CHAPTER 767

ACTIONS AFFECTING THE FAMILY

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

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

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

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

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

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

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

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

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

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

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

(a) To affirm marriage.

(b) Annulment.

(c) Divorce.

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

(e) Custody.

(f) For child support.

(g) For maintenance payments.

(h) For property division.

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

(j) For periodic family support payments.

(k) Concerning visitation rights to children.

(L) To determine paternity.

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

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

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

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

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

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

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

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

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

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

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

History: 1979 c. 32 s. 50.

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

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

Comment of Judicial Council, 1971: This section provides that in any action for an annulment, divorce, legal separation, or otherwise, where the court determines there is reason for special concern for future welfare of the minor children, the court shall appoint a guardian ad litem for representation of the children. If a guardian ad litem is appointed, the court

shall direct payment of fees by either or both parties. If the parties are indigent, the court, in its discretion, may direct that the fee be paid by the county. In all cases the court shall approve the amount of the fee of the guardian ad litem. [Re Order effective July 1, 1971]

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

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

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

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

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

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

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

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

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

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

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

(3) PARTIES. The party initiating an action affecting the family shall be denominated the petitioner. The party responding to the action shall be denominated the respondent. All references to "plaintiff" in chs. 801 to 807 shall apply to the petitioner, and all references to "defendant" in chs. 801 to 807 shall apply to the respondent. Both parties together may initiate the petition by signing and filing a joint petition. The parties to a joint petition shall be called joint petitioners. The parties to a joint petition shall state within the joint petition that both parties consent to personal jurisdiction and waive service of summons.

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

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

(6) DISMISSAL. An action affecting marriage 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.

History: 1977 c. 105, 418, 447; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; 1979 c. 352 s. 39.

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

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

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

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

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

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

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

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

History: 1977 c. 418; 1979 c. 32 s. 50; 1979 c. 352 s. 39.

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

767.08 Actions to compel support by spouse. (1) If either spouse fails or refuses, without lawful or reasonable excuse, to provide for the support and maintenance of the other spouse or minor children, the other spouse may commence an action in any court having jurisdiction in actions for divorce to compel the spouse to provide such support and maintenance as may be legally required. The court, in the action, shall, after consideration of the factors enumerated in ss. 767.25 and 767.26 where appropriate, determine and adjudge the amount, if any, the spouse should reasonably contribute to the support and maintenance of the other spouse or children and how the sum should be paid. 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 spouse upon sufficient evidence. 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. In any such support action there shall be no filing fee or other costs taxable to the other spouse, 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 the spouse.

(2) If the state or any subdivision thereof furnishes public aid to a spouse or dependent children for support and maintenance and the spouse fails or refuses to institute an appropriate court action under this chapter to provide for the same, the person in charge of county welfare activities, the county child support agency or the state department of health and social services shall have the same right as the individual spouse to initiate an action under this section, for the purpose of securing reimbursement for support and maintenance furnished and of obtaining continued support and maintenance. The title of the action shall be substantially in the following form:

A.B. (Welfare official), on behalf of
C.D. (Spouse)
v.
E.F. (Other spouse)

In counties having a population of 500,000 or more, counsel employed by the department of social services, the county child support agency or the department of health and social services shall represent the director or department thereof in any such action and may petition the court to be appointed as guardian ad litem for any minor or incompetent children.

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

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).

767.081 Counseling for marriage assessment, divorce and separation. In every action for annulment, divorce or legal separation, the family court commissioner shall inform the parties of the availability of counseling for marriage assessment, divorce and separation and referral services offered by the family court commissioner or the department of family conciliation. In this section, "counseling for marriage assessment, divorce and separation" means counseling to explore the possibility of reconciliation, to enable the parties to adjust to the status of being unmarried persons, to prepare the parties to live separate lives and to assist the parties in planning for the needs of their minor children, if any.

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

(2) The family court commissioner shall arrange for such counseling on a voluntary basis for parties to an action for annulment who request such counseling and who are not required to participate in such counseling under

sub. (1). Such counseling shall be provided as under sub. (1). No person consulted for counseling may disclose any statement made by either party without the consent of that party.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) INITIATION OF ACTION. 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.

(2m) SUMMONS, CONTENTS. Where only one party initiates the action and the parties have minor children, the summons served on the other party shall include notification of the contents of s. 946.715.

(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.

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

Prenuptial and postnuptial agreements. Loeb, WBB March 1981.

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

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

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

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

767.10 Stipulation and property division. The parties in an action for an annulment, divorce or legal separation may, subject to the approval of the court, stipulate for a division of estate, for maintenance payments, for the support of children, for periodic family support payments under s. 767.261 or for custody and visitation, in case a divorce or legal separation is granted or a marriage annulled.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1m) 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.

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

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

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

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

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.

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

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

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

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

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

(2) 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.

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

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

767.16 Family court commissioner or law partner; when interested; procedure. Neither a family court commissioner nor a partner may appear in any action affecting the family in any court held in the county in which the family court commissioner is acting, except when authorized to appear by s. 767.14. In case the commissioner or a partner shall be in any way interested in such action, the presiding judge shall appoint some reputable attorney to perform the services enjoined upon such family court commissioner and such attorney, so appointed, shall take and file the oath and receive the compensation provided by law.

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

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

History: 1979 c. 32 s. 50; 1979 c. 176.
See note to 59.47, citing 61 Atty. Gen. 443.

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

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

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

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

History: 1975 c. 94; 1979 c. 32 s. 50.
Women's names in Wisconsin: In Re Petition of Kruzel. MacDougall, 1975 WBB No. 4.

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

(2) ACTIONS IN COURTS OF FOREIGN COUNTRIES. Any court of this state may recognize a judgment in any action affecting the family involving Wisconsin domiciliaries, except an ac-

tion relating to child custody, by a court of competent jurisdiction in a foreign country, in accordance with the principles of international comity.

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

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

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

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

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

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

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

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

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

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

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

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

(c) Requiring either party or both parties to pay for the support of minor children.

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

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

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

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

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

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

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

(1m) If a family court commissioner believes that a temporary restraining order or injunction under s. 813.025 (2) 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 (1m).

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

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

History: 1971 c. 149; 1971 c. 211 s. 126; 1971 c. 220, 307; 1975 c. 283; Sup. Ct. Order, 73 W (2d) xxxi; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 111, 196; 1979 c. 352 s. 39.

Where a guardian ad litem is appointed where the issue of custody of a child is disputed, his fee should be divided be-

tween both parties when their ability to pay is equal. Lacey v. Lacey, 45 W (2d) 378, 173 NW (2d) 142.

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

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

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

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

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

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

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

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

(c) If the interest of any child demands it, and if the court finds that neither party is able to care for the child adequately or that neither party is fit and proper to have the care and custody of the child, the court may declare any such 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 agency specified in s. 48.56 (1) or to a licensed child welfare agency. The charges for such care shall be pursuant to the procedure under s. 48.36 except as provided in s. 767.29 (3).

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

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

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

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

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

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

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

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

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

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

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

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 award-

ing 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.

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

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

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

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

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

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

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

(6) Whenever the court grants visitation rights to a parent, it shall order the child's custodian to obtain written approval of the parent having visitation rights or permission of the court in order to establish legal residence outside this state or to remove the child from this state for a period of time exceeding 90 days. Such court permission may be granted only after notice to the parent having visitation rights and after opportunity for hearing. Violation of a court order under this subsection may be deemed a change of circumstances under s. 767.32, allowing the court to modify the judgment with respect to custody, child support and visitation rights so as to permit withholding of a portion of the support payments to defray the added expense to the parent with visitation rights of exercising such rights or to modify a custody order.

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

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

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

767.25 Child support. (1) Upon every judgment of annulment, divorce or legal separation, or in rendering a judgment in an action under s. 767.02 (1) (f) or (j) or 767.08, the court may order either or both parents to pay an amount reasonable or necessary for support of a child and shall specifically assign responsibility for payment of medical expenses, after considering the guidelines for the determination of child support established by the department of health and social services and considering:

(a) The financial resources of the child.

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

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

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

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

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

(g) The child's educational needs.

(h) The tax consequences to each party.

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

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

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

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

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

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

Where parents each own 1/2 interest in future proceeds of real estate and state contributes to child support, court may order only non-custodial 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).

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

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

(1) The length of the marriage.

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

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

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

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

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

(6) The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.

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

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

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

(10) The tax consequences to each party.

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

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

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

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

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

Prenuptial and postnuptial agreements. Loeb, WBB March 1981.

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

(1) The length of the marriage.

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

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

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

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

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

(7) The tax consequences to each party.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.

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

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. The court, after considering the financial resources of both parties, may 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's fees to either party, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his or her name. The court may not

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.

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

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

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

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

767.265 Assignment of income. (1) Each order for child support under s. 767.23 or 767.25, for maintenance payments under s. 767.23 or 767.26, for family support under s. 767.261, for support by a spouse under s. 767.02 (1) (f) or for maintenance payments under s. 767.02 (1) (g) shall include an order directing the payer to assign commissions, earnings, salaries, wages and other income due or to be due in the future to the clerk of the court where the action is filed, as will be sufficient to meet the maintenance payments, child support payments or family support payments imposed by the court for the support of the spouse or minor children or both and to defray arrearages in payments due at the time the assignment takes effect. Each order for child support under s. 767.23 or 767.25 may include an order directing the payer to assign benefits under ch. 102 or 108 due or to be due in the future to the clerk of the court where the action is filed, as will be sufficient to meet the child support payments imposed by the court for the support of minor children and to defray arrearages in payments due at the time the assignment takes place. If the payer does not execute an assignment when so ordered, the court or family court commissioner shall execute that assignment. The assignment of income shall take effect when the requirement of sub. (2) has been satisfied, or, at the discretion of the court or family court commissioner, may take effect immediately.

(1m) Any spouse who is entitled to a payment of support which has been ordered by the court or family court commissioner under s. 767.23, 767.25, 767.26 or 767.261 may apply to the court or court commissioner for an income assignment under sub. (1). Upon receipt of the application, the court or family court commissioner shall order the payer to execute an income assignment. If the payer does not execute an assignment when so ordered, the court or family court commissioner shall execute that assignment. The court or family court commissioner may order the income assignment to take effect immediately or after the requirements of sub. (2) are satisfied.

(2) The family court commissioner, upon application of the person receiving payments, shall send a notice by certified mail to the last-known address of any payer who has failed to make a required maintenance payment or child support payment within 20 days of its due date. The notice shall be postmarked no later than 10 days after the date on which the application was filed and shall inform the recipient that an assignment of his or her income shall go into effect 10 days after the date on which the notice was sent. The payer may, within that 10-day period, request a hearing on the issue of whether the income assignment should take effect, in which case the income assignment shall be held in abeyance pending the outcome of the hearing. The family court commissioner shall hold a hearing requested under this section within 10 working days after the date of the request. If at the hearing the payer establishes that extraordinary circumstances prevented fulfillment of the maintenance payment or child support obligation and that such circumstances are beyond the control of the payer, the family court commissioner may direct that the income assignment not take effect until such time, within 12 months, as another month's payment is missed. If such a delay is granted, the income assignment shall, upon application, go into effect if, within the following 12 months, the payer fails to make in full any payment within 20 days of its due date. Either party may, within 15 working days of the date of the decision by the family court commissioner under this section, seek review of the decision by the court with jurisdiction over the action.

(3) An assignment made under this section shall be binding upon the party from whom the payer receives salary, benefits or wages one week after service upon it of a true copy of the assignment signed by the payer, court or family court commissioner and annexed to a copy of the order, by personal service or by registered or certified mail, until further order of the court. For each payment the party from whom the payer receives salary, benefits or wages shall receive $1 which shall be deducted from the money to be paid to the payer. Section 241.09 does not apply to assignments under this section. If the party from whom the payer receives salary, benefits or wages fails to make the assignment after receipt of the true copy of the assignment and order as provided in this section,

it may be fined not more than $200 and may be required to pay the amount assigned to the clerk of the court. An employer may not use such assignments as a basis for the discharge of an employe or for any disciplinary action against the employe. An employer who discharges or disciplines an employe in violation of this subsection may be fined not more than $200 and may be required to make full restitution to the aggrieved employe, including reinstatement and back pay. Compliance by the party from whom the payer receives salary, benefits or wages with the order operates as a discharge of its liability to the payer as to that portion of the payer's commission, earnings, salaries, wages, benefits or other income so affected.

(4) 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; 1981 c. 20, 186.

Wage assignment provisions of this section are mandatory. 68 Atty. Gen. 106.

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

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

(3) 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.

(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.

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

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

767.28 Maintenance, custody and support when divorce or separation denied. In a judgment in an action for divorce or legal separation, although such divorce or legal separation is denied, the court may make such order for the custody of any of the minor children and for the maintenance of either spouse and support

of such children by either spouse out of property or income, as the nature of the case may render just and reasonable.

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

767.29 Maintenance payments, clerk of court, family court commissioner, fees and compensation. (1) All orders or judgments providing for temporary or permanent maintenance payments or support of children shall direct the payment of all such sums to the clerk of the court for the use of the person for whom the same has been awarded. A party securing an order for temporary maintenance payments or support money shall forthwith file said order, together with all pleadings in the action, with the clerk of the court. Said clerk shall disburse the money so received pursuant to said judgment or order and take receipts therefor. All moneys received or disbursed under this section shall be entered in a record book kept by said clerk, which shall be open to inspection by the parties to the action, 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 said judgment or order, the clerk or the family court commissioner of said county shall take such proceedings as either of them deems advisable to secure the payment of such sum including enforcement by contempt proceedings under ch. 785 or by other means. Copies of any order issued to compel such payment shall be mailed to counsel who represented each party when such maintenance payments or support money was awarded. In case any fees of officers in any of said proceedings including the compensation of the family court commissioner at the rate of $50 per day unless such commissioner is on a salaried basis, be not collected from the person proceeded against, the same 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 of social services or public welfare or municipal relief agency granting such assistance. Such assignment shall be approved by order of the court granting the maintenance payments or support money, and may be terminated in like manner; except that it shall not be terminated in cases where there is any delinquency in the amount of maintenance payments and support money previously ordered or adjudged to be paid to the assignee without the written consent of the assignee or upon notice to the assignee and hearing. When an assignment of maintenance payments or support money, or both, has been approved by the order, the assignee shall be deemed a real party in interest within s. 803.01 but solely for the purpose of securing payment of unpaid maintenance payments or support money adjudged or ordered to be paid, by participating in proceedings to secure the payment thereof. Notwithstanding assignment under this subsection, and without further order of the court, the clerk of court, upon receiving notice that a party or a minor child of the parties is receiving aid under s. 49.19, shall forward all support assigned under s. 49.19 (4) (h) 1 or 49.45 (19) to the department.

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

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

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.

767.30 Enforcement of maintenance payment and child support orders. In all cases where payments under s. 767.23, child support payments under s. 767.25, maintenance payments under s. 767.26, family support payments under s. 767.261, where child support, family support or maintenance payments are ordered in a temporary order under s. 767.23 or attorney fees under s. 767.262 are ordered, the court may provide that the same shall be paid in such sums and at such times as shall be deemed expedient, and may impose the same 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; and upon neglect or refusal to give such security or upon the failure to pay such payments or fees the court may enforce the payment thereof, including past due payments, by execution, under ch. 785, by money judgment for past due payments, by

satisfaction under s. 811.23 out of any property attached under ch. 811 or otherwise as in other cases. No such judgment shall become effectual as a charge upon specific real estate until the judgment or a certified copy thereof is recorded in the office of the register of deeds in the county in which the real estate is situated.

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.

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).

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

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

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

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

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

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

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

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

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

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 sup-

port allowance without a hearing as to the effect on the children. Krause v. Krause, 58 W (2d) 499, 206 NW (2d) 589.

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

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

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

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

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

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.

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

History: 1981 c. 20.

767.36 Dower and curtesy rights. When a judgment of divorce is granted, and also when the court, upon granting a legal separation, makes a final division of the estate under s. 767.255 or 767.26, neither party shall be entitled to dower or curtesy in any lands of the other.

History: 1977 c. 105 s. 60; 1979 c. 32 ss. 50, 92 (4).

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

(c) At the time of filing any judgment for an annulment, divorce or legal separation, the attorney for the moving party shall present to the clerk of court 2 true copies thereof in addition to the original judgment, and until such copies are presented the clerk may refuse to accept such judgment for filing. After the judgment is filed,

the clerk shall mail a copy forthwith to each party to the action at the last-known address, and the court record shall show such mailing.

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

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

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

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

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

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

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

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

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

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

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

767.395 Duties; department of health and social services. (1) The department of health and social services shall submit guidelines for the determination of child support under s. 767.25 (1) to any appropriate standing committee of the legislature for review prior to implementation.

(2) The department of health and social services shall develop cost of living indices and earnings indices for consideration by courts in ordering adjustments in child support under s. 767.33 (1).

History: 1981 c. 20.

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

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

767.45 Determination of paternity. (1) The following persons may bring an action for the purpose of determining the paternity of a

child or for the purpose of rebutting the presumption of paternity under s. 891.41:

(a) The child.

(b) The child's natural mother.

(c) A man presumed to be the child's father under s. 891.39.

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

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

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

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

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

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

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

(5) An action under this section may be joined with any other action for child support and shall be governed by the procedures specified in s. 767.05 relating to child support, except that the title of the action shall be "In re the paternity of A.B." The petition shall state 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.

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

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

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

History: 1979 c. 352; 1981 c. 20 s. 2202 (20) (m).

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

See note to 806.04, citing J.M.S. v. Benson, 98 W (2d) 406, 297 NW (2d) 18 (1980).

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 or by certified mail.

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

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

Summons

THE STATE OF WISCONSIN,
To said respondent:

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

Date: .....
Time: .....
Room: .....
Judge: .....
Address: .....

If you do not appear, the court will order law enforcement officers to find you and bring you to court. If you plan to be represented by an attorney, you should contact the attorney prior

to the court appearance listed above. If you are unable to afford an attorney, the court will appoint one for you. If you do not appear you may be found to be the father of the child in a judgment by the court.

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

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

History: 1979 c. 352; 1981 c. 314.

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

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

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

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

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

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

History: 1979 c. 352.

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

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

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

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

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

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

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

(5) If a respondent or the guardian ad litem refuses to accept the final recommendation for support or any party refuses to accept any other 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.

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

(2) WHEN RESPONDENT FAILS TO APPEAR. If the respondent has been personally served and fails to appear and plead on the return date specified in the summons, on the date set for the pretrial hearing or on the date set for the trial, the court or family court commissioner may issue an order for the arrest of the respondent under s. 818.02 (1) (f) and, if there are reasonable grounds to believe that the respondent is outside the state or if the respondent has not been apprehended within 6 months after the issuance of the order, the court or family court commissioner may enter a judgment upon the petition upon due proof by the petitioner of the

facts alleged in the petition. However, the court may not make such a judgment where service has been obtained by publication. Upon finding that the respondent is the father of the child the court may make appropriate orders for support and custody of the child.

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

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

History: 1979 c. 352.

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Discovery shall be conducted as provided in ch. 804, except that no discovery may be obtained from the mother of the child after the close of the pretrial hearing. No discovery may solicit information relating to the sexual relations or possible sexual relations of the mother 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 (1), except that an action brought on behalf of or by the child is as provided in s. 893.88 (2).

(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.

767.48 Blood tests in paternity actions. (1) The court may, and upon request of a party shall, require the child, mother, alleged father, or any male witness who testifies or will testify about his sexual relations with the mother at a possible time of conception to submit to blood tests. The tests shall be performed by an expert qualified as an examiner of genetic markers present on blood cells and components, appointed by the court.

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

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

(4) Whenever the results of the blood tests exclude the alleged father as the father of the child this evidence shall be conclusive evidence of nonpaternity and the court shall dismiss the action. Whenever the results of the tests exclude any male witness from possible paternity the tests shall be conclusive evidence of nonpaternity of the male witness. If any party refuses to submit to the blood test this fact shall be disclosed to the fact finder. 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 shall be paid for by the county but 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.

(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.

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

History: 1979 c. 352 s. 10.

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

(2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a new birth certificate be issued under s. 69.33 or 69.336.

(3) The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the father to pay or contribute to the reasonable expenses of the mother's pregnancy and confinement during pregnancy and may direct either party to pay or contribute to the costs of blood tests, attorney fees and other costs. Contributions to the costs of blood tests shall be paid to the county which paid for the blood tests.

(4) Support judgments or orders ordinarily shall be for periodic payments which may vary in amount. The father's liability for past support of the child shall be limited to support for the period after commencement of action.

(5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including but not limited to:

(a) The needs of the child.

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

(c) The relative financial means of the parents.

(d) The earning ability of the parents.

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

(f) The age of the child.

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

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

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

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

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

History: 1979 c. 352.

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, including custody and visitation and related issues during the proceeding to determine paternity. However, this does not include a custody, visitation or related action which is commenced after the paternity proceeding has ended.

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

History: 1979 c. 352.

767.53 Paternity hearings and records; confidentiality. Any court appearance, hearing or trial relating to paternity determination shall be held in closed court without admittance of 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 access to the record shall be allowed to the parties and their attorneys or their authorized representatives.

History: 1979 c. 352.

767.60 Legitimation of children. In any case where the father and mother of any child or children born out of wedlock shall lawfully intermarry, except where the parental rights of the mother were terminated prior thereto, such child or children shall thereby become legitimated and enjoy all the rights and privileges of legitimacy as if they had been born during the wedlock of their 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 ss. 765.05 to 765.24, 767.60 and 852.05. The issue of all marriages declared void under the law shall, nevertheless, be legitimate.

History: 1979 c. 32 ss. 48, 92 (2); 1979 c. 352; 1981 c. 314 s. 146.