parent receives maintenance pay-

ments 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 capacity of each parent, based on each parent's education, training and work experience and based on the availability of work in or near the parent's community.

(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 the right to periods of physical placement.

(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 legal 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, 767.32 and 767.325, 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; 1987 a. 27, 37, 355, 413; 1989 a. 212.

Determining father's support obligation by applying percentage standards is inappropriate where children live in several households. In re Paternity of B. W. S., 131 W (2d) 301, 388 NW (2d) 615 (1986).

Regardless of whether fifteen-year-old boy's parenthood resulted from sexual assault as defined in criminal law, court could find intercourse and parenthood voluntary for purposes of child support. In re Paternity of J.L.H. 149 W (2d) 349, 411 NW (2d) 273 (Ct. App. 1989).

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 legal custody, periods of physical placement or related issues.

(3) This section does not prevent an attorney responsible for support enforcement under s. 59.458 (1) or any 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; 1987 a. 355; 1989 a. 31.

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); Stats. 1979 s. 765.25; 1979 c. 352; Stats. 1979 s. 767.60; 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.

(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 attorney responsible for support enforcement under s. 59.458 (1) of this state to satisfy him or her 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 attorney responsible for support enforcement under s. 59.458 (1) to investigate the demand and to report to the governor 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 or she 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). The court may permit a family court commissioner to conduct hearings under this section.

(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.

(c) The time for service of process under this section may be extended to the date on which the respondent was actually served, if a showing of due diligence in attempting to serve the respondent is made.

(12) OFFICIALS TO REPRESENT THE INTEREST OF OBLIGEE. (a) If this state is acting as an initiating state, the attorney responsible for support enforcement under s. 59.458 (1), upon the request of the court or the person in charge of county welfare activities, shall provide the services specified under s. 767.075 (1) to the obligee in any proceeding under this section. If the attorney responsible for support enforcement under s. 59.458 (1) neglects or refuses to provide the services specified under s. 767.075 (1) to the obligee, the department of justice may undertake the provision of those services.

(b) Any district attorney or person in charge of county welfare activities that provides services under par. (a) shall be deemed to represent only the interest of the state. Any services provided by an attorney under par. (a) do not create an attorney-client relationship with any other party.

(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 attorney responsible for support enforcement under s. 59.458 (1) 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 attorney responsible for support enforcement under s. 59.458 (1) of his or her action.

(b) The attorney responsible for support enforcement under s. 59.458 (1) shall prosecute the case diligently. He or she 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 or her 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 attorney responsible for support enforcement under s. 59.458 (1) neglects or refuses to provide the services specified under s. 767.075 (1) to the obligee, the department of justice may undertake the provision of those services. Any person providing services under this paragraph shall be deemed to represent only the interest of the state. Any services provided by an attorney under this paragraph do not create an attorney-client relationship with any other party.

(19) FURTHER DUTIES OF COURT AND OFFICIALS IN THE RESPONDING STATE. (a) The attorney responsible for support enforcement under s. 59.458 (1) on personal initiative shall use all available means to locate the obligor or his or her property, and, if because of inaccuracies in the petition or otherwise the court cannot obtain jurisdiction, the attorney responsible for support enforcement under s. 59.458 (1) shall inform the court of what he or she 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 or her property is not found in the county and the attorney responsible for support enforcement under s. 59.458 (1) discovers that the obligor or his or her property may be found in another county of this state or in another state, the attorney 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 or she shall forthwith notify the initiating court.

(c) If the attorney responsible for support enforcement under s. 59.458 (1) has no information as to the location of the obligor or his or her property, the attorney 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. (a) If at the hearing the obligor is called for examination as an adverse party and he or she declines to answer upon the ground that his or her testimony may tend to incriminate him or her, the court may require the obligor to answer, in which event he or she is immune from criminal prosecution with respect to his or her testimony, except for perjury committed in this testimony.

(b) The immunity provided under par. (a) is subject to the restrictions under s. 972.085.

(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 legal custody, periods of physical placement 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 attorney responsible for support enforcement under s. 59.458 (1) 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 attorney responsible for support enforcement under s. 59.458 (1) shall send a certified copy of the order to the attorney responsible for support enforcement under s. 59.458 (1) of any county in which it appears that proceedings to enforce the order would be effective. The attorney responsible for support enforcement under s. 59.458 (1) 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 following the procedures in ss. 767.457 to 767.60. 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 or her 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 or her property is found. The clerk of the court receiving these documents shall notify the attorney responsible for support enforcement under s. 59.458 (1) 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) 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'S INTEREST. (a) If this state is acting either as a rendering or a registering state the attorney responsible for support enforcement under s. 59.458 (1), upon the request of the court shall provide the services specified under s. 767.075 (1) to the obligee in proceedings under subs. (36) to (40).

(b) If the attorney responsible for support enforcement under s. 59.458 (1) neglects or refuses to provide the services specified under s. 767.075 (1) to the obligee, the department of justice may undertake the provision of those services.

(c) Any person providing services under this subsection shall be deemed to represent only the interest of the state. Any services provided by an attorney under this subsection do not create an attorney-client relationship with any other party.

(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. The clerk shall also docket the case and notify the attorney responsible for support enforcement under s. 59.458 (1) of his or her action. The attorney responsible for support enforcement under s. 59.458 (1) 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; Stats. 1985 s. 767.65; 1987 a. 355, 413; Sup. Ct. Order, 146 W (2d) xvi; 1989 a. 31, 122, 212.

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).

Obligor did not waive personal jurisdiction defense by failing to object at time of registration of foreign support order where no request for affirmative relief accompanied registration. In re Davanis v. Davanis, 132 W (2d) 318, 392 NW (2d) 108 (Ct. App. 1986).

Order in divorce action canceling all support arrearages had no effect upon arrearages accumulated under RURESA action in another county. Corporation counsel may appeal in RURESA action regardless of whether department of justice appeals under (34). Horch v. Ponik, 132 W (2d) 373, 392 NW (2d) 123 (Ct. App. 1986).