

CHAPTER 52

SUPPORT OF DEPENDENTS

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52.01 Liability of relatives; enforcement.

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

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

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

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

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

(4) The circuit court shall in a summary way hear the allegations and proofs of the parties and by order require maintenance from these relatives, if they have sufficient ability (considering their own future maintenance and making reasonable allowance for the protection of the property and investments from which they derive their living and their care and protection in old age) in the following order: First the husband or wife; then the father and the mother. The order shall specify a sum which will be sufficient for the support of the dependent person, to be paid weekly or monthly, during a period fixed by the order or until the further order of the court. If the court is satisfied that any such relative is unable wholly to maintain the dependent person, but is able to contribute to the person's support, the court may direct 2 or more of the relatives to maintain the person and prescribe the proportion each shall contribute. If the court is satisfied that these relatives are unable together wholly to maintain the dependent person, but are able to contribute to the person's support, the court shall direct a sum to be paid weekly or monthly by each relative in proportion to ability. Contributions directed by court order, if for less than full support, shall be paid to the department of health and social services and distributed as required by state and federal law. Upon application of any party affected by the order and upon like notice and procedure, the court may modify such an order. Obedience to such

an order may be enforced by proceedings for contempt.

NOTE: Sub. (4) is shown as amended by chapter 352, laws of 1979, effective July 1, 1981. Chapter 352 substituted "the mother" for "lastly the mother".

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

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

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

(8) The county shall not be obliged to pay the suit tax as provided in s. 814.21 in any action or special proceeding instituted under this section.

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

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

52.03 Abandonment; seizure of property.

(1) If a person absconds or is about to abscond from his or her children or spouse, or is about to remove permanently from the municipality in which he or she resides leaving a spouse or children, or both, chargeable or likely to become chargeable upon the public for support or neglects or refuses to support or provide for the spouse or children, the county or municipality where the spouse or children may be, by the official or agency designated to administer public assistance, may apply to the circuit court for any county in which any real or personal property of the parent or spouse is situated for a warrant to seize the property.

NOTE: Sub. (1) is shown as amended by chapter 352, laws of 1979, effective July 1, 1981. Up to that date, sub. (1) reads:

"(1) If a father or mother, being a widow or living separate from her husband, absconds or is about to abscond from his or her children or a husband from his wife, or if a father, mother or husband is about to remove permanently from the municipality in which he or she resides leaving a wife 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 wife or children, the county or municipality where the wife

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 father, mother or husband is situated for a warrant to seize the property."

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

(3) Upon the return the circuit court may inquire into the facts and circumstances and may confirm the seizure or discharge the same. If the seizure is confirmed, the court shall from time to time direct what part of the personal property shall be sold and how much of the proceeds of the sales and the rents and profits of the real estate shall be applied toward the maintenance of the spouse or children of the person. All such sales shall be at public auction in accordance with the laws relating to execution sales of personalty and realty as provided in ss. 815.29 and 815.31.

(4) The county or municipality, respectively, shall receive the proceeds of all property so sold and the rents and profits of the real estate of such person and apply the same to the maintenance and support of the spouse or children of such person; and they shall account to the court for the moneys so received and for the application thereof from time to time.

(5) If the person whose property has been so seized shall return and support the spouse or children so abandoned or give security to the county or municipality, respectively, (to be approved by them) that the spouse or children shall not thereafter be chargeable to such municipality, the court shall discharge such warrant and order the restoration of the property seized by virtue thereof and remaining unappropriated, or the unappropriated proceeds thereof, after deducting the expenses of such proceedings.

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

NOTE: Subs. (3), (4) and (5) are shown as amended by chapter 352, laws of 1979, effective July 1, 1981. Chapter 352 substituted "spouse" for "wife" in each of these subsections.

52.05 Abandonment; uniform act. (1)

PENALTY. Any person who, without just cause, deserts or wilfully neglects or refuses to provide

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for the support and maintenance of his or her spouse or child under 18 years (legitimate or born out of wedlock) in destitute or necessitous circumstances shall be fined not more than \$500 or imprisoned not more than 2 years or both. The parent of any child born out of wedlock who has made provision for the support of such child by giving bond, or by an agreement approved by a court under s. 767.45 (2), on which such parent is not in default, shall not be subject to this section.

NOTE: Sub. (1) is shown as amended by chapter 352, laws of 1979, effective July 1, 1981. Up to that date, sub. (1) reads:

"(1) Penalty. Any person who, without just cause, deserts or wilfully neglects or refuses to provide for the support and maintenance of his wife or child under 18 years (legitimate or born out of wedlock) in destitute or necessitous circumstances shall be fined not more than \$500, or imprisoned not more than 2 years, or both. The parent of any child born out of wedlock who has made provision for the support of such child by giving bond, or by settlement with the proper officers in accordance with ss. 52.21 to 52.45, on which such parent is not in default, shall not be subject to this section."

(2) ANY PERSON MAY MAKE COMPLAINT. Proceedings under this section may be instituted upon complaint made under oath or affirmation by the spouse or a child, the superintendent or acting superintendent or other officer in charge of public welfare agencies, the secretary of the department or case work supervisor II, or by any other person or organization, against any person guilty of either of the above-named offenses.

(3) ORDER FOR SUPPORT PENDENTE LITE. At any time before trial, upon petition of the complainant and upon notice to the defendant, the court, or a judge thereof in vacation, may enter such temporary order as may seem just, providing for support of the deserted spouse or children, or both, pendente lite, and may punish for violation of such order as for contempt.

(4) ORDER FOR SUPPORT IN LIEU OF PENALTY; RECOGNIZANCE. Before the trial, with the consent of the defendant, or at the trial, on entry of a plea of guilty, or after conviction, instead of imposing the penalty provided in this section or in addition thereto, the court in its discretion, having regard to the circumstances, and to the financial ability or earning capacity of the defendant, shall have the power to make an order, which shall be subject to change by the court from time to time, as circumstances may require, directing the defendant to pay a certain sum weekly, semimonthly, monthly, or as the circumstances may permit, for a period not exceeding 2 years, to the spouse or to the guardian, curator or custodian of the minor child or children, or to an organization or individual approved by the court as trustee; and shall also have the power to release the defendant from custody on probation for the period so fixed, upon his or her entering into a recognizance,

with or without surety, in such sum as the court or a judge in vacation may order and approve. The condition of the recognizance shall be such that if the defendant shall make his or her personal appearance in court whenever ordered to do so, and shall further comply with the terms of the order of support, or of any subsequent modification thereof, then the recognizance shall be void, otherwise of full force and effect.

(5) SENTENCE. If the court is satisfied by information and due proof under oath, that at any time during the 2-year period the defendant has violated the term of the order, it may forthwith proceed with the trial of the defendant under the original charge, or sentence him or her under the original conviction, or enforce the suspended sentence, or punish for violation of the order as for contempt and sentence the person to confinement in the county jail under s. 56.08, as the case may be. In case of forfeiture of recognizance, and enforcement thereof by execution, the sum recovered may, in the discretion of the court, be paid, in whole or in part, to the spouse, or to the guardian, curator, custodian or trustee of the minor child or children, or to the county department of social services or public welfare.

(6) RULES OF EVIDENCE. No other or greater evidence shall be required to prove the marriage of the husband and wife, or that the defendant is the father or mother of the child or children, whether legitimate or born out of wedlock, than is or shall be required to prove such facts in a civil action. In no prosecution under this section shall any existing statute or rule of law prohibiting the disclosure of confidential communications between husband and wife apply, and both husband and wife shall be competent and compellable witnesses to testify against each other to any and all relevant matters, including the fact of the marriage and the parentage of the child or children, but neither shall be compelled to give evidence incriminating himself or herself. Proof of the desertion of the spouse, child or children in destitute or necessitous circumstances or of neglect or refusal to provide for the support and maintenance of the spouse, child or children shall be prima facie evidence that such desertion, neglect or refusal is wilful. Substantial failure by any person to provide for such support or maintenance prior to the date when complaint is made under this section shall be prima facie evidence of intent hereunder.

History: 1977 c. 271; 1979 c. 352.

NOTE: Subs. (2) to (6) are shown as amended by chapter 352, laws of 1979, effective July 1, 1981. In addition to minor style changes, chapter 352 amended (2) to (6) by substituting "spouse" for "wife". Sub. (6) also was amended by substituting "born out of wedlock" for "illegitimate".

Trial court is not authorized by (4) to impose a sentence or probation and subsequently withdraw such disposition in

favor of a court order for support. *Pettit v. State*, 73 W (2d) 543, 243 NW (2d) 223.

52.055 Failure to support. (1) Any parent who intentionally neglects or refuses to provide for the necessary and adequate support of his or her child under 18 years (legitimate or born out of wedlock), or any person who, without just cause, intentionally neglects or refuses to provide for the necessary and adequate maintenance of his or her spouse, shall be guilty of a misdemeanor and may be fined not more than \$100 or imprisoned not more than 3 months in the county jail or both. The parent of any child born out of wedlock who has made provision for the support of such child by giving bond, or by an agreement approved by a court under s. 767.45 (2), on which such parent is not in default, shall not be subject to this section. Substantial failure by the parent or person to provide for the support or maintenance for more than 21 consecutive days immediately prior to the date when complaint is made under this section shall be prima facie evidence of intent hereunder; but this provision shall not preclude a prosecution hereunder for failure to support for a lesser time. Substantial failure by the parent or person to comply with any part of a court order under ch. 767 for support of any such child under the age of 18 years or for such maintenance of his or her spouse shall be prima facie evidence of a violation of this section for prosecution under this section.

(2) Before the trial, with the consent of the defendant, or at the trial, on entry of a plea of guilty, or after conviction, instead of imposing the penalty in sub. (1) or in addition thereto, the court in its discretion, having regard to the circumstances, and to the financial ability or earning capacity of the defendant, may make an order, which shall be subject to change by the court from time to time as circumstances require, directing the defendant to pay a certain sum weekly, semimonthly, monthly, or as the circumstances permit, for a period not exceeding 2 years, to the spouse or to the guardian, curator or custodian of the minor child or children, or to an organization or individual approved by the court as trustee, and may also release the defendant from custody on probation for the period so fixed, upon his or her entering into a recognizance, with or without surety, in such sum as the court or a judge in vacation orders and approves. The condition of the recognizance shall be that if the defendant makes personal appearance in court whenever so ordered and further complies with the terms of the order of support, or of any subsequent modification thereof, then the recognizance is void, otherwise of full force and effect.

(2m) Upon a showing of need to the court, the court shall order a hearing. At the hearing, the court may make an order directing the father to assign such salary or wages due him or to be due him in the future from his employer or successor employers to the clerk of court where the judgment in any action affecting the family, as designated in s. 767.02, was granted, as will be sufficient to pay the allowances, as adjudged by the court, for the support, maintenance and education of the minor children of the parties. The assignment shall be binding upon the employer and successor employers one week after service upon the employer of a true copy of the assignment signed by the employe and annexed to a copy of the order, by personal service or by registered or certified mail until further order of the court. For each payment the employer shall receive \$1 which the employer shall deduct from the money to be paid the employe. Section 241.09 shall not apply to assignments under this section. The employer may not use the assignment as a basis for the discharge of an employe or for any disciplinary action against the employe. Compliance by an employer with the order operates as a discharge of the employer's liability to the employe as to that portion of the employe's wages so affected.

(3) If the court is satisfied by information and due proof under oath, that any time during the 2-year period the defendant has violated the term of the order, it may forthwith proceed with the trial of the defendant under the original charge, or sentence him or her under the original conviction, or enforce the suspended sentence, or may punish for violation of such order as for contempt and sentence the person to confinement in the county jail under s. 56.08, as the case may be. In case of the forfeiture of recognizance, and enforcement by execution, the sum recovered may, in the discretion of the court, be paid in whole or in part, to the spouse, or to the guardian, curator, custodian, trustee of the minor children or to the county department of social services or public welfare.

History: 1977 c. 105 s. 60; 1977 c. 271, 273; 1979 c. 32 s. 92 (4); 1979 c. 352.

NOTE: This section is shown as amended by chapters 32 and 352, laws of 1979. Chapter 352 is effective July 1, 1981. In addition to minor language changes, the subsections were affected as follows by chapter 352:

Sub. (1) was amended by substituting "an agreement approved by a court under s. 767.45 (2)" for "settlement with the proper officers in accordance with ss. 52.21 to 52.45" and "his or her spouse" for "his wife".

Sub. (2) was amended by substituting "the spouse" for "the wife".

Sub. (2m) was amended by substituting "affecting the family" for "affecting the marriage" and by deleting "and after judgment is entered under s. 52.37" following "767.02, was granted".

Sub. (3) was amended by substituting "the spouse" for "the wife".

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

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

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

History: 1977 c. 449.

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

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

(am) "District attorney", as used in this section, means either the district attorney or, when authorized by county board resolution to conduct the duties of the district attorney under this section, the corporation counsel.

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

duty to pay arrearages of support past due and unpaid.

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

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

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

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

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

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

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

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

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

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

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

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

(4) **EXTENT OF DUTIES OF SUPPORT.** Duties of support arising under the law of this state, when

applicable under sub. (7), bind the obligor present in this state regardless of the presence or residence of the obligee.

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

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

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

(6) CONDITIONS OF INTERSTATE RENDITION.

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

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

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

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

present in the responding state during the period for which support is sought until otherwise shown.

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

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

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

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

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

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

(13) PETITION FOR A MINOR. A petition on behalf of a minor obligee may be executed and

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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 or by the county. These costs or fees except for the receiving and disbursing fee authorized by s. 59.42 (10) (b) do not have priority over amounts due to the obligee.

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

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

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

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

1. Compile a list of the courts and their addresses in this state having jurisdiction under this section and transmit it to the state information agency of every other state which has

adopted this or a substantially similar law. Upon adjournment of each session of the legislature the agency shall distribute copies of any amendments to this section and a statement of their effective date to all other state information agencies;

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

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

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

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

(18) DUTY OF THE COURT AND OFFICIALS OF THIS STATE AS RESPONDING STATE. (a) After the responding court receives copies of the petition, certificate and law from the initiating court, the clerk of the court shall docket the case and notify the district attorney of his action.

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

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

(19) FURTHER DUTIES OF COURT AND OFFICIALS IN THE RESPONDING STATE. (a) The district attorney on his own initiative shall use all means at his disposal to locate the obligor or his

property, and if because of inaccuracies in the petition or otherwise the court cannot obtain jurisdiction the district attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the initiating court.

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

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

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

(21) IMMUNITY FROM CRIMINAL PROSECUTION. If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

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

(23) RULES OF EVIDENCE. In any hearing for the civil enforcement of this section the court is governed by the rules of evidence applicable in a civil court action. If the action is based on a support order issued by another court a certified copy of the order shall be received as evidence of

the duty of support, subject only to any defenses available to an obligor with respect to paternity under sub. (27) or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

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

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

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

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

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

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

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

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

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

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

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

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

(31) APPLICATION OF PAYMENTS. A support order made by a court of this state pursuant to this section does not nullify and is not nullified by a support order made by a court of this state pursuant to any other law or by a support order made by a court of any other state pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another state shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this state.

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

(33) INTRASTATE APPLICATION. This section applies if both the obligee and the obligor are in this state but in different counties. If the court

of 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 county in this state may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the petition and a certification of the findings to the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify the district attorney of their receipt. The district attorney and the court in the county to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this state as a responding state.

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

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

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

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

(36) REGISTRATION. The obligee may register the foreign support order in a court of this state in the manner, with the effect and for the purposes herein provided.

(37) REGISTRY OF FOREIGN SUPPORT ORDERS. The clerk of the court shall maintain a registry of foreign support orders in which he shall file foreign support orders.

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

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

(39) REGISTRATION PROCEDURE; NOTICE. (a) An obligee seeking to register a foreign support order in a court of this state shall transmit to the clerk of the court 1) 3 certified copies of the order with all modifications thereof, 2) one copy of the reciprocal enforcement of support act of the state in which the order was made and 3) a statement verified and signed by the obligee, showing the post-office address of the obligee, the last known place of residence and post-office address of the obligor,

the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution and a list of the states in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the registry of foreign support orders. The filing constitutes registration under this section.

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

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

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

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

(41) UNIFORMITY OF INTERPRETATION. This section shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

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

History: 1975 c. 82; 1977 c. 187, 449; 1979 c. 32 s. 92 (4); 1979 c. 221, 257.

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).

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

52.21 Paternity proceedings, jurisdiction, orders. (1) Any judge of a court of record, in vacation as well as in open court, and all court commissioners shall have jurisdiction in all complaints and proceedings arising under ss. 52.21 to 52.45.

(2) In every paternity action the court, either during the pendency thereof or in approving a settlement agreement or in rendering judgment or in revising the judgment, may make and enforce such orders or provisions for the suitable care, custody, support and maintenance of the child as a court having jurisdiction of marital actions may make therein pursuant to ss. 767.23, 767.24 and 767.25 to 767.28, unless or until parental rights to such child are terminated in accordance with subch. VIII of ch. 48, provided that the court shall make no order relating to support and maintenance of such child until paternity has been established; provided that the court shall never give the custody of the child to the defendant unless the welfare of such child will be promoted thereby and unless the defendant has admitted paternity or has been adjudicated the father of such child.

(3) All proceedings relating to the custody of children shall comply with the requirements of ch. 822.

History: 1975 c. 39, 200, 283; 1979 c. 32 s. 92 (4); 1979 c. 330 s. 13; 1979 c. 352.

NOTE: Chapter 352, laws of 1979, repeals this section effective July 1, 1981.

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

Father has common law duty to support illegitimate child. Illegitimate child's action to declare paternity during father's lifetime discussed. *J.M.S. v. Benson*, 91 W (2d) 526, 283 NW (2d) 465 (Ct. App. 1979).

52.22 Prosecution. The district attorney shall appear in and prosecute every paternity proceeding where the complainant is not represented by private counsel, including both the preliminary examination and the proceedings in the trial court and all subsequent proceedings brought to modify the original judgment or agreement. Where the complainant is a minor or incompetent the district attorney shall act as her guardian ad litem without court order in every such proceeding which he prosecutes. Private counsel in behalf of the complainant may appear instead of the district attorney after a

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warrant or summons is issued pursuant to s. 52.25, and reasonable attorney's fees may be allowed and taxed against the defendant. In every case where private counsel does so appear in behalf of the complainant, the private counsel shall be charged with the duty of prosecuting the proceeding in all respects thereafter (except that any settlement agreement in such case shall be drawn by the district attorney as provided in s. 52.28); and the private counsel shall be substituted by the court as complainant's counsel in place of the district attorney, who shall thereafter withdraw from the case. If a complainant represented by private counsel is a minor or incompetent, the private counsel shall also be appointed as her guardian ad litem. In counties having a population of 500,000 or more the corporation counsel of such county or an assistant corporation counsel shall have all the powers and perform all the duties conferred or imposed upon the district attorney by ss. 52.21 to 52.45 exclusively and in lieu of such district attorney.

History: Sup. Ct. Order, 50 W (2d) vii; 1979 c. 352.

NOTE: Chapter 352, laws of 1979, repeals this section effective July 1, 1981.

Comment of Judicial Council, 1971: If a minor or incompetent complainant in a paternity proceeding is represented by private counsel, the private counsel shall be appointed her guardian ad litem. Present law says private counsel may be appointed as guardian ad litem. [Re Order effective July 1, 1971]

See note to 52.10, citing 60 Atty. Gen. 190.

52.23 Prosecution continued by district attorney. If the mother of a child born out of wedlock commences a paternity proceeding and fails to prosecute, the district attorney, if he determines it to be to the best interest of the child shall prosecute the proceedings commenced by the mother to final judgment.

History: 1979 c. 352.

NOTE: Chapter 352, laws of 1979, repeals this section effective July 1, 1981.

52.24 Inquiry by district attorney. If any woman bears a child out of wedlock which is or is likely to become a public charge, or is pregnant with a child likely to be born out of wedlock and to become a public charge, the district attorney, if he believes it to be to the best interest of the child, shall apply to any court or court commissioner of the county, who shall thereupon examine such woman on oath respecting the father of such child, the time when and the place where such child was begotten and such other circumstances as he deems necessary; and such court or court commissioner shall reduce such examination to writing and shall thereupon issue a warrant, without further or formal complaint, to apprehend the reputed father, and the same proceeding shall be had thereon and with

like effect as provided in cases of complaint made by such woman.

History: 1979 c. 352.

NOTE: Chapter 352, laws of 1979, repeals this section effective July 1, 1981.

Mother of child born out of wedlock may rely upon her self-incrimination right in refusing to identify father. In *Matter of Grant*, 83 W (2d) 77, 264 NW (2d) 587 (1978).

Plaintiff failed to show that her claims, that the statute infringed her privilege against self-incrimination, her constitutional right of privacy, and her right to equal protection, were likely to succeed on the merits and thus a temporary restraining order should be denied. *Burdick v Miech*, 385 F Supp. 927.

52.25 Paternity; proceedings on and contents of complaint. On complaint made to any district attorney by any woman who has born a child out of wedlock or who is pregnant with a child likely to be born out of wedlock, accusing a named person of being the father of such child, the district attorney shall take such complaint in writing, under oath of such woman, and may thereupon petition a judge of the county for a warrant, which judge upon finding probable cause shall thereupon issue his warrant directed to the sheriff of his county, commanding him forthwith to bring such accused person before the court or judge before whom the warrant is returnable to answer such complaint. This district attorney shall forthwith deliver any complaint filed with him to the court or judge before whom the warrant is returnable. In the alternative the district attorney may proceed as provided in s. 52.24 or he may take the complaint in writing, under oath, and issue a summons under s. 968.04.

History: 1979 c. 352.

NOTE: Chapter 352, laws of 1979, repeals this section effective July 1, 1981.

The provision of this section, that a paternity action be commenced by a summons issued by the district attorney is mandatory rather than directory, since the legislative intent was that the district attorney control such proceedings up to the time a warrant or summons is issued under the statute; hence, if the district attorney declines to prosecute, the mother may not commence proceedings by a private attorney. *State ex rel. Smith v. Chicks*, 70 W (2d) 833, 235 NW (2d) 694.

52.26 Warrant; attendance of parties; arraignment and bail. Any warrant issued under ss. 52.21 to 52.45 may be executed in any part of this state; and in all cases a copy of the complaint shall be served upon the defendant and the court or court commissioner may compel the complainant and defendant to attend and testify the same as witnesses in other cases. An attorney shall be appointed for a minor or incompetent defendant unless he appears by his own attorney. If an attorney is appointed, he shall receive reasonable compensation and the amount thereof may be taxed as a cost against the defendant in the discretion of the court. At the time of arraignment, the defendant may give bail, as provided in ch. 969, to insure his appear-

ances at the time of the preliminary examination and all subsequent stages of the proceedings until entry of judgment or until the matter is dismissed or he is otherwise discharged by the court; and in default thereof he shall be committed pending such proceedings, to the county jail.

History: Sup. Ct. Order, 50 W (2d) vii; 1979 c. 352.

NOTE: Chapter 352, laws of 1979, repeals this section effective July 1, 1981.

Comment of Judicial Council, 1971: This section requires appointment of an attorney rather than a guardian ad litem for a minor or incompetent defendant in a paternity action unless the defendant appears by his own attorney. [Re Order effective July 1, 1971]

52.27 Preliminary examination. On the entry of defendant's plea denying paternity, or on the date to which the matter is then adjourned, the court or court commissioner shall examine the complainant under oath respecting the cause of complaint; the defendant may cross-examine her and put any questions necessary for his defense. Witnesses may be examined on behalf of either party. If the defendant does not appear, the court or court commissioner shall proceed in the same manner as though he were present, and shall make such orders as if the defendant were in court. The court or court commissioner may exclude the public from attendance at such examination. All testimony taken and proceedings had shall be reduced to writing; and the proceedings for cause shown may be adjourned from time to time.

History: 1979 c. 352.

NOTE: Chapter 352, laws of 1979, repeals this section effective July 1, 1981.

Paternity trials are civil special proceedings in which defendant's discovery procedures are limited to preliminary examination. State ex rel. Opelt v. Crisp, 81 W (2d) 106, 260 NW (2d) 25.

52.28 Settlement agreements. A woman who has borne a child out of wedlock or who is pregnant with a child which is likely to be born out of wedlock, may enter into an agreement with the person claimed by her to be the father of the child. Such agreement may be entered into at any time prior to final judgment, either before or after issuance of process, or at any time while said judgment is still in effect. No agreement shall be entered into before the birth of the child unless the court finds that there are special circumstances making it advisable to do so. The agreement shall include a determination of all facts and orders which s. 52.37 requires the court to determine in its order for judgment, except that where the parties are unable to agree as to the paternity of the child, the alleged father may deny paternity in the agreement. By the terms of the agreement the defendant must submit personally to the jurisdiction of the court, and consent to entry of judgment in accordance with the terms of the agreement. If

the alleged father denies paternity, the agreement must contain a waiver of notice and opportunity to appear at proceedings affecting the child, and a waiver of any rights to custody of the child under ch. 48. Upon motion of the district attorney, the judge of a court of record having power to enter final judgment in paternity proceedings, being satisfied with the terms of the agreement, shall order judgment in accordance therewith if paternity of the child is admitted. Where the paternity of the child is not admitted, after said agreement is approved by the court, it shall be filed but judgment shall not be rendered until there is a default of the payments agreed upon, when, upon motion of the district attorney, judgment shall be rendered and entered forthwith. All agreements referred to in ss. 52.21 to 52.45 shall be drawn by the district attorney. No other agreement or settlement of any paternity proceeding shall be valid. A copy of the agreement shall be filed with the department.

History: 1973 c. 263; 1979 c. 352.

NOTE: Chapter 352, laws of 1979, repeals this section effective July 1, 1981.

52.29 Agreement by district attorney. In all cases where the mother commences any proceedings under this chapter and fails to prosecute the same, or where she has been delivered of a child born out of wedlock which is likely to become a public charge or shall be pregnant with a child likely to be born out of wedlock and to become a public charge, the district attorney of the county in which she resides shall have power to make an agreement with the putative father in the same manner and with the same force and effect as might be made by the mother.

History: 1979 c. 352.

NOTE: Chapter 352, laws of 1979, repeals this section effective July 1, 1981.

52.30 Discharge of defendant. If the defendant enters into agreement with the complainant as provided in s. 52.28 or 52.29, the court or court commissioner shall make a memorandum of said agreement and upon entry of judgment on such agreement shall discharge such defendant.

History: 1979 c. 352.

NOTE: Chapter 352, laws of 1979, repeals this section effective July 1, 1981.

52.31 When bound over for trial; new proceedings, when had if discharged. (1) If the defendant does not enter into a settlement agreement with the complainant as provided in s. 52.28 or 52.29 and there is probable cause to believe him to be the father of the child, the court or court commissioner shall cause him to

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be bound over for trial before the circuit court for the proper county.

(2) The court or court commissioner shall thereupon certify and return the examination and all testimony so taken before him or her with all process and papers in the case to the clerk of the circuit court.

(3) If any examination was conducted as provided by law, and the person complained of was discharged for want of sufficient evidence to raise a probability of his paternity, and the district attorney afterwards discovers admissible evidence sufficient, in his or her judgment, to convict the person discharged, the district attorney may, notwithstanding that discharge, cause another complaint to be made before any officer authorized by law to make such examination, and thereupon another proceeding shall be had.

History: 1977 c. 449; 1979 c. 352.

NOTE: Chapter 352, laws of 1979, repeals this section effective July 1, 1981.

52.32 Venue; change of venue. (1) Except as provided under sub. (2), venue for all cases begun under ss. 52.21 to 52.45 is in the county where the complainant resides or if the complainant is a nonresident of the state, then in the county where the defendant resides.

(2) If it appears to the satisfaction of the court by affidavit that a fair and impartial trial cannot be had in that county, the court may direct that the defendant be tried in some adjoining county where a fair and impartial trial can be had or in the county where the defendant resides.

(3) The defendant is entitled to only one change of venue.

History: 1977 c. 449; 1979 c. 352.

NOTE: Chapter 352, laws of 1979, repeals this section effective July 1, 1981.

52.33 Continuance; bail. If the complainant has not borne her child or is not able to attend, or if at any time there is any other sufficient reason, the court may order a continuance of the cause. If the sureties on the bond object to continue being held liable or if the court for any cause deems it proper, the court may order a new bond to be given and the defendant shall be committed until he gives the new bond.

History: 1977 c. 449; 1979 c. 352.

NOTE: Chapter 352, laws of 1979, repeals this section effective July 1, 1981.

52.34 Absence of defendant at trial. If the defendant fails to appear, the security for his appearance shall be forfeited and shall be applied on account of the payment of the judg-

ment, but the trial shall proceed as if he were present.

History: 1979 c. 352.

NOTE: Chapter 352, laws of 1979, repeals this section effective July 1, 1981.

52.35 Trial; evidence. Upon the trial of the proceedings the main issue shall be whether the defendant is or is not the father of complainant's child, but if the child was born to the complainant while she was the lawful wife of a specified man there shall first be determined, as provided in s. 891.39, the prior issue of whether the husband was not the father of the child. The trial shall be by jury, if either party demands a jury, otherwise by the court; provided that such demand shall be made in writing at the time when the defendant is bound over for trial or within 20 days thereafter, and any neglect to make such demand shall be a waiver of the right to trial by jury. The court may in its discretion order a trial by jury of any issue of fact unless waived by the parties. The court may direct, and if requested by either party, before the introduction of any testimony in the party's behalf, shall direct the jury to find a special verdict as to any of the issues specified in this section. If the mother is dead, becomes insane, cannot be found within the jurisdiction or fails to prosecute, the proceeding does not abate, but the child shall be substituted as complainant and the case prosecuted as provided in s. 52.23. The testimony of the mother taken at the preliminary hearing may in any such case be read in evidence if it is competent, relevant and material. The judge may exclude the public from attendance at the trial.

History: Sup. Ct. Order, 50 W (2d) vii; Sup. Ct. Order, 67 W (2d) 750; 1975 c. 218, 422; 1979 c. 34, 352.

NOTE: This section is renumbered and amended by chapter 352, laws of 1979, effective July 1, 1981. For new version see 767.50.

Comment of Judicial Council, 1971: This section provides for appointment of a guardian ad litem for child in paternity actions for issue of legitimacy if child was born while mother was married. This is an attempt to clarify present law. [Re Order effective July 1, 1971]

The court should deny an offer of proof that the child resembled a man other than the defendant where the witness was unqualified and no proper foundation was laid. State ex rel. Schlehlein v. Duris, 54 W (2d) 34, 194 NW (2d) 613.

52.355 Burden of proof. The complainant shall have the burden of proving the issues involved by clear and satisfactory preponderance of the evidence; provided that if the child whose paternity is at issue was born to the complainant while she was the lawful wife of a specified man the complainant shall then have the burden of proving that the husband is not the father of such child as required in s. 891.39.

History: 1979 c. 352.

NOTE: Chapter 352, laws of 1979, repeals this section effective July 1, 1981.

The statutory burden of proof is a hybrid but does not require that the trier of fact be convinced beyond a reasonable doubt. State ex rel. Brajdic v. Seber, 53 W (2d) 446, 193 NW (2d) 43.

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. 885.23 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 or 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 arrangements 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. 814.04 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. Whenever the results of said tests exclude any male witness the same shall be conclusive evidence of such fact. 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.

History: Sup. Ct. Order, 67 W (2d) 774; 1979 c. 352.

NOTE: Chapter 352, laws of 1979, repeals this section effective July 1, 1981.

In a paternity proceeding, where defendant made 2 timely requests for blood tests of the parties and the child, but the mother terminated her parental rights to the child by surren-

dering it to the department of public welfare and thereafter consenting to its adoption, all without notice to the defendant, the failure of the complainant to appear with the child for the blood tests was a denial of due process of law to the defendant, and warranted the trial court in dismissing the action on its merits. State ex rel. Lyons v. De Valk, 47 W (2d) 200, 177 NW (2d) 106.

52.37 Judgment. (1) If the defendant is found the father of the child, or admits the truth of the allegation, or enters into a settlement agreement, he shall be adjudged to be the father of such child, unless paternity is denied in such settlement agreement, and shall be ordered to pay all expenses incurred for lying-in and attendance of the mother during pregnancy, and also for the past care and support of the child, from the time of its birth until the date of the approval of the agreement or the entry of judgment. If the child is dead at time of trial he shall pay the expenses of the funeral and the expenses of the last illness. All payments and expenses stated herein shall be paid by the accused to a trustee, and the settlement agreement or judgment shall specifically provide for the amount of disbursement and indicate the person to whom the trustee shall make such disbursement.

(2) The defendant shall also pay to the county the costs of the action and is chargeable for the future support of the child until it attains the age of 18 years. The amount of such future support shall be established after considering the criteria under sub. (2m). Payments for such future support shall be directed to be made in either of the 2 following methods:

(a) Payment of a specified monthly sum until the child is 18 years of age;

(b) Payment of a specified lump sum to be paid upon the approval of an agreement or entry of judgment, or in specified minimum monthly instalments and other necessary instalments within 4 years following a period of 30 days after the date of such approval or entry of judgment, subject to the condition that upon default in any monthly instalment, the court reserves the right to require the defendant to pay monthly support money for the child until it attains the age of 18 years. All payments for the future support of the child shall be paid to a trustee and shall be held by him for the benefit of the child, subject to the order of the court, and shall be paid by him to the person, agency or institution having legal custody of the child in such manner and amounts as the court directs.

(2m) The court shall establish the amount of future support under sub. (2) after consideration of the following criteria:

- (a) The financial resources of the child.
- (b) The financial resources of both parents.
- (c) The desirability that the custodian remain in the home as a full-time parent.

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(d) 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.

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

(f) The child's educational needs.

(g) The tax consequences to each party.

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

(3) All of the foregoing matters shall be ascertained and fixed by the court and, together with such attorney fees as have been allowed, shall be inserted in the judgment. The judge shall order the clerk of the court to file with the state registrar a report showing the name, date and place of birth of the child and the name, date and place of birth of the father of the child on a form designated by the state registrar. The registrar shall issue a new certificate or correct the old certificate in accordance with the judgment of the court. Such new or corrected certificate shall be issued substantially in accordance with ss. 69.24 (1) (e) and 69.33 and the clerk of the court shall collect a fee of \$4 which shall be transmitted to the state registrar. Judgments entered upon agreement of the parties shall conform to the above unless the parties are unable to agree as to the paternity of the child, when such adjudication may be omitted.

(4) All such judgments shall be satisfied of record by the clerk on payment to him of the costs and the filing of satisfaction of judgment executed and acknowledged by the complainant and trustee, if a trustee be appointed, and whenever ordered so to do by a written order of the court.

(5) At any time after judgment the court may make an order directing the father to assign such salary or wages due or to be due in the future from his employer or successor employers to the clerk of court where the judgment was granted, as will be sufficient to pay an amount adjudged by the court for the support, maintenance and education of his minor child. Such assignment shall be binding upon the employer and successor employers one week after service upon the employer of a true copy of the assignment signed by the employe and annexed to a copy of the order, by personal service or by registered or certified mail until further order of the court. For each payment the employer shall receive \$1 which the employer shall deduct from the money to be paid the employe. Section 241.09 does not apply to assignments under this section. The employer may not use such assignments as a basis for the discharge of an employe or for any disciplinary action against the employe. Compliance by an employer with the

order operates as a discharge of the employer's liability to the employe as to that portion of the employe's wages so affected.

History: 1975 c. 224; 1977 c. 418; 1979 c. 177, 221, 352.

NOTE: Chapter 352, laws of 1979, repeals this section effective July 1, 1981.

52.38 Continuing jurisdiction; revision of judgment or agreement.

(1) Whenever settlement has been made pursuant to s. 52.37 and the defendant fails to comply with the terms of such settlement, or whenever the judgment or agreement providing for the monthly support of a child born out of wedlock has been docketed or filed, the court shall have continuing jurisdiction and may, on the petition of the district attorney, the trustee, the mother, the named or adjudicated father, or any other person, agency or institution having legal custody of the child or upon stipulation signed by the defendant and the person, agency or institution having legal custody of the child and approved by the district attorney, revise and alter such judgment or agreement respecting the amount of support and the payment thereof and in its discretion may provide for or increase or decrease the amount of future support, and may make such further judgment or order as the circumstances of the parties require.

(2) Whenever a petition is brought to the court as hereinabove set forth, the district attorney, the defendant, and the person, agency or institution having legal custody of the child, must be served with a copy of the petition at least 10 days before the date set for the hearing.

(3) Nothing in this section shall in any way be considered a derogation of s. 52.05.

History: 1979 c. 352.

NOTE: Chapter 352, laws of 1979, repeals this section effective July 1, 1981.

52.39 Bond or commitment. If the person adjudged to be the father of such child pays the cost of the prosecution, and any lump or total sum adjudged to be paid, he shall be discharged and the judgment satisfied of record; or if he gives a bond to the proper town or county in such sum and with such surety as the court approves, conditioned on the performance of such judgment and the payment of all sums ordered to be paid as therein directed, he shall be discharged; otherwise he shall be committed, but not more than once in any one calendar year, to the county jail until he complies with such judgment or is otherwise discharged according to law. The court may stay execution of such commitment; execution so stayed shall issue at any time when it appears to the court that the defendant has defaulted on any of the provisions of the judgment. The provisions of s. 56.08 relating to the employment of misdemeanants shall at his re-

quest be applicable to any person committed to the county jail under ss. 52.21 to 52.45.

History: 1979 c. 352

NOTE: Chapter 352, laws of 1979, repeals this section effective July 1, 1981.

52.40 When and how discharged; liability thereafter. Any person who has been so imprisoned 90 days commencing in any one calendar year may apply for his discharge from the imprisonment as provided by law for the discharge from imprisonment of persons confined in jail upon executions against the person; but notice of the application for the discharge shall be given to the complainant, if she lives within the state, and also to the district attorney at least 15 days before the application for discharge is made. Upon the defendant's release, if he at any time fails to comply with the judgment of the court with reference to the continued support of the child, he may be dealt with as for contempt of court, and shall likewise be subject to all the penalties for failure to care for and support the child which are imposed by law upon the father of a legitimate child of like age and capacity, and in case of failure to abide by any order of the court, the defendant shall be fully liable for the support of the child without reference to the order.

History: 1979 c. 257, 352.

NOTE: Chapter 352, laws of 1979, repeals this section effective July 1, 1981.

52.41 Execution. The court, upon motion by the mother of such child, or the trustee named in the judgment, or of the district attorney, may, from time to time, order execution to issue against the defendant and his sureties in any bond given to secure the performance of any such judgment, or against a defendant who has been discharged under s. 52.40, for such sum as may at any time become due thereon and remain unpaid.

History: 1979 c. 352.

NOTE: Chapter 352, laws of 1979, repeals this section effective July 1, 1981.

52.42 Records; private. All records of court proceedings in cases under ss. 52.21 to 52.45 shall be withheld from inspection by, and copies shall not be furnished to, persons other than the parties in interest and their attorneys except upon order of the court.

History: 1979 c. 352.

NOTE: Chapter 352, laws of 1979, repeals this section effective July 1, 1981.

52.43 Trustee. (1) The trustee to whom payment for the future support of the child shall be made pursuant to the judgment or agreement shall be the county official in charge of the relief of the poor, the clerk of the court, or such other

person, corporation or state board or officer authorized so to act as may be designated by the court. Such trustee shall furnish such bond as the court may require, except that whenever a county officer shall be designated as trustee he shall not be required to furnish bond other than that furnished in his official capacity. The trustee shall administer such funds under the direction of the court and shall report to the court annually or oftener, as directed by the court, the amounts received and paid over.

(2) Whenever such child dies, any unexpended funds remaining in the hands of the trustee after payment of lying-in expenses, past support payments to the date of the death of the child, expenses of last illness and funeral expenses, shall be paid to the mother of the child.

(3) Upon filing a final account with the court showing satisfactory evidence of compliance with all orders of the court and with provisions of ss. 52.21 to 52.45 which relate to the trustee, the trustee shall be relieved of all further obligations and discharged.

History: 1979 c. 352

NOTE: Chapter 352, laws of 1979, repeals this section effective July 1, 1981.

52.44 Adoption. (1) Upon the adoption of a child born out of wedlock, subsequent to approval of an agreement or entry of judgment, the trustee therein appointed shall promptly file with the court an accounting of his trust, together with an affidavit advising the court of all circumstances and asking the court for an order as to the disposition of any and all funds in the hands of the trustee; the court shall thereupon make and enter an order for the disposition of said funds, if any, by the trustee.

(2) At such time as the court makes the order, provided for in sub. (1) of this section the court may, in its discretion, refund to the defendant any payments made pursuant to agreement or judgment for the period, pending final adoption, during which the child was living in the home of the adopting parents.

History: 1979 c. 352.

NOTE: Chapter 352, laws of 1979, repeals this section effective July 1, 1981.

52.45 Construction of sections 52.21 to 52.45. Sections 52.21 to 52.45 shall be so interpreted and construed as to effectuate the protection and welfare of the child involved in any proceedings hereunder. Any proceeding commenced under the foregoing sections is a civil special proceeding, and all such proceedings shall be commenced in the name of the state on the relation of the complainant, or on relation of the child if the complainant is dead, or insane, or does not prosecute. Such proceeding shall be commenced and conducted and the orders and

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judgments therein enforced according to the provisions of these statutes with respect to civil actions and civil proceedings in courts of record, as far as applicable except as otherwise provided in this chapter; provided that no fee shall be required for filing any such proceeding in court. Wherever the language "child born out of wedlock" is used in this chapter, it shall be construed to mean either a child born to an unmarried

woman, or a child which, although born to a married woman, is either alleged or adjudicated not to be the issue of her marriage.

History: 1979 c. 352.

NOTE: Chapter 352, laws of 1979, repeals this section effective July 1, 1981.

The dismissal of a paternity proceeding is an order, not a judgment, and may not be appealed until the order is entered. *State ex rel. Hildebrand v. Kegu*, 59 W (2d) 215, 207 NW (2d) 658.