

No. 139, A.]

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CHAPTER 180

AN ACT to repeal and recreate 52.36 and 325.23 of the statutes, relating to the results of blood tests as evidence in illegitimacy proceedings.

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

SECTION 1. 52.36 of the statutes is repealed and recreated to read:

52.36 EVIDENCE: BLOOD TESTS. (1) If it is relevant to the prosecution or defense in a paternity proceeding, or if the defendant enters a plea admitting paternity (subject to a blood test finding that he cannot be excluded as the father), the trial court, if requested, shall order that the complainant, her child and the defendant and any male witness who has testified in the proceeding and who is directly involved in the controversy, submit to one or more blood tests as provided in sub. (2).

(2) When the court determines that a blood test is relevant to any proceeding under sub. (1) or s. 325.23 the court shall, upon request of any party, order that such test be made by a duly qualified physician or physicians, each of whom has specialized in the field of clinical pathology and who possess a certificate of qualification as a certified pathologist issued by the American board of pathology. In cases where definite exclusion is established by the first such test the court, if requested, shall order a second such test to be performed by an independent physician who possesses the same qualifications as the first, as set forth above. The court may order that the testimony of such physician or physicians be taken by deposition prior to the trial and they shall be subject to cross-examination by any person involved in the controversy. All arrange-

ments for such tests shall be made by the party requesting the same and any failure on the part of said party to have said tests performed prior to the date of trial shall be deemed a waiver of said party's right to such tests unless good cause is shown to the contrary. The physician's fees for such tests shall be advanced by the county; and any physician's fees for blood tests advanced by the county shall be taxed as costs pursuant to s. 271.04 as necessary fees of officers allowed by law.

(3) Whenever the results of said tests exclude the defendant as the father of the child the same shall be conclusive evidence of such fact and the court shall dismiss said action, but such tests shall be receivable in evidence only in cases where definite exclusion of any person is established. If any party refuses to submit to such test such fact shall be disclosed upon trial.

SECTION 2. 325.23 of the statutes is repealed and recreated to read:

325.23 BLOOD TESTS IN CIVIL ACTIONS. Whenever it is relevant in a civil action to determine the parentage or identity of any child, person or corpse, the court, by order, shall direct any party to the action and any person involved in the controversy to submit to one or more blood tests as provided in s. 52.36. The results of said tests shall constitute conclusive evidence where exclusion is established and shall be receivable as evidence, but only in cases where a definite exclusion is established. Whenever the court orders such blood tests and one of the parties refuses to submit to such tests such fact shall be disclosed upon trial. Notwithstanding the provisions of s. 52.36 (2) the court shall determine how and by whom the costs of such examination shall be paid.

Approved June 11, 1957.

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