CHAPTER 767

ACTIONS AFFECTING THE FAMILY

767.001 Definitions. In this chapter:

(1d) "Department" means the department of workforce development.

(1m) "Genetic test" means a test that examines genetic markers present on blood cells, skin cells, tissue cells, bodily fluid cells or cells of another body material for the purpose of determining the statistical probability of an alleged father's paternity.

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

(2) "Legal custody" means:

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

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

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

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

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

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

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

History: 1987 a. 355; 1995 a. 100, 279, 404; 1997 a. 3, 27, 35.

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

Sub. (2m) confers the right to choose a child's religion on the custodial parent. Lange v. Lange, 175 Wis. 2d 373, N.W.2d (Ct. App. 1993).

A custodial parent's right to make major decisions for the children does not give that parent the right to decide whether the actions of the noncustodial parent are consistent with those decisions. Wood v. DeHahn, 214 Wis. 2d 221, 571 N.W.2d 186 (Ct. App. 1997).

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

(2) In an action to establish paternity or to establish or enforce a child support obligation, in regard to a child who is the subject of the action, a person is subject to the jurisdiction of the courts of this state as provided in s. 769.201 or 801.05.

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

History: 1975 c. 39; 1977 c. 449; 1979 c. 32 s. 50; 1979 c. 196, 352; Stats. 1979 s. 767.01; 1987 a. 27; 1993 a. 326.

Cross−reference: See s. 765.001 for provision as to intent and construction of this chapter.

The trial court has broad authority to enforce its family court judgments and may employ any remedy customarily available to courts of equity. It was appropriate to direct the defendant to the pay the plaintiff's medical expenses when the defendant had not converted n insurance policy as ordered under a divorce decree. Rotter v. Rotter, 80 Wis. 2d 56, 257 N.W.2d 861 (1977).

When a husband complied with the original court order to make property division installment payments, the court had no authority to order the husband to pay the wife's income tax on installments. Wright v. Wright, 92 Wis. 2d 246, 284 N.W.2d 894 (1979).

When possession of the party's homestead was awarded by the divorce judgment to the wife to be sold upon her death with the proceeds divided between the parties, the family court and probate court had concurrent jurisdiction. Morrissette v. Morrissette, 99 Wis. 2d 467, 299 N.W.2d 590 (Ct. App. 1980).

The joinder of divorce and contract actions between spouses is not required. Caulfield v. Caulfield, 183 Wis. 2d 83, 515 N.W.2d 278 (Ct. App. 1994).

When one party to a divorce dies during the action the court loses jurisdiction, including jurisdiction to enforce prior orders. Socha v. Socha, 183 Wis. 2d 390, 515 N.W.2d 337 (Ct. App. 1994).

An injunction against a man, whose petition to establish himself as father of 2 children had been denied, to stay away from the children until they reach age 18 was within the court's power to enforce its judgments and orders. Paternity of C.A.S. & C.D.S. 185 Wis. 2d 468, 518 N.W.2d 285 (Ct. App. 1994).

A family court has jurisdiction to hear equitable claims against 3rd parties that affect the rights of parties to a divorce, such as a claim against a 3rd party title holder of property claimed to actually be part of the marital estate. Zabel v. Zabel, 210 Wis. 2d 337, 565 N.W.2d 240 (Ct. App. 1997).

Ch. 822, the Uniform Child Custody Jurisdiction Act, does not, in and of itself, establish a sufficient statutory basis for personal jurisdiction over a nonresident defendant in a paternity proceeding. Paula M.S. v. Neal A. R. 226 Wis. 2d 79, 593 N.W.2d 486 (Ct. App. 1999).

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

History: 1975 c. 283; 1979 c. 32 s. 50; Stats. 1979 s. 767.015.

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

(a) To affirm marriage.

(b) Annulment.

(c) Divorce.

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

(e) Custody.

(f) For child support.

(g) For maintenance payments.

(h) For property division.

(i) To enforce or modify a judgment or order in an action affecting the family granted in this state or elsewhere.

(j) For periodic family support payments.

(k) Concerning periods of physical placement or visitation rights to children, including an action to prohibit a move with or the removal of a child under s. 767.327 (3) (c).

(L) To determine paternity.

(m) To enforce or revise an order for support entered under s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2), 938.183 (4), 938.355 (2) (b) 4., 938.357 (5m) (a) or 938.363 (2).

(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; Stats. 1979 s. 767.02; 1985 a. 29; Sup. Ct. Order, 141 Wis. 2d xvii (1987); 1987 a. 355, 403, 413; 1989 a. 212; 1993 a. 326, 481; 1995 a. 27 s. 9126 (19); 1995 a. 70, 77, 404; 1997 a. 27; 1999 a. 103.

A circuit court does not have subject matter jurisdiction in a divorce action to determine attorney fees between an attorney and client that the attorney continues to represent in the divorce action. Stasey v. Stasey, 168 Wis. 2d 37, 483 N.W.2d 221 (1992).

A divorce action terminates on the death of a spouse. After the death an order prohibiting an act in regard to marital property entered in the divorce may not be enforced under ch. 767. As the parties are legally married at the time of death, the sole remedy for resolving for resolving disputes over marital property lies under s. 766.70. Socha v. Socha, 204 Wis. 2d 474, 555 N.W.2d (152 Ct. App. 1996).

There is no authority in this chapter to allow a name change for children in a divorce action. Jocius v. Jocius, 218 Wis. 2d 103, 580 N.W.2d 708 (Ct. App. 1998).

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

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

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

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

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

(2) (a) Except as provided in ch. 769, if the petition, motion or order to show cause is for enforcement or modification of a child support, family support or maintenance order, the petition, motion or order to show cause shall be filed in the county in which the original judgment or order was rendered or in the county where the minor children reside unless any of the following applies:

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

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

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

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

(4) If a petition, motion or order to show cause for enforcement or modification of a child support, family support or maintenance order is filed and heard, regardless of whether it is filed and

heard in a county other than the county in which the original judgment or order was rendered, any judgment or order enforcing or modifying the original judgment or order shall specify that payments of support or maintenance, and payments of arrearages in support or maintenance, if any, are payable to the department or its designee, whichever is appropriate.

History: 1989 a. 212; 1993 a. 326, 481; 1995 a. 279; 1997 a. 27.

Venue for a petition to modify or enforce an out−of−state custody decree is the county where the judgment is filed even though the judgment may be filed in any county. Sharp v. Sharp, 185 Wis. 2d 416, 518 N.W.2d 254 (Ct. App. 1994).

767.027 Notice and service of process requirements. **(1)** In any action under s. 767.02 (1) (i) to enforce a judgment or order with respect to child support, due process requirements related to notice and service of process are satisfied to the extent that the court finds all of the following:

(a) That a diligent effort was made to ascertain the location of the respondent.

(b) That written notice of the action to the respondent has been delivered to the most recent residential address or employer address provided by the respondent under s. 767.263 (2) to the county child support agency under s. 59.53 (5).

(2) The department shall promulgate rules that specify the process that the department will use under sub. (1) (a) to ascertain the location of the respondent. Notwithstanding sub. (1) (b), the process specified in the rules shall utilize all reasonable means to which the department has access, including electronic means, interfaces with other programs and information provided by the postmaster, for determining the current address of the respondent.

History: 1997 a. 191.

Cross Reference: See also ch. DWD 42, Wis. adm. code.

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

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

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

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

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

History: 1977 c. 105; 1979 c. 32 ss. 50, 92 (2); Stats. 1979 s. 767.03.

A remarriage, although unlawful in Wisconsin and dissolved through an annulment, is sufficient to terminate maintenance under s. 767.32 (3). The requirement that maintenance be terminated following remarriage is unconditional. Falk v. Falk, 158 Wis. 2d 184, 462 N.W.2d 547 (Ct. App. 1990).

Although a marriage may be "void", the marriage governs the parties' legal relations unless it is annulled. Sinai Samaritan Medical Center, Inc. v. McCabe, 197 Wis. 2d 709, 541 N.W.2d 190 (Ct. App. 1995).

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

History: 1979 c. 32 s. 50; Stats. 1979 s. 767.04.

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

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

2. Except as provided in par. (am), the legal custody or physical placement of the child is contested.

(am) The court is not required to appoint a guardian ad litem under par. (a) 2. if all of the following apply:

1. Legal custody or physical placement is contested in an action to modify legal custody or physical placement under s. 767.325 or 767.327.

2. The modification sought would not substantially alter the amount of time that a parent may spend with his or her child.

3. The court determines any of the following:

a. That the appointment of a guardian ad litem will not assist the court in the determination regarding legal custody or physical placement because the facts or circumstances of the case make the likely determination clear.

b. That a party seeks the appointment of a guardian ad litem solely for a tactical purpose, or for the sole purpose of delay, and not for a purpose that is in the best interest of the child.

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

(c) The attorney responsible for support enforcement under s. 59.53 (6) (a) may request that the court or a circuit court commissioner appoint a guardian ad litem to bring an action or motion on behalf of a minor who is a nonmarital child whose paternity has not been acknowledged under s. 767.62 (1) or a substantially similar law of another state or adjudicated for the purpose of determining the paternity of the child, and the court or circuit court commissioner shall appoint a guardian ad litem, if any of the following applies:

1. Aid is provided under s. 46.261, 48.57 (3m) or (3n), 49.19 or 49.45 on behalf of the child, or benefits are provided to the child's custodial parent under ss. 49.141 to 49.161, but the state and its delegate under s. 49.22 (7) are barred by a statute of limitations from commencing an action under s. 767.45 on behalf of the child.

2. An application for legal services has been filed with the child support program under s. 49.22 on behalf of the child, but the state and its delegate under s. 49.22 (7) are barred by a statute of limitations from commencing an action under s. 767.45 on behalf of the child.

(d) A guardian ad litem appointed under par. (c) shall bring an action or motion for the determination of the child's paternity if the guardian ad litem determines that the determination of the child's paternity is in the child's best interest.

(e) Nothing in this subsection prohibits the court from making a temporary order under s. 767.23 that concerns the child before a guardian ad litem is appointed or before the guardian ad litem has made a recommendation to the court, if the court determines that the temporary order is in the best interest of the child.

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

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

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

(4m) STATUS HEARING. (a) Subject to par. (b), at any time after 120 days after a guardian ad litem is appointed under this section, a party may request that the court schedule a status hearing related to the actions taken and work performed by the guardian ad litem in the matter.

(b) A party may, not sooner than 120 days after a status hearing under this subsection is held, request that the court schedule another status hearing on the actions taken and work performed by the guardian ad litem in the matter.

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

(6) COMPENSATION. The guardian ad litem shall be compensated at a rate that the court determines is reasonable. The court shall order either or both parties to pay all or any part of the compensation of the guardian ad litem. In addition, upon motion by the guardian ad litem, the court shall order either or both parties to pay the fee for an expert witness used by the guardian ad litem, if the guardian ad litem shows that the use of the expert is necessary to assist the guardian ad litem in performing his or her functions or duties under this chapter. If both parties are indigent, the court may direct that the county of venue pay the compensation and fees. If the court orders a county to pay the compensation of the guardian ad litem, the amount ordered may not exceed the compensation paid to private attorneys under s. 977.08 (4m) (b). The court may order a separate judgment for the amount of the reimbursement in favor of the county and against the party or parties responsible for the reimbursement. The court may enforce its orders under this subsection by means of its contempt power.

History: Sup. Ct. Order, 50Wis. 2d vii (1971); 1977 c. 105, 299; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; 1979 c. 352 s. 39; Stats. 1979 s. 767.045; 1987 a. 355; Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1993 a. 16, 481; 1995 a. 27, 201, 289, 404; 1997 a. 105, 191; 1999 a. 9; 2001 a. 61.

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

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

Sub. (4) defines the role of the guardian ad litem. It clarifies that the responsibility is as an advocate for the best interests of the child. It emphasizes the need for the guardian ad litem to function independently, while giving broad consideration to the views of others, including the children, social workers and the like. It also specifies that the guardian ad litem shall function in the same manner as the lawyer for a party. Among other things, this means that the guardian ad litem communicates with the court and other lawyers in the same manner as a lawyer for a party, presents information on relevant issues through the presentation of evidence or in other appropriate ways and generally functions as the lawyer for a party. In this case the "party" is the best interests of the children. Sub. (4) also enumerates specific duties to emphasize their particular importance.

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

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

If both spouses have ability to pay, each should be required to contribute to the payment of the guardian ad litem's fee, with the percentage to be paid by each to be determined in the court's discretion. Tesch v. Tesch, 63 Wis. 2d 320, 217 N.W.2d 647 (1974).

When the guardian ad litem's report was timely disclosed to both parties, the trial court did not err in failing to introduce the report during a custody hearing. Allen v. Allen, 78 Wis. 2d 263, 254 N.W.2d 244 (1977).

An increase of visitation rights from 24 days to 75 days per year had sufficient impact upon the welfare of the children to require the appointment of a guardian ad litem. Bahr v. Galonski, 80 Wis. 2d 72, 257 N.W.2d 869 (1977).

The appointment of a guardian ad litem pursuant to sub. (1) and s. 891.39 (1) (a) is mandated when paternity is questioned and also when there are special concerns. Special concerns arise when a child's welfare is directly at issue, as is the case when an existing family is disrupted. Johnson v. Johnson, 157 Wis. 2d 490, 460 N.W.2d 166 (Ct. App. 1990).

A guardian ad litem may not be called as a witness in a custody proceeding. The G.A.L. is to communicate with the court as a lawyer for a party and to present information by presenting evidence. Hollister v. Hollister, 173 Wis. 2d 413, 496 N.W.2d 642 (Ct. App. 1992).

A guardian ad litem could act in a separate action involving the child outside of the court of original appointment even though another guardian ad litem had been appointed by the court when the separate action was brought. Interest of Brandon S.S. 179 Wis. 2d 114, 507 N.W.2d 94 (1993).

The court's power to appropriate compensation for court−appointed counsel is necessary for the effective operation of the judicial system. In ordering compensation for court ordered attorneys, a court should abide by the s. 977.08 (4m) rate when it can retain qualified, effective counsel at that rate, but should order compensation at the rate under SCR 81.01 or 81.02 or a higher rate when necessary to secure effective counsel. Friedrich v. Dane County Circuit Ct. 192 Wis. 2d 1, 531 N.W.2d 32 (1995).

The denial of a child's request to intervene in a divorce action was correct. The guardian ad litem fulfills the requirement that a child is entitled to representation. Joshua K. v. Nancy K. 201 Wis. 2d 655, 549 N.W.2d 494 (Ct. App. 1996).

Quasi−judicial immunity extends to a guardian ad litem's negligent performance in a divorce proceeding. Paige K. B. v. Molepske, 219 Wis. 2d 418, 580 N.W.2d 289 (1998).

Under sub. (6), if only one of the parties is indigent, the court may not order the county or the indigent party to pay guardian ad litem fees. The court's only option is to order the non−indigent party to pay. Olmstead v. Circuit Court for Dane County, 2000 WI App 261, 240 Wis. 2d 197, 622 N.W.2d 29.

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. 769 or 801.

(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) or (g) to (k) shall be entitled "In re the marriage of A.B. and C.D.", except that an independent action for visitation under s.767.245 (3) shall be entitled "In re visitation with A. B.". An action affecting the family under s. 767.02 (1) (f) or (m) shall be entitled "In re the support of A.B.". A child custody action shall be entitled "In re the custody of A.B.". In all other respects, the general provisions of chs. 801 and 802 respecting the content and form of the summons and pleadings shall apply.

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

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

History: 1977 c. 105, 418, 447; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; 1979 c. 352 s. 39; Stats. 1979 s. 767.05; 1983 a. 326; 1983 a. 447 s. 67; 1985 a. 37; 1993 a. 326, 481; 1995 a. 68.

As a general matter, the child's best interests will be served by living with a parent. If circumstances compel a contrary conclusion, the interests of the child, not a supposed right of a parent to custody, controls. In a dispute between a father and a deceased mother's parents, the court erred in concluding that it must award custody to a natural parent unless he was unfit or unable to care for the children. LaChapell v. Mawhinney, 66 Wis. 2d 679, 225 N.W.2d 501 (1975).

When a divorce action was brought before the residency requirement was met, an action was never commenced and the petition could not be amended after the requirement was met. Siemering v. Siemering, 95 Wis. 2d 111, 288 N.W.2d 881 (Ct. App. 1980).

The prohibition under sub. (7) of commencing an action under s. 766.70 while a divorce, annulment, or legal separation action is pending is constitutional. Haack v. Haack, 149 Wis. 2d 243, 440 N.W.2d 794 (Ct. App. 1989).

A cause of action under s.766.70 requires that the complained of conduct arise as a result of the marital relationship and a breach of the good faith duty between spouses. Once a divorce is commenced, the claim must be resolved in divorce court. A cause of action between spouses arising outside the marital relationship, such as a stockbroker−client relationship, does not fall within s. 766.70 and may be maintained independent of the divorce. Knafelc v. Dain Bosworth, Inc. 224 Wis. 2d 346, 591 N.W.2d 611 (Ct. App. 1999).

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

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

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

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

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

History: 1971 c. 220; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); Stats. 1979 s. 767.07; 1987 a. 355; 1989 a. 132.

A divorce judgment did not bar a wife's action against her former husband for torts allegedly committed during the marriage. Stuart v. Stuart, 143 Wis. 2d 347, 421 N.W.2d 505 (1988).

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

(a) An action to establish paternity whenever there is a completed application for legal services filed with the child support program under s. 49.22 or whenever s. 767.45 (6m) or (6r) applies.

(b) An action to establish or enforce a child support or maintenance obligation whenever there is a completed application for legal services filed with the child support program under s. 49.22.

(c) Whenever aid under s. 46.261, 48.57 (3m) or (3n), 49.19 or 49.45 is provided on behalf of a dependent child or benefits are provided to the child's custodial parent under ss. 49.141 to 49.161.

(cm) Whenever aid under s. 46.261, 48.57 (3m) or (3n), 49.19 or 49.45 has, in the past, been provided on behalf of a dependent child, or benefits have, in the past, been provided to the child's custodial parent under ss. 49.141 to 49.161, and the child's family is eligible for continuing child support services under 45 CFR 302.33.

(2) (a) Except as provided in par. (b), in any action affecting the family under a child support enforcement program, an attorney acting under s. 49.22 or 59.53 (5), including any district attorney or corporation counsel, represents only the state. Child support services provided by an attorney as specified in sub. (1) do not create an attorney−client relationship with any other party.

(b) Paragraph (a) does not apply to an attorney who is employed by the department under s. 49.22 or a county under s. 59.53 (5) or (6) (a) to act as the guardian ad litem of the minor child for the purpose of establishing paternity.

History: 1977 c. 418; 1979 c. 32 s. 50; 1979 c. 352 s. 39; Stats. 1979 s. 767.075; 1983 a. 27 s. 2202 (57); 1987 a. 413; 1989 a. 31; 1993 a. 326, 481; 1995 a. 27 s. 9126 (19); 1995 a. 201, 275, 289, 404; 1997 a. 35, 105.

When parents each own a 1/2 interest in the future proceeds of real estate and the state contributes to child support, the court may not order the custodial parent to pay child support in the form of an accumulating real estate lien in favor of the state. State ex rel. v. Reible, 91 Wis. 2d 394, 283 N.W.2d 427 (Ct. App. 1979).

A mother is a necessary party in a paternity action brought by the state. Paternity of Joshua E. 171 Wis. 2d 327, 491 N.W.2d 136 (Ct. App. 1992).

A mother's and child's interests in a paternity action are not sufficiently identical to place them in privity for the purpose of res judicata. Chad M.G. v. Kenneth J.Z. 194 Wis. 2d 690, 535 N.W.2d 97 (Ct. App. 1995).

Sub. (2) (b) allows a county corporation counsel to act as the guardian ad litem for a child in a paternity action so long as he or she only represents the child and does not represent the state in the action. Chad M.G. v. Kenneth J.Z. 194 Wis. 2d 690, 535 N.W.2d 97 (Ct. App. 1995).

Because a child has a right to bring an independent action for paternity under s. 767.45, if the child was not a party to an earlier state instituted paternity action, it would be a violation of the child's due process rights to preclude the child from litigating the paternity issue. Mayonia M.M. v. Kieth N. 202 Wis. 2d 461, 551 N.W.2d 34 (Ct. App. 1996).

767.077 Support for dependent child. The state or its delegate under s. 49.22 (7) shall bring an action for support of a minor child under s. 767.02 (1) (f) or, if appropriate, for paternity determination and child support under s. 767.45 whenever the child's right to support is assigned to the state under s. 46.261, 48.57 (3m) (b) 2. or (3n) (b) 2., 49.145 (2) (s), 49.19 (4) (h) 1. b. or 49.775 (2) (bm) if all of the following apply:

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

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

History: 1987 a. 27; 1995 a. 289, 404; 1997 a. 27, 105.

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

1. Is an action for modification of a child support order under s. 767.32 or an action in which an order for child support is required under s. 767.25 (1), 767.51 (3) or 767.62 (4).

2. The child's right to support is assigned to the state under s. 48.57 (3m) (b) 2. or (3n) (b) 2. or 49.19 (4) (h) 1. b.

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

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

1. Register for work at a public employment office established under s. 106.09.

2. Apply for jobs.

3. Participate in a job training program.

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

(2) Subsection (1) does not limit the authority of a court to issue an order, other than an order under sub. (1), regarding employment of a parent in an action for modification of a child support order under s. 767.32 or an action in which an order for child support is required under s. 767.25 (1), 767.51 (3) or 767.62 (4).

History: 1987 a. 27; 1991 a. 39; 1993 a. 16; 1995 a. 27 ss. 7098, 7098e, 9130 (4); 1995 a. 289, 404; 1997 a. 105, 191; 1999 a. 9.

A divorce action terminates on the death of a spouse. After the death an order prohibiting an act in regard to marital property entered in the divorce may not be enforced under ch. 767. As the parties are legally married at the time of death, the sole remedy for resolving for resolving disputes over marital property lies under s. 766.70. Socha v. Socha, 204 Wis. 2d 474, 555 N.W.2d 152 (Ct. App. 1996).

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

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

(b) "Relative" means any person connected with a child by blood, marriage or adoption.

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

1. The person's spouse.

2. The minor child.

3. The person with legal custody of the child.

4. A nonlegally responsible relative.

(b) The court in the action shall, as provided under s. 767.25 or 767.26, determine and adjudge the amount, if any, the person should reasonably contribute to the support and maintenance of the spouse or child and how the sum should be paid. This amount must be expressed as a fixed sum unless the parties have stipulated to expressing the amount as a percentage of the payer's income and the requirements under s. 767.10 (2) (am) 1. to 3. are satisfied. The amount so ordered to be paid may be changed or modified by the court upon notice of motion or order to show cause by either party upon sufficient evidence.

(c) The determination may be enforced by contempt proceedings, an account transfer under s. 767.267 or other enforcement mechanisms as provided under s. 767.30.

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

(3) If the state or any subdivision thereof furnishes public aid to a spouse or dependent child for support and maintenance and the spouse, person with legal custody or nonlegally responsible relative fails or refuses to institute an appropriate court action under this chapter to provide for the same, the person in charge of county welfare activities, the county child support agency under s. 59.53 (5) or the department is a real party in interest under s. 767.075 and shall initiate an action under this section, for the purpose of obtaining support and maintenance. Any attorney employed by the state or any subdivision thereof may initiate an action under this section. The title of the action shall be "In re the support or maintenance of A.B. (Child)".

History: 1971 c. 220; 1971 c. 307 s. 116; 1973 c. 237; 1975 c. 82; 1977 c. 105, 271; 1979 c. 32 ss. 50, 92 (4); Stats. 1979 s. 767.08; 1981 c. 317; 1983 a. 27; 1985 a. 29, 176; 1987 a. 413; 1989 a. 212; 1993 a. 481; 1995 a. 27 s. 9126 (19); 1995 a. 201, 404; 1997 a. 27, 35; 1999 a. 162; 2001 a. 16.

Four factors required to find a party estopped from seeking a revision of an order are enumerated. Nichols v. Nichols, 162 Wis. 2d 96, 469 N.W.2d 619 (1991).

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

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

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

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

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

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

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

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

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

History: 1977 c. 105, 271, 447, 449; 1979 c. 32 s. 50; 1987 a. 355; 2001 a. 61.

767.082 Suspension of proceedings to effect reconciliation. During the pendency of any action for divorce or legal separation, the court may, upon written stipulation of both parties

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

History: 1971 c. 220; 1977 c. 105; 1979 c. 32 s. 50; Stats. 1979 s. 767.082.

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

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

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

History: 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.083; 1987 a. 355; 2001 a. 61.

767.085 Petition and response. (1) PETITION, CONTENTS. Except as otherwise provided, 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, birthdate and social security number of each minor child of the parties and each other child born to the wife during the marriage, and whether the wife is pregnant.

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

(cm) If the relief requested is a legal separation and the parties have filed a petition under s. 767.12 (3), that both parties agree that the marital relationship is broken.

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

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

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

(h) That during the pendency of the action, the parties are prohibited from, and may be held in contempt of court for, harassing, intimidating, physically abusing or imposing any restraint on the personal liberty of the other party or a minor child of either party.

(i) If the action is one under s. 767.02 (1) (a), (b), (c), (d), (h) or (i), that during the pendency of the action, without the consent of the other party or an order of the court or a circuit court commissioner, the parties are prohibited from, and may be held in contempt of court for, encumbering, concealing, damaging, destroying, transferring or otherwise disposing of property owned by either or both of the parties, except in the usual course of business, in order to secure necessities or in order to pay reasonable costs and expenses of the action, including attorney fees.

(j) Unless the action is one under s. 767.02 (1) (g) or (h), that during the pendency of the action, the parties are prohibited from, and may be held in contempt of court for, doing any of the following without the consent of the other party or an order of the court or a circuit court commissioner:

1. Establishing a residence with a minor child of the parties outside the state or more than 150 miles from the residence of the other party within the state.

2. Removing a minor child of the parties from the state for more than 90 consecutive days.

3. Concealing a minor child of the parties from the other party.

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

(b) The clerk of court shall provide without charge, to each person filing a petition requesting child support, a document setting forth the percentage standard established by the department under s. 49.22 (9) and listing the factors which a court may consider under s. 767.25 (1m).

(2m) SUMMONS, CONTENTS. (a) Except as provided in par. (b), if only one party initiates the action and the parties have minor children, the summons served on the other party:

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

2. Shall be accompanied by a document, provided without charge by the clerk of court, setting forth the percentage standard established by the department under s. 49.22 (9) and listing the factors which a court may consider under s. 767.25 (1m).

(b) If service is by publication, notification regarding s. 948.31 may consist of references to the statute numbers and titles, and information relating to the percentage standard and the factors need not be provided.

(3) SERVICE. If only one party initiates the action, the other shall be served under ch. 801 and may serve a response or counterclaim within 20 days after the date of service, except that questions of jurisdiction may be raised at any time prior to judgment. Service shall be made upon the petitioner and upon the circuit 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; Stats. 1979 s. 767.085; 1985 a. 29; 1987 a. 332 s. 64; 1987 a. 355, 403; 1989 a. 31, 56, 132; 1993 a. 78, 481; 1995 a. 27 s. 9126 (19); 1995 a. 201, 404; 1997 a. 191; 2001 a. 61.

Prenuptial and postnuptial agreements. Loeb, WBB March 1981.

767.087 Prohibited acts during pendency of action. (1) In an action affecting the family, the petitioner upon filing the petition, the joint petitioners upon filing the joint petition and the respondent upon service of the petition are prohibited from doing any of the following:

(a) Harassing, intimidating, physically abusing or imposing any restraint on the personal liberty of the other party or a minor child of either of the parties.

(b) If the action is one under s. 767.02 (1) (a), (b), (c), (d), (h) or (i), encumbering, concealing, damaging, destroying, transferring or otherwise disposing of property owned by either or both of the parties, without the consent of the other party or an order of the court or a circuit court commissioner, except in the usual course of business, in order to secure necessities or in order to pay reasonable costs and expenses of the action, including attorney fees.

(c) Unless the action is one under s. 767.02 (1) (g) or (h), without the consent of the other party or an order of the court or a circuit court commissioner, establishing a residence with a minor child of the parties outside the state or more than 150 miles from the residence of the other party within the state, removing a minor child of the parties from the state for more than 90 consecutive days or concealing a minor child of the parties from the other party.

(2) The prohibitions under sub. (1) shall apply until the action is dismissed, until a final judgment in the action is entered or until the court or a circuit court commissioner orders otherwise.

(3) (a) Except as provided in par. (b), a party who violates any provision of sub. (1) may be proceeded against under ch. 785 for contempt of court.

(b) An act in violation of sub. (1) (c) is not a contempt of court if the court finds that the action was taken to protect a party or a minor child of the parties from physical abuse by the other party and that there was no reasonable opportunity under the circumstances for the party to obtain an order under sub. (2) authorizing the action.

History: 1993 a. 78; 2001 a. 61.

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

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

History: 1977 c. 105; 1979 c. 32 s. 50; Stats. 1979 s. 767.09.

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

767.10 Stipulation and property division. (1) 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 property, for maintenance payments, for the support of children, for periodic family support payments under s. 767.261 or for legal custody and physical placement, in case a divorce or legal separation is granted or a marriage annulled.

(2) (a) A court may not approve a stipulation for child support or family support unless the stipulation provides for payment of child support, determined in a manner consistent with s. 767.25 or 767.51.

(am) A court may not approve a stipulation for expressing child support or family support as a percentage of the payer's income unless all of the following apply:

1. The state is not a real party in interest in the action under any of the circumstances specified in s. 767.075 (1).

2. The payer is not subject to any other order, in any other action, for the payment of child or family support or maintenance.

3. All payment obligations included in the order, other than the annual receiving and disbursing fee under s. 767.29 (1) (d), are expressed as a percentage of the payer's income.

(b) A court may not approve a stipulation for a division of property that assigns substantially all of the property to one of the parties in the action if the other party in the action is in the process of applying for medical assistance under subch. IV of ch. 49 or if the court determines that it can be reasonably anticipated that the other party in the action will apply for medical assistance under subch. IV of ch. 49 within 30 months of the stipulation.

History: 1971 c. 220; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); Stats. 1979 s. 767.10; 1985 a. 29; 1987 a. 355; 1993 a. 16; 1993 a. 490 s. 276; 1995 a. 27; 2001 a. 16.

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 of whether the agreement adequately provides for the parties. Ray v. Ray, 57 Wis. 2d 77, 203 N.W.2d 724 (1973).

There are 2 types of postnuptial agreements: 1) family settlement agreements that contemplate the continuation of the marriage, and 2) separation agreements that are made after separation in contemplation of a separation. The former are presumed binding on the parties under s. 767.255 (3) (L). The latter are governed by s. 767.10 and constitute a recommendation jointly made by the parties to the court regarding what the judgment provide. Evenson v. Evenson, 228 Wis. 2d 676, 598 N.W.2d 232 (Ct. App. 1999). See also VanBoxtel v. VanBoxtel, 2001 WI 40, 242 Wis. 2d 474, 625 N.W.2d 284.

An agreement made in contemplation of divorce, entered into after the parties agreed to the divorce, was subject to s. 767.10, not 767.255. When a party withdrew his consent before court approval, the agreement was unenforceable. Ayres v. Ayres, 230 Wis. 2d 431, 602 N.W.2d 132 (Ct. App. 1999).

A trial court may refuse to incorporate a stipulation in a divorce judgment when a party repudiates his or her consent. A party is free to withdraw form a stipulation until it is incorporated in a judgment, and repudiation may render the stipulation nonexistent. VanBoxtel v. VanBoxtel, 2001 WI 40, 242 Wis. 2d 474, 625 N.W.2d 284.

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) MEDIATION REFERRALS. (a) In any action affecting the family, including a revision of judgment or order under s. 767.32 or 767.325, in which it appears that legal custody or physical placement is contested, the court or circuit court commissioner shall refer the parties to the director of family court counseling services for possible mediation of those contested issues. The court or circuit court commissioner shall inform the parties that the confidentiality of communications in mediation is waived if the parties stipulate under sub. (14) (c) that the person who provided mediation to the parties may also conduct the legal custody or physical placement study under sub. (14).

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

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

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

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

(8) INITIAL SESSION OF MEDIATION REQUIRED. (a) Except as provided in par. (b), in any action affecting the family, including an action for revision of judgment or order under s. 767.32 or 767.325, in which it appears that legal custody or physical placement is contested, the parties shall attend at least one session with a mediator assigned under sub. (6) or contracted with under sub. (7) and, if the parties and the mediator determine that continued mediation is appropriate, no court may hold a trial of or a final hearing on legal custody or physical placement until after mediation is completed or terminated.

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

1. That a party engaged in abuse, as defined in s. 813.122 (1) (a), of the child, as defined in s. 48.02 (2).

2. Interspousal battery as described under s. 940.19 or 940.20 (1m) or domestic abuse as defined in s. 813.12 (1) (am).

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

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

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

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

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

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

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

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

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

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

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

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

1. There is evidence that a party engaged in abuse, as defined in s. 813.122 (1) (a), of the child, as defined in s. 48.02 (2).

2. There is evidence of interspousal battery as described under s. 940.19 or 940.20 (1m) or domestic abuse as defined in s. 813.12 (1) (am).

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

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

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

(b) If after mediation under this section the parties do not reach agreement on legal custody or periods of physical placement, the parties or the mediator shall so notify the court. Except as provided in s. 767.045 (1) (am), the court shall promptly appoint a guardian ad litem under s. 767.045. Regardless of whether the court appoints a guardian ad litem, the court shall, if appropriate, refer the matter for a legal custody or physical placement study under sub. (14). If the parties come to agreement on legal custody or physical placement after the matter has been referred for a study, the study shall be terminated. The parties may return to mediation at any time before any trial of or final hearing on legal custody or periods of physical placement. If the parties return to mediation, the county shall collect any applicable fee under s. 814.615.

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

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

1. The conditions of the child's home.

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

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

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

(c) No person who provided mediation to the parties under this section may investigate the parties under this subsection unless each party personally so consents by written stipulation after mediation has ended and after receiving notice from the person who provided mediation that consent waives the inadmissibility of communications in mediation under s. 904.085.

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

History: 1987 a. 355; 1989 a. 56; 1991 a. 269; Sup. Ct. Order No. 93−03, 179 Wis. 2d xv; 1995 a. 275, 343; 1999 a. 9; 2001 a. 61, 109.

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

Judicial Council Note, 1993. Subsections (5) (a) and (14) (c) are amended because the rule of inadmissibility under s. 904.085 is not a privilege; it is waivable only if the parties stipulate that the mediator may conduct the custody investigation.

767.115 Educational programs and classes in actions affecting the family. (1) (a) At any time during the pendency of an action affecting the family in which a minor child is involved and in which the court or circuit court commissioner determines that it is appropriate and in the best interest of the child, the court or circuit court commissioner, on its own motion, may order the parties to attend a program specified by the court or circuit court commissioner concerning the effects on a child of a dissolution of the marriage.

(b) At any time during the pendency of an action to determine the paternity of a child, or an action affecting the family for which the underlying action was an action to determine the paternity of a child, if the court or circuit court commissioner determines that it is appropriate and in the best interest of the child, the court or circuit court commissioner, on its own motion, may order either or both of the parties to attend a program specified by the court or circuit court commissioner providing training in parenting or coparenting skills, or both.

(1m) A program under sub. (1) shall be educational rather than therapeutic in nature and may not exceed a total of 4 hours in length. The parties shall be responsible for the cost, if any, of attendance at the program. The court or circuit court commissioner may specifically assign responsibility for payment of any cost. No facts or information obtained in the course of the program, and no report resulting from the program, is admissible in any action or proceeding.

(2) Notwithstanding s. 767.07, the court or circuit court commissioner may require the parties to attend a program under sub. (1) as a condition to the granting of a final judgment or order in the action affecting the family that is pending before the court or circuit court commissioner.

(3) A party who fails to attend a program ordered under sub. (1) or pay costs specifically ordered under sub. (1m) may be proceeded against under ch. 785 for contempt of court.

(4) (a) At any time during the pendency of a divorce or paternity action, the court or circuit court commissioner may order the parties to attend a class that is approved by the court or circuit court commissioner and that addresses such issues as child development, family dynamics, how parental separation affects a child's development and what parents can do to make raising a child in a separated situation less stressful for the child.

(b) The court or circuit court commissioner may not require the parties to attend a class under this subsection as a condition to the granting of the final judgment or order in the divorce or paternity action, however, the court or circuit court commissioner may refuse to hear a custody or physical placement motion of a party who refuses to attend a class ordered under this subsection.

(c) 1. Except as provided in subd. 2., the parties shall be responsible for any cost of attending the class.

2. If the court or circuit court commissioner finds that a party is indigent, any costs that would be the responsibility of that party shall be paid by the county.

History: 1993 a. 225; 1997 a. 45; 1999 a. 9; 2001 a. 61.

767.12 Trial procedure. (1) PROCEEDINGS. In actions affecting the family, all hearings and trials to determine whether judgment shall be granted, except hearings under s. 757.69 (1) (p) 3., shall be before the court. The testimony shall be taken by the reporter and shall be written out and filed with the record if so ordered by the court. Custody proceedings shall receive priority in being set for hearing.

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

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

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

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

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

History: Sup. Ct. Order, 67 Wis. 2d 585, 756 (1975); 1977 c. 105; 1979 c. 32 s. 50; 1979 c. 352 s. 39; Stats. 1979 s. 767.12; 1983 a. 436; 1989 a. 132; 2001 a. 61.

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 a circuit court commissioner to that effect shall accordingly be procured by the moving party, and shall be served upon the nonmoving party before the trial. In the case of a joint petition the order is not required.

History: 1977 c. 105; 1979 c. 32 s. 50; 1979 c. 196; 1979 c. 352 s. 39; Stats. 1979 s. 767.125; 2001 a. 61.

767.14 Service on office of family court commissioner and appearance by circuit 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 circuit court commissioner supervising the office of 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. A circuit court commissioner assisting in matters affecting the family may appear in an action under this chapter when appropriate; and shall appear when requested by the court.

History: 1977 c. 105; 1979 c. 32 s. 50; 1979 c. 352 s. 39; Stats. 1979 s. 767.14; 2001 a. 61.

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 circuit court commissioner supervising the office of family court commissioner.

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

History: Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1979 c. 32 s. 50; 1979 c. 196; Stats. 1979 s. 767.145; 1983 a. 447; 2001 a. 61.

767.15 Service on child support program. (1) In any action affecting the family in which either party is a recipient of benefits under ss. 49.141 to 49.161 or aid under s. 46.261, 49.19 or 49.45, each party shall, either within 20 days after making service on the opposite party of any motion or pleading requesting the court or circuit court commissioner to order, or to modify a previous order, relating to child support, maintenance or family support, or before filing the motion or pleading in court, serve a copy of the motion or pleading upon the county child support agency under s. 59.53 (5) of the county in which the action is begun.

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

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

History: 1977 c. 418; 1979 c. 32 s. 50; 1979 c. 196; 1979 c. 352 s. 39; Stats. 1979 s. 767.15; 1983 a. 27; 1987 a. 413; 1995 a. 27 s. 9126 (19); 1995 a. 201, 289, 404; 1997 a. 27, 35; 2001 a. 61.

767.16 Circuit court commissioner or law partner; when interested; procedure. Neither a circuit court commissioner assisting in matters affecting the family nor a partner may appear in any action affecting the family in any court held in the county in which the circuit court commissioner is acting, except when authorized to appear by s. 767.14. In case the circuit court 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 the circuit court commissioner. The appointed attorney shall take and file the oath and receive the compensation provided by law.

History: 1979 c. 32 ss. 50, 92 (4); 1979 c. 176; 1979 c. 352 s. 39; Stats. 1979 s. 767.16; 2001 a. 61.

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

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

History: 1977 c. 105, 273; 1979 c. 32 s. 50; 1979 c. 352 s. 39; Stats. s. 767.19.

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

History: 1975 c. 94; 1979 c. 32 s. 50; Stats. 1979 s. 767.20.

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

767.21 Full faith and credit; comity. (1) ACTIONS IN COURTS OF OTHER STATES. (a) Full faith and credit shall be given in all courts of this state to a judgment in any action affecting the family, except an action relating to child custody, by a court of competent jurisdiction in another state, territory or possession of the United States, when both spouses personally appear or when the respondent has been personally served. Full faith and credit shall also be given in all courts of this state to the amount of arrearages owed for nonpayment or late payment of a child support, family support or maintenance payment under an order issued by a court of competent jurisdiction in another state, territory or possession of the United States. A court in this state may not adjust the amount of arrearages owed except as provided in s. 767.32 (1m).

(b) Full faith and credit shall be given in all courts of this state to a determination of paternity made by any other state, whether established through voluntary acknowledgment or an administrative or judicial process.

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

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

History: 1977 c. 105; 1979 c. 32 s. 50; 1979 c. 352 s. 39; Stats. 1979 s. 767.21; 1989 a. 212; 1993 a. 481.

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

A Wisconsin court has equitable jurisdiction to decide issues of maintenance and property division when an out−of−state divorce judgment fails to address those issues. Haeuser v. Haeuser, 200 Wis. 2d 750, 548 N.W.2d 750 (Ct. App. 1996).

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 the person's departure therefrom, or (b) at all times after the person's departure from this state, and until the person's return maintained a place of residence within this state, shall be prima facie evidence that the person was domiciled in this state when the divorce proceeding was commenced.

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

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

History: 1977 c. 105; 1979 c. 32 s. 50; Stats. 1979 s. 767.22; 1993 a. 486.

Comity cannot be accorded a Mexican decree if no domicile existed in that foreign jurisdiction. Estate of Steffke, 65 Wis. 2d 199, 222 N.W.2d 628 (1974).

767.23 Temporary orders for support of spouse and children; suit money; attorney fees. (1) Except as pro-

vided in ch. 822, in every action affecting the family, the court or circuit court commissioner may, during the pendency thereof, make just and reasonable temporary orders concerning the following matters:

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

(am) Upon the request of a party, granting periods of physical placement to a party in a manner consistent with s. 767.24. The court or circuit court commissioner shall make a determination under this paragraph within 30 days after the request for a temporary order regarding periods of physical placement is filed.

(b) Notwithstanding ss. 767.085 (1) (j) and 767.087 (1) (c), prohibiting the removal of minor children from the jurisdiction of the court.

(bm) Allowing a party to move with or remove a child after a notice of objection has been filed under s. 767.327 (2) (a).

(c) Subject to s. 767.477, requiring either party or both parties to make payments for the support of minor children, which payment amounts must be expressed as a fixed sum unless the parties have stipulated to expressing the amount as a percentage of the payer's income and the requirements under s. 767.10 (2) (am) 1. to 3. are satisfied.

(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 or an authorization for transfer under s. 767.267.

(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) Notwithstanding ss. 767.085 (1) (i) and 767.087 (1) (b), prohibiting either party from disposing of assets within the jurisdiction of the court.

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

(k) Subject to s. 767.477, requiring either party or both parties to maintain minor children as beneficiaries on a health insurance policy or plan.

(L) Requiring either party or both parties to execute an assignment of income for payment of health care expenses of minor children.

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

(1m) If a circuit court commissioner believes that a temporary restraining order or injunction under s. 813.12 is appropriate in an action, the circuit 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 circuit 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 circuit court commissioner shall consider those factors that the court is required by this chapter to consider before entering a final judgment on the same subject matter. In making a determination under sub. (1) (a) or (am), the court or circuit court commissioner shall consider the factors under s. 767.24 (5). If the court or circuit court commissioner makes a temporary child support order that deviates from the amount of support that would be required by using the percentage standard established by the department under s. 49.22 (9), the court or circuit court commissioner shall comply with the requirements of s. 767.25 (1n). A temporary order under sub. (1) may be based upon the written stipulation of the parties, subject to the approval of the court or circuit court commissioner. Temporary orders made by a circuit court commissioner may be reviewed by the court.

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

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

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

History: 1971 c. 149; 1971 c. 211 s. 126; 1971 c. 220, 307; 1975 c. 283; Sup. Ct. Order, 73 Wis. 2d xxxi (1976); 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 111, 196; 1979 c. 352 s. 39; Stats. 1979 s. 767.23; 1983 a. 27; 1983 a. 204 s. 22; 1983 a. 447; 1985 a. 29 s. 3202 (9); 1987 a. 355, 364, 413; 1989 a. 212; 1991 a. 39; 1993 a. 78, 481, 490; 1995 a. 27 ss. 7100h, 9126 (19); 1995 a. 70, 404; 1999 a. 9; 2001 a. 16, 61.

Cross Reference: See also ch. DWD 40, Wis. adm. code.

Sub. (3) (a) is strictly construed to apply to those situations expressly set forth in the statute, such as orders for dismissal, substitution of attorneys and vacation of judgments, in actions affecting families. In other cases, an action to recover legal fees may be instituted. Kotecki & Radtke, S.C. v. Johnson, 192 Wis. 2d 429, 531 N.W.2d 606 (Ct. App. 1995).

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

767.24 Custody and physical placement. (1) GENERAL PROVISIONS. In rendering a judgment of annulment, divorce, legal separation or paternity, or in rendering a judgment in an action under s. 767.02 (1) (e) or 767.62 (3), the court shall make such provisions as it deems just and reasonable concerning the legal custody and physical placement of any minor child of the parties, as provided in this section.

(1m) PARENTING PLAN. In an action for annulment, divorce or legal separation, an action to determine paternity or an action under s. 767.02 (1) (e) or 767.62 (3) in which legal custody or physical placement is contested, a party seeking sole or joint legal custody or periods of physical placement shall file a parenting plan with the court before any pretrial conference. Except for cause shown, a party required to file a parenting plan under this subsection who does not timely file a parenting plan waives the right to object to the other party's parenting plan. A parenting plan shall provide information about the following questions:

(a) What legal custody or physical placement the parent is seeking.

(b) Where the parent lives currently and where the parent intends to live during the next 2 years. If there is evidence that the other parent engaged in interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), with respect to the parent providing the parenting plan, the parent providing the parenting plan is not required to disclose the specific address but only a general description of where he or she currently lives and intends to live during the next 2 years.

(c) Where the parent works and the hours of employment. If there is evidence that the other parent engaged in interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), with respect to the parent providing the parenting plan, the parent providing the parenting

plan is not required to disclose the specific address but only a general description of where he or she works.

(d) Who will provide any necessary child care when the parent cannot and who will pay for the child care.

(e) Where the child will go to school.

(f) What doctor or health care facility will provide medical care for the child.

(g) How the child's medical expenses will be paid.

(h) What the child's religious commitment will be, if any.

(i) Who will make decisions about the child's education, medical care, choice of child care providers and extracurricular activities.

(j) How the holidays will be divided.

(k) What the child's summer schedule will be.

(L) Whether and how the child will be able to contact the other parent when the child has physical placement with the parent providing the parenting plan.

(m) How the parent proposes to resolve disagreements related to matters over which the court orders joint decision making.

(n) What child support, family support, maintenance or other income transfer there will be.

(o) If there is evidence that either party engaged in interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), with respect to the other party, how the child will be transferred between the parties for the exercise of physical placement to ensure the safety of the child and the parties.

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

(am) The court shall presume that joint legal custody is in the best interest of the child.

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

1. Both parties agree to sole legal custody with the same party.

2. The parties do not agree to sole legal custody with the same party, but at least one party requests sole legal custody and the court specifically finds any of the following:

a. One party is not capable of performing parental duties and responsibilities or does not wish to have an active role in raising the child.

b. One or more conditions exist at that time that would substantially interfere with the exercise of joint legal custody.

c. The parties will not be able to cooperate in the future decision making required under an award of joint legal custody. In making this finding the court shall consider, along with any other pertinent items, any reasons offered by a party objecting to joint legal custody. Evidence that either party engaged in abuse, as defined in s. 813.122 (1) (a), of the child, as defined in s. 48.02 (2), or evidence of interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), creates a rebuttable presumption that the parties will not be able to cooperate in the future decision making required.

(c) The court may not give sole legal custody to a parent who refuses to cooperate with the other parent if the court finds that the refusal to cooperate is unreasonable.

(3) CUSTODY TO AGENCY OR RELATIVE. (a) If the interest of any child demands it, and if the court finds that neither parent is able to care for the child adequately or that neither parent is fit and proper to have the care and custody of the child, the court may declare the child to be in need of protection or services and transfer legal custody of the child to a relative of the child, as defined in s. 48.02 (15), to a county department, as defined under s. 48.02 (2g), or to a licensed child welfare agency. If the court transfers legal custody of a child under this subsection, in its order the court shall notify the parents of any applicable grounds for termination of parental rights under s. 48.415.

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

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

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

(e) The charges for care furnished to a child whose custody is transferred under this subsection shall be pursuant to the procedure under s. 48.36 (1) or 938.36 (1) except as provided in s. 767.29 (3).

(4) ALLOCATION OF PHYSICAL PLACEMENT. (a) 1. Except as provided under par. (b), if the court orders sole or joint legal custody under sub. (2), the court shall allocate periods of physical placement between the parties in accordance with this subsection.

2. In determining the allocation of periods of physical placement, the court shall consider each case on the basis of the factors in sub. (5). The court shall set a placement schedule that allows the child to have regularly occurring, meaningful periods of physical placement with each parent and that maximizes the amount of time the child may spend with each parent, taking into account geographic separation and accommodations for different households.

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

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

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

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

(5) FACTORS IN CUSTODY AND PHYSICAL PLACEMENT DETERMINATIONS. In determining legal custody and periods of physical placement, the court shall consider all facts relevant to the best interest of the child. The court may not prefer one parent or potential custodian over the other on the basis of the sex or race of the parent or potential custodian. The court shall consider the following factors in making its determination:

(a) The wishes of the child's parent or parents, as shown by any stipulation between the parties, any proposed parenting plan or any legal custody or physical placement proposal submitted to the court at trial.

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

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

(cm) The amount and quality of time that each parent has spent with the child in the past, any necessary changes to the parents' custodial roles and any reasonable life−style changes that a parent proposes to make to be able to spend time with the child in the future.

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

(dm) The age of the child and the child's developmental and educational needs at different ages.

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

(em) The need for regularly occurring and meaningful periods of physical placement to provide predictability and stability for the child.

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

(fm) The cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party.

(g) Whether each party can support the other party's relationship with the child, including encouraging and facilitating frequent and continuing contact with the child, or whether one party is likely to unreasonably interfere with the child's continuing relationship with the other party.

(h) Whether there is evidence that a party engaged in abuse, as defined in s. 813.122 (1) (a), of the child, as defined in s. 48.02 (2).

(i) Whether there is evidence of interspousal battery as described under s. 940.19 or 940.20 (1m) or domestic abuse as defined in s. 813.12 (1) (am).

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

(jm) The reports of appropriate professionals if admitted into evidence.

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

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

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

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

(c) In making an order of joint legal custody and periods of physical placement, the court may specify one parent as the primary caretaker of the child and one home as the primary home of the child, for the purpose of determining eligibility for aid under s. 49.19 or benefits under ss. 49.141 to 49.161 or for any other purpose the court considers appropriate.

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

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

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

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

(7m) MEDICAL AND MEDICAL HISTORY INFORMATION. (a) In making an order of legal custody, the court shall order a parent who is not granted legal custody of a child to provide to the court medical and medical history information that is known to the parent. The court shall send the information to the physician or other health care provider with primary responsibility for the treatment and care of the child, as designated by the parent who is granted legal custody of the child, and advise the physician or other health care provider of the identity of the child to whom the information relates. The information provided shall include all of the following:

1. The known medical history of the parent providing the information, including specific information about stillbirths or congenital anomalies in the parent's family, and the medical histories, if known, of the parents and siblings of the parent and any sibling of the child who is a child of the parent, except that medical history information need not be provided for a sibling of the child if the parent or other person who is granted legal custody of the child also has legal custody, including joint legal custody, of that sibling.

2. A report of any medical examination that the parent providing the information had within one year before the date of the order.

(am) The physician or other health care provider designated under par. (a) shall keep the information separate from other records kept by the physician or other health care provider. The information shall be assigned an identification number and maintained under the name of the parent who provided the information to the court. The patient health care records of the child that are kept by the physician or other health care provider shall include a reference to that name and identification number. If the child's patient health care records are transferred to another physician or other health care provider or another health care facility, the records containing the information provided under par. (a) shall be transferred along with the child's patient health care records. Notwithstanding s. 146.819, the information provided under par. (a) need not be maintained by a physician or other health care provider after the child reaches age 18.

(b) Notwithstanding ss. 146.81 to 146.835, the information shall be kept confidential, except only as follows:

1. The physician or other health care provider with custody of the information, or any other record custodian at the request of the physician or other health care provider, shall have access to the information if, in the professional judgment of the physician or other health care provider, the information may be relevant to the child's medical condition.

2. The physician or other health care provider may release only that portion of the information, and only to a person, that the physician or other health care provider determines is relevant to the child's medical condition.

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

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

History: 1971 c. 149, 157, 211; 1975 c. 39, 122, 200, 283; 1977 c. 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.24; 1981 c. 391; 1985 a. 70, 176; 1987 a. 332 s. 64; 1987 a. 355, 364, 383, 403; 1989 a. 56 s. 259; 1989 a. 359; 1991 a. 32; 1993 a. 213, 446, 481; 1995 a. 77, 100, 275, 289, 343, 375; 1997 a. 35, 191; 1999 a. 9; 2001 a. 109.

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

It was reversible error for the court to make a custody award when the court should have recognized the rule of comity and declined to exercise its jurisdiction. Sheridan v. Sheridan, 65 Wis. 2d 504, 223 N.W.2d 557 (1974).

As a general matter, the child's best interests will be served by living with a parent. If circumstances compel a contrary conclusion, the interests of the child, not a supposed right of a parent to custody, controls. In a dispute between a father and a deceased mother's parents, the court erred in concluding that it must award custody to a natural parent unless he was unfit or unable to care for the children. LaChapell v. Mawhinney, 66 Wis. 2d 679, 225 N.W.2d 501 (1975).

The record of a temporary hearing may be relevant at a divorce hearing, but is not controlling, and neither party has the burden of proving a change in circumstances to warrant a change from the temporary order. Kuesel v. Kuesel, 74 Wis. 2d 636, 247 N.W.2d 72 (1976).

The trial court may not order a custodial parent to live in designated part of the state or else lose custody. Groh v. Groh, 110 Wis. 2d 117, 327 N.W.2d 655 (1983).

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

A contract between a parent and a non−parent to transfer permanent custody is unenforceable. Interest of Z.J.H. 162 Wis. 2d 1002, 471 N.W.2d 202 (1991). But see Custody of H.S.H−K, 193 Wis. 2d 649, 533 N.W.2d 419 (1995) regarding unmarried persons contracting for visitation in a co−parenting agreement.

Revision of s. 767.24 to allow joint custody in cases in which both parties did not agree was not a "substantial change in circumstances" justifying a change to joint custody. Licary v. Licary, 168 Wis. 2d 686, 484 N.W.2d 371 (Ct. App. 1992).

Section 767.001 (2m) confers the right to choose a child's religion on the custodial parent. Reasonable restrictions on visitation to prevent subversion of this right do not violate the constitution. Lange v. Lange, 175 Wis. 2d 373, N.W.2d (Ct. App. 1993).

There is no authority to order a change of custody at an unknown time in the future upon the occurrence of some stated contingency. Koeller v. Koeller, 195 Wis. 2d 660, 536 N.W.2d 216 (Ct. App. 1995).

A custodial parent's right to make major decisions for the children does not give that parent the right to decide whether the actions of the noncustodial parent are consistent with those decisions. Wood v. DeHahn, 214 Wis. 2d 221, 571 N.W.2d 186 (Ct. App. 1997).

Neither sub. (4) (b) nor s. 767.325 (4) permits a prospective order prohibiting a parent from requesting a change of physical placement in the future. Jocius v. Jocius, 218 Wis. 2d 103, 580 N.W.2d 708 (Ct. App. 1998).

Section 813.122 implicitly envisions a change of placement and custody if the trial court issues a child abuse injunction under that section against a parent who has custody or placement of a child under a divorce order or judgment. Scott M.H. v. Kathleen M.H. 218 Wis. 2d 605, 581 N.W.2d 564 (Ct. App. 1998).

Sub. (5) (b), while requiring consideration of the child's wishes, leaves to the court's discretion whether to allow the child to testify. That the child is a competent witness under s. 906.01 does not affect the court's discretion. Hughes v. Hughes, 223 Wis. 2d 111, 588 N.W.2d 346 (Ct. App. 1998).

Constitutional protections of a parent's right to his or her child do not prevent the application of the best interests of the child standard as the central focus of determining where the child shall live. "Best interests" and "safety" are not synonymous. Richard D. v. Rebecca G. 228 Wis. 2d 658, 599 N.W.2d 90 (Ct. App. 1999).

Sub. (4) requires allocation of placement between the parents. Before a court may deny a parent all placement or contact with a child, it must find that the contact would endanger the child's physical, mental or emotional health. A parent who seeks to deny all contact by the other parent has the burden of proving the danger to the child. Wolfe v. Wolfe, 2000 WI App 93, 234 Wis. 2d 449, 610 N.W.2d 222.

There is no presumption of equal placement. While sub. (4) (a) 2. requires the court to provide for placement that allows the child to have regularly occurring, meaningful periods of physical placement with each parent, that is not tantamount to a presumption of equal placement. Keller v. Keller, 2002 WI App 161, ___ Wis. 2d ___, 647 N.W.2d 426.

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).

Recent Changes in Wisconsin's Law Regarding Child Custody and Placement. Rue. 2001 WLR 1177.

Debating the Standard in Child Custody Placement Decisions. Molvig. Wis. Law. July 1998.

Wisconsin's Custody, Placement and Paternity Reform Legislation. Walther. Wis.Law. April 2000.

767.242 Enforcement of physical placement orders.

(1) DEFINITIONS. In this section:

(a) "Petitioner" means the parent filing a petition under this section, regardless of whether that parent was the petitioner in the action in which periods of physical placement were awarded under s. 767.24.

(b) "Respondent" means the parent upon whom a petition under this section is served, regardless of whether that parent was the respondent in the action in which periods of physical placement were awarded under s. 767.24.

(2) WHO MAY FILE. A parent who has been awarded periods of physical placement under s. 767.24 may file a petition under sub. (3) if any of the following applies:

(a) The parent has had one or more periods of physical placement denied by the other parent.

(b) The parent has had one or more periods of physical placement substantially interfered with by the other parent.

(c) The parent has incurred a financial loss or expenses as a result of the other parent's intentional failure to exercise one or more periods of physical placement under an order allocating specific times for the exercise of periods of physical placement.

(3) PETITION. (a) The petition shall allege facts sufficient to show the following:

1. The name of the petitioner and that the petitioner has been awarded periods of physical placement.

2. The name of the respondent.

3. That the criteria in sub. (2) apply.

(b) The petition shall request the imposition of a remedy or any combination of remedies under sub. (5) (b) and (c). This paragraph does not prohibit a judge or circuit court commissioner from imposing a remedy under sub. (5) (b) or (c) if the remedy was not requested in the petition.

(c) A judge or circuit court commissioner shall accept any legible petition for an order under this section.

(d) The petition shall be filed under the principal action under which the periods of physical placement were awarded.

(e) A petition under this section is a motion for remedial sanction for purposes of s. 785.03 (1) (a).

(4) SERVICE ON RESPONDENT; RESPONSE. Upon the filing of a petition under sub. (3), the petitioner shall serve a copy of the petition upon the respondent by personal service in the same manner as a summons is served under s. 801.11. The respondent may respond to the petition either in writing before or at the hearing under sub. (5) (a) or orally at that hearing.

(5) HEARING; REMEDIES. (a) A judge or circuit court commissioner shall hold a hearing on the petition no later than 30 days after the petition has been served, unless the time is extended by mutual agreement of the parties or upon the motion of a guardian ad litem and the approval of the judge or circuit court commissioner. The judge or circuit court commissioner may, on his or her own motion or the motion of any party, order that a guardian ad litem be appointed for the child prior to the hearing.

(b) If, at the conclusion of the hearing, the judge or circuit court commissioner finds that the respondent has intentionally and unreasonably denied the petitioner one or more periods of physical placement or that the respondent has intentionally and unreasonably interfered with one or more of the petitioner's periods of physical placement, the court or circuit court commissioner:

1. Shall do all of the following:

a. Issue an order granting additional periods of physical placement to replace those denied or interfered with.

b. Award the petitioner a reasonable amount for the cost of maintaining an action under this section and for attorney fees.

2. May do one or more of the following:

a. If the underlying order or judgment relating to periods of physical placement does not provide for specific times for the exercise of periods of physical placement, issue an order specifying the times for the exercise of periods of physical placement.

b. Find the respondent in contempt of court under ch. 785.

c. Grant an injunction ordering the respondent to strictly comply with the judgment or order relating to the award of physical placement. In determining whether to issue an injunction, the judge or circuit court commissioner shall consider whether alternative remedies requested by the petitioner would be as effective in obtaining compliance with the order or judgment relating to physical placement.

(c) If, at the conclusion of the hearing, the judge or circuit court commissioner finds that the petitioner has incurred a financial loss or expenses as a result of the respondent's failure, intentionally and unreasonably and without adequate notice to the petitioner, to exercise one or more periods of physical placement under an order allocating specific times for the exercise of periods of physical

placement, the judge or circuit court commissioner may issue an order requiring the respondent to pay to the petitioner a sum of money sufficient to compensate the petitioner for the financial loss or expenses.

(d) Except as provided in par. (b) 1. a. and 2. a., the judge or circuit court commissioner may not modify an order of legal custody or physical placement in an action under this section.

(e) An injunction issued under par. (b) 2. c. is effective according to its terms, for the period of time that the petitioner requests, but not more than 2 years.

(6) ENFORCEMENT ASSISTANCE. (a) If an injunction is issued under sub. (5) (b) 2. c., upon request by the petitioner the judge or circuit court commissioner shall order the sheriff to assist the petitioner in executing or serving the injunction.

(b) Within 24 hours after a request by the petitioner, the clerk of the circuit court shall send a copy of an injunction issued under sub. (5) (b) 2. c. to the sheriff or to any other local law enforcement agency that is the central repository for orders and that has jurisdiction over the respondent's residence. If the respondent does not reside in this state, the clerk shall send a copy of the injunction to the sheriff of the county in which the circuit court is located.

(c) The sheriff or other appropriate local law enforcement agency under par. (b) shall make available to other law enforcement agencies, through a verification system, information on the existence and status of any injunction issued under sub. (5) (b) 2. c. The information need not be maintained after the injunction is no longer in effect.

(8) PENALTY. Whoever intentionally violates an injunction issued under sub. (5) (b) 2. c. is guilty of a Class I felony.

NOTE: Sub. (8) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(8) PENALTY. Whoever intentionally violates an injunction issued under sub. (5) (b) 2. c. may be fined not more than $10,000 or imprisoned for not more than 2 years or both.

History: 1999 a. 9; 2001 a. 61, 109.

Wisconsin's Custody, Placement and Paternity Reform Legislation. Walther. Wis.Law. April 2000.

767.245 Visitation rights of certain persons. (1) Except as provided in subs. (1m) and (2m), upon petition by a grandparent, greatgrandparent, stepparent or person who has maintained a relationship similar to a parent−child relationship with the child, the court may grant reasonable visitation rights to that person if the parents have notice of the hearing and if the court determines that visitation is in the best interest of the child.

(1m) (a) Except as provided in par. (b), the court may not grant visitation rights under sub. (1) to a person who has been convicted under s. 940.01 of the first−degree intentional homicide, or under s. 940.05 of the 2nd−degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated.

(b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child. The court shall consider the wishes of the child in making the determination.

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

(2m) Subsection (3), rather than sub. (1), applies to a grandparent requesting visitation rights under this section if sub. (3) (a) to (c) applies to the child.

(3) The court may grant reasonable visitation rights, with respect to a child, to a grandparent of the child if the child's parents have notice of the hearing and the court determines all of the following:

(a) The child is a nonmarital child whose parents have not subsequently married each other.

(b) Except as provided in sub. (4), the paternity of the child has been determined under the laws of this state or another jurisdiction if the grandparent filing the petition is a parent of the child's father.

(c) The child has not been adopted.

(d) The grandparent has maintained a relationship with the child or has attempted to maintain a relationship with the child but has been prevented from doing so by a parent who has legal custody of the child.

(e) The grandparent is not likely to act in a manner that is contrary to decisions that are made by a parent who has legal custody of the child and that are related to the child's physical, emotional, educational or spiritual welfare.

(f) The visitation is in the best interest of the child.

(3c) A grandparent requesting visitation under sub. (3) may file a petition to commence an independent action for visitation under this chapter or may file a petition for visitation in an underlying action affecting the family under this chapter that affects the child.

(3m) (a) A pretrial hearing shall be held before the court in an action under sub. (3). At the pretrial hearing the parties may present and cross−examine witnesses and present other evidence relevant to the determination of visitation rights. A record or minutes of the proceeding shall be kept.

(b) On the basis of the information produced at the pretrial hearing, the court shall evaluate the probability of granting visitation rights to a grandparent in a trial and shall so advise the parties. On the basis of the evaluation, the court may make an appropriate recommendation for settlement to the parties.

(c) If a party or the guardian ad litem refuses to accept a recommendation under this subsection, the action shall be set for trial.

(d) The informal hearing under this subsection may be terminated and the action set for trial if the court finds it unlikely that all parties will accept a recommendation under this subsection.

(4) If the paternity of the child has not yet been determined in an action under sub. (3) that is commenced by a person other than a parent of the child's mother but the person filing the petition under sub. (3) has, in conjunction with that petition, filed a petition or motion under s. 767.45 (1) (k), the court shall make a determination as to paternity before determining visitation rights under sub. (3).

(5) Any person who interferes with visitation rights granted under sub. (1) or (3) may be proceeded against for contempt of court under ch. 785, except that a court may impose only the remedial sanctions specified in s. 785.04 (1) (a) and (c) against that person.

(6) (a) If a person granted visitation rights with a child under this section is convicted under s. 940.01 of the first−degree intentional homicide, or under s. 940.05 of the 2nd−degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, the court shall modify the visitation order by denying visitation with the child upon petition, motion or order to show cause by a parent or guardian of the child, or upon the court's own motion, and upon notice to the person granted visitation rights.

(b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child. The court shall consider the wishes of the child in making that determination.

History: 1971 c. 220; 1977 c. 105 ss. 35, 39; 1979 c. 32 ss. 50, 92 (4); Stats. 1979 s. 767.245; 1983 a. 447, 450; 1987 a. 355; 1995 a. 68; 1999 a. 9.

Biological grandparents had no right to visitation following termination of their son's parental rights and adoption by the child's stepfather. Soergel v. Soergel, 154 Wis. 2d 564, 453 N.W.2d 624 (1990).

The visitation petition of a custodial parent's widow did not meet the criteria of sub. (1) when, prior to the custodial parent's death, the non−custodial parent had filed a motion to revise custody. Section 880.155 governs visitation in the event of a parent's death. Cox v. Williams, 177 Wis. 2d 433, 502 N.W.2d 128 (1993).

A paternity case in which the court has retained postjudgment authority to enforce the judgment constitutes an underlying action under which a petition for grandparent visitation may be brought. Paternity of Nastassja L.H.−J. 181 Wis. 2d 666, 512 N.W.2d 189 (Ct. App. 1993).

An existing underlying action affecting the family does not alone provide standing to petition under this section. The underlying action must threaten the integrity of a family unit. An action under this section does not apply to intact families. Because the father figure in a household was not the biological or adoptive father of one of the children did not mean the family was not intact. Marquardt v. Hegemann−Glascock, 190 Wis. 2d 447, 526 N.W.2d 834 (Ct. App. 1994).

This section does not apply outside the dissolution of a marriage, but it does not preempt the consideration of visitation in circumstances not subject to the statute. A circuit court may consider visitation by a non−parent outside a marriage dissolution situation in the best interests of the child if the non−parent petitioner demonstrates a parent−like relationship with the child and shows a significant triggering event such as substantial interference with that relationship. Custody of H.S.H.−K. 193 Wis. 2d 649, 533 N.W.2d 419 (1995).

Public policy does not prohibit a court, relying on its equitable powers, to grant visitation outside this section on the basis of a co−parenting agreement between a biological parent and another when visitation is in the child's best interest. Custody of H.S.H.−K. 193 Wis. 2d 649, 533 N.W.2d 419 (1995).

When applying sub. (3), circuit courts must apply the presumption that a fit parent's decision regarding grandparent visitation is in the best interest of the child, but the court must still make its own assessment of the best interest of the child. Paternity of Roger D.H. 2002 WI App 35, 250 Wis. 2d 747, 641 N.W.2d 440.

Grandparent Visitation Rights. Rothstein. Wis. Law. Nov. 1992.

The Effect of C.G.F. and Section 48.925 on Grandparental Visitation Petitions. Hughes. Wis. Law. Nov. 1992.

Third−party Visitation in Wisconsin. Herman & Cooper. Wis. Law. March 2001.

767.247 Prohibiting visitation or physical placement if a parent kills other parent. (1) Notwithstanding ss. 767.23 (1) (am), 767.24 (1), (4) and (5), 767.51 (3) and 767.62 (4) (a) and except as provided in sub. (2), in an action under this chapter that affects a minor child, a court or circuit court commissioner may not grant to the child's parent visitation or physical placement rights with the child if the parent has been convicted under s. 940.01 of the first−degree intentional homicide, or under s. 940.05 of the 2nd−degree intentional homicide, of the child's other parent, and the conviction has not been reversed, set aside or vacated.

(2) Subsection (1) does not apply if the court or circuit court commissioner determines by clear and convincing evidence that the visitation or periods of physical placement would be in the best interests of the child. The court or circuit court commissioner shall consider the wishes of the child in making the determination.

History: 1999 a. 9; 2001 a. 61.

767.25 Child support. (1) Whenever the court approves a stipulation for child support under s. 767.10, enters a judgment of annulment, divorce or legal separation, or enters an order or a judgment in a paternity action or in an action under s. 767.02 (1) (f) or (j), 767.08 or 767.62 (3), the court shall do all of the following:

(a) Order either or both parents to pay an amount reasonable or necessary to fulfill a duty to support a child. The support amount must be expressed as a fixed sum unless the parties have stipulated to expressing the amount as a percentage of the payer's income and the requirements under s. 767.10 (2) (am) 1. to 3. are satisfied.

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

(1g) In determining child support payments, the court may consider all relevant financial information or other information relevant to the parent's earning capacity, including information reported under s. 49.22 (2m) to the department or the county child support agency under s. 59.53 (5).

(1j) Except as provided in sub. (1m), the court shall determine child support payments by using the percentage standard established by the department under s. 49.22 (9).

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

(a) The financial resources of the child.

(b) The financial resources of both parents.

(bj) Maintenance received by either party.

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

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

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

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

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

(ej) The award of substantial periods of physical placement to both parents.

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

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

(g) The child's educational needs.

(h) The tax consequences to each party.

(hm) The best interests of the child.

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

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

(1n) If the court finds under sub. (1m) that use of the percentage standard is unfair to the child or the requesting party, the court shall state in writing or on the record the amount of support that would be required by using the percentage standard, the amount by which the court's order deviates from that amount, its reasons for finding that use of the percentage standard is unfair to the child or the party, its reasons for the amount of the modification and the basis for the modification.

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

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

(4) The court shall order either party or both to pay for the support of any child of the parties who is less than 18 years old, or any child of the parties who is less than 19 years old if the child is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent.

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

(b) In addition to ordering child support for a child under sub. (1), the court shall specifically assign responsibility for and direct the manner of payment of the child's health care expenses. In assigning responsibility for a child's health care expenses, the court shall consider whether a child is covered under a parent's health insurance policy or plan at the time the court approves a stipulation for child support under s. 767.10, enters a judgment of annulment, divorce or legal separation, or enters an order or a judgment in a paternity action or in an action under s. 767.02 (1) (f) or (j), 767.08 or 767.62 (3), the availability of health insurance to each parent through an employer or other organization, the extent of coverage available to a child and the costs to the parent for the cov-

erage of the child. A parent may be required to initiate or continue health care insurance coverage for a child under this subsection. If a parent is required to do so, he or she shall provide copies of necessary program or policy identification to the custodial parent and is liable for any health care costs for which he or she receives direct payment from an insurer. This subsection shall not be construed to limit the authority of the court to enter or modify support orders containing provisions for payment of medical expenses, medical costs, or insurance premiums which are in addition to and not inconsistent with this subsection.

(c) 1. In directing the manner of payment of a child's health care expenses, the court may order that payment, including payment for health insurance premiums, be withheld from income and sent to the appropriate health care insurer, provider or plan, as provided in s. 767.265 (3h), or sent to the department or its designee, whichever is appropriate, for disbursement to the person for whom the payment has been awarded if that person is not a health care insurer, provider or plan. If the court orders income withholding and assignment for the payment of health care expenses, the court shall send notice of assignment in the manner provided under s. 767.265 (2r) and may include the notice of assignment under this subdivision with a notice of assignment under s. 767.265. The department or its designee, whichever is appropriate, shall keep a record of all moneys received and disbursed by the department or its designee for health care expenses that are directed to be paid to the department or its designee.

2. If the court orders a parent to initiate or continue health insurance coverage for a child under a health insurance policy that is available to the parent through an employer or other organization but the court does not specify the manner in which payment of the health insurance premiums shall be made, the clerk of court may provide notice of assignment in the manner provided under s. 767.265 (2r) for the withholding from income of the amount necessary to pay the health insurance premiums. The notice of assignment under this subdivision may be sent with or included as part of any other notice of assignment under s. 767.265, if appropriate. A person who receives notice of assignment under this subdivision shall send the withheld health insurance premiums to the appropriate health care insurer, provider or plan, as provided in s. 767.265 (3h).

(d) If the court orders a parent to provide coverage of the health care expenses of the parent's child and the parent is eligible for family coverage of health care expenses under a health benefit plan that is provided by an employer on an insured or on a self−insured basis, the employer shall do all of the following:

1. Permit the parent to obtain family coverage of health care expenses for the child, if eligible for coverage, without regard to any enrollment period or waiting period restrictions that may apply.

2. Provide family coverage of health care expenses for the child, if eligible for coverage, upon application by the parent, the child's other parent, the department or the county child support agency under s. 59.53 (5), or upon receiving a notice under par. (f) 1.

2m. Notify the county child support agency under s. 59.53 (5) when coverage of the child under the health benefit plan is in effect and, upon request, provide copies of necessary program or policy identification to the child's other parent.

3. After the child has coverage under the employer's health benefit plan, and as long as the parent is eligible for family coverage under the employer's health benefit plan, continue to provide coverage for the child unless the employer receives satisfactory written evidence that the court order is no longer in effect or that the child has coverage of health care expenses under another health insurance policy or health benefit plan that provides comparable coverage of health care expenses.

(e) 1. If a parent who has been ordered by a court to provide coverage of the health care expenses of a child who is eligible for medical assistance under subch. IV of ch. 49 receives payment from a 3rd party for the cost of services provided to the child but does not pay the health care provider for the services or reimburse the department or any other person who paid for the services on behalf of the child, the department may obtain a judgment against the parent for the amount of the 3rd party payment.

2. Section 767.265 (4) applies to a garnishment based on a judgment obtained under subd. 1.

(f) 1. If a parent who provides coverage of the health care expenses of a child under an order under this subsection changes employers and that parent has a court−ordered child support obligation with respect to the child, the county child support agency under s. 59.53 (5) shall provide notice of the order to provide coverage of the child's health care expenses to the new employer and to the parent.

2. The notice provided to the parent shall inform the parent that coverage for the child under the new employer's health benefit plan will be in effect upon the employer's receipt of the notice. The notice shall inform the parent that he or she may, within 10 business days after receiving the notice, by motion request a hearing before the court on the issue of whether the order to provide coverage of the child's health care expenses should remain in effect. A motion under this subdivision may be heard by a circuit court commissioner. If the parent requests a hearing and the court or circuit court commissioner determines that the order to provide coverage of the child's health care expenses should not remain in effect, the court shall provide notice to the employer that the order is no longer in effect.

(5) Subject to ss. 767.51 (4) and 767.62 (4m), liability for past support shall be limited to the period after the birth of the child.

(6) A party ordered to pay child support under this section shall pay simple interest at the rate of 1% per month on any amount in arrears that is equal to or greater than the amount of child support due in one month. If the party no longer has a current obligation to pay child support, interest at the rate of 1% per month shall accrue on the total amount of child support in arrears, if any. Interest under this subsection is in lieu of interest computed under s. 807.01 (4), 814.04 (4) or 815.05 (8) and is paid to the department or its designee under s. 767.29. Except as provided in s. 767.29 (1m), the department or its designee, whichever is appropriate, shall apply all payments received for child support as follows:

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

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

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

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

History: 1971 c. 157; 1977 c. 29, 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.25; 1981 c. 20; 1983 a. 27; 1985 a. 29; 1987 a. 27, 37, 355, 413; 1989 a. 31, 212; 1991 a. 39; 1993 a. 481; 1995 a. 27 ss. 7101, 7102, 9126 (19); 1995 a. 201, 279, 404; 1997 a. 27, 35, 191; 1999 a. 9, 32; 2001 a. 16, 61.

Cross Reference: See also ch. DWD 40, Wis. adm. code.

A provision in a judgment as to the education of children past the age of majority, inserted pursuant to a stipulation of the parties, cannot later be challenged and can be enforced by contempt proceedings. Bliwas v. Bliwas, 47 Wis. 2d 635, 178 N.W.2d 35 (1970).

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

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

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

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

Federal Supplemental Security Income may not be considered to be an economic resource for purposes of computing a child support obligation. However, a seek−work order may be appropriate. Langlois v. Langlois, 150 Wis. 2d 101, 441 N.W.2d 286 (Ct. App. 1989).

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

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

Consideration of expenses incurred by a child as an adult, including education expenses, is error. Resong v. Vier, 157 Wis. 2d 382, 459 N.W.2d 591 (Ct. App. 1990).

A divorce stipulation waiving or setting a ceiling on child support and preventing modification is against public policy and will not be enforced. Ondrasek v. Tenneson, 158 Wis. 2d 690, 462 N.W.2d 915 (Ct. App. 1990).

The trial court's use of a computer program to analyze financial evidence was not error. Bisone v. Bisone, 165 Wis. 2d 114, 477 N.W.2d 59 (Ct. App. 1991).

A stepparent has no legal obligation to support a stepchild. Under appropriate circumstances the theory of equitable estoppel may apply to cases involving child support. Ulrich v. Cornell, 168 Wis. 2d 792, 484 N.W.2d 546 (1992).

In a joint custody situation, the parent with primary physical custody may be ordered to pay child support. Matz v. Matz, 166 Wis. 2d 326, 479 N.W.2d 245 (Ct. App. 1991).

The absence of a mortgage obligation is relevant to the assessment of a party's economic circumstances, but does not translate into imputed income under the applicable administrative rule. In Marriage of Zimmerman v. Zimmerman, 169 Wis. 2d 516, 485 N.W.2d 294 (Ct. App. 1992).

A support order against actual AFDC grants is prohibited by *Thibadeau*, but an order against earned income of one who also receives AFDC is not. In Support of B., L., T. & K. 171 Wis. 2d 617, 492 N.W.2d 350 (Ct. App. 1992).

No matter how corporate income is labeled, a family court may pierce the corporate shield if it is convinced the obligor's intent is to avoid financial obligations. Evjen v. Evjen, 171 Wis. 2d 677, 492 N.W.2d 360 (Ct. App. 1992).

The parties' extrajudicial agreement that child support payments be discontinued was enforceable via the doctrine of equitable estoppel. Harms v. Harms, 174 Wis. 2d 780, 498 N.W.2d 229 (1993).

The "serial family payer" rule adopted under the percentage standards referred to in sub. (1) is discussed. Brown v. Brown, 177 Wis. 2d 512, 503 N.W.2d 280 (Ct. App. 1993).

The mandatory percentage standards for determining support do not allow for deferred payments. Kelly v. Hougham, 178 Wis. 2d 546, 504 N.W.2d 440 (Ct. App. 1993).

An AFDC recipient assigns all rights to child support payments to the state. As such the payments may not be held in trust for the child under sub. (2). Paternity of Lachelle A.C. 180 Wis. 2d 708, 510 N.W.2d 718 (Ct. App. 1993).

A lump sum separation benefit received upon termination of employment was properly considered to be income subject to the percentage standards for support. Gohde v. Gohde, 181 Wis. 2d 770, 512 N.W.2d 199 (Ct. App. 1993).

In deciding not to apply the percentage standard, the court erred when it compared the parties available incomes after deducting the percentage amount from the payer's income, but failed to consider the assumed contribution of the same percentage by the payee. Kjelstrum v. Kjelstrum, 181 Wis. 2d 973, 512 N.W.2d 264 (Ct. App. 1994).

A trial court could may not set child support at zero, convert post−divorce income to marital property and order that income to be held in trust to be distributed to the child when AFDC benefits ended. Luna v. Luna, 183 Wis. 2d 20, 515 N.W.2d 480 (Ct. App. 1994).

If the interests of the children and custodial parent are protected, parties are free to contract in a settlement agreement that the primary custodian will not have spending discretion over child support . Jacquart v. Jacquart, 183 Wis. 2d 372, 515 N.W.2d 539 (Ct. App. 1994).

An asset and its income stream may not be counted both as an asset in the property division and as part of the payer's income from which support is paid. Maley v. Maley, 186 Wis. 2d 125, 519 N.W.2d 717 (Ct. App. 1994).

Trust income that is income to the beneficiary under federal tax law is subject to a child support order regardless of whether a distribution is made to the beneficiary. Grohmann v. Grohmann, 189 Wis. 2d 532, 525 N.W.2d 261 (1995).

A minimum fixed child support amount, rather than the percentage standard, based on the payer's "potential income" was appropriate when the court found that the payer had a substantial potential to manipulate the amount of support. Doerr v. Doerr, 189 Wis. 2d 112, 525 N.W.2d 745 (Ct. App. 1994).

The trial court may consider the amount of time a child is placed with the paying parent and that parent's second family in setting support. Molstad v. Molstad, 193 Wis. 2d 602, 535 N.W.2d 63 (Ct. App. 1995).

The percentage standards may be used to generate future as well as present support. Paternity of Tukker M.O., 199 Wis. 2d 186, 544 N.W.2d 417 (1996).

The percentage standards presumptively apply in the case of a high income payee absent the payer's showing of unfairness by the greater weight of the credible evidence. Luciani v. Montemurro−Luciani, 199 Wis. 2d 280, 544 N.W.2d 561 (1996).

Sub. (6) makes interest on child support arrearages mandatory. A trial court has no discretion in awarding interest, even if it determines that to do so would be inequitable. Douglas County Child Support v. Fisher, 200 Wis. 2d 807, 547 N.W.2d 801 (Ct. App. 1996).

A court may consider earning capacity rather than actual earnings in determining child support and maintenance if it finds a parent's job choice voluntary and unreasonable. Sellers v. Sellers, 201 Wis. 2d 578, 549 N.W.2d 481 (Ct. App. 1996).

The fact that a party, by deliberate conduct, frustrates an accurate calculation of the party's income does not prevent the trial court from making the appropriate finding of fact. The court may make its findings based on the available evidence. Lellman v. Mott, 204 Wis. 2d 166, 554 N.W.2d 525 (Ct. App. 1996).

The court did not abuse its discretion in ruling against a request in a high income payer case for an increase in support according to the percentage standards when the court believed that the request was really a disguised claim for extra money to support the custodial parent's own lifestyle. Nelsen v. Candee, 205 Wis. 2d 632, 556 N.W.2d 789 (Ct. App. 1996).

In certain cases, such as with military retirement pay, an asset may be divided in the property division and its income stream considered as income in determining child support. Cook v. Cook, 208 Wis. 2d 166, 560 N.W.2d 246 (1997).

When a noncustodial parent seeks to impose a trust on arrearages owed under a pre−August 1, 1987 support order, that parent must demonstrate that the trust is in the child's best interest and, when the custodial parent does not agree to the trust, that the primary custodian was unwilling to or incapable of managing the support money. Cameron v. Cameron, 209 Wis. 2d 88, 562 N.W.2d 126 (1997).

Income disparity resulting from applying the percentage standards is only relevant if the payer can show inability to pay or that the income disparity will adversely affect the children or payer. Equalizing lifestyles between parents is not a support objective. The amount of discretionary income either parent will have to spend on their children is a secondary consideration. Raz v. Brown, 213 Wis. 2d 296, 570 N.W.2d 605 (Ct. App. 1997).

The repayment to the payer spouse of a loan made by him to a company that he owned was a proper addition to the payer's income available for support. It was properly found to be deferred compensation, which is included within the applicable definition of income. Raz v. Brown, 213 Wis. 2d 296, 570 N.W.2d 605 (Ct. App. 1997).

A stipulation for child support with no time limit or opportunity for review was against public policy and the payer was not estopped from seeking a modification due to a material change in circumstances. Krieman v. Goldberg, 214 Wis. 2d 163, 571 N.W.2d 425 (1997).

Absent a finding that an individual partner has authority to unilaterally control a partnership asset, partnership assets will be imputed as available income only in accordance with the partnership agreement. Health insurance premiums paid by a partnership are included in the partners income available for child support. Weis v. Weis, 215 Wis. 2d 135, 572 N.W.2d 123 (Ct. App. 1997).

The trial court properly exercised its discretion under sub. (1m) (i) by excluding from the application of the percentage standards the value of nonassignable trips received by the paying spouse as employment bonuses although the trips constituted taxable income. State v. Wall, 215 Wis. 2d 591, 573 N.W.2d 862 (Ct. App. 1997).

In concluding that a deviation from the percentage standards is warranted, all listed factors need not be applied. State v. Alonzo R. 230 Wis. 2d 17, 601 N.W.2d 328 (Ct. App. 1999).

The percentage standards under sub. (1j) include the shared−time payer formula in DWD 40.04(2), Wis. Adm. Code, as well as the straight percentage standards in DWD 40.03 (1). The shared−time formula applies if the payer will be assuming costs in proportion to the number of days the court is ordering placement with the parent. Randall v. Randall, 2000 WI App 98, 235 Wis. 2d 1, 612 N.W.2d 737.

Incarceration is a valid factor for a court to consider in setting child support because of the impact it may have on the payor's employability due to what may be voluntary and unreasonable acts. It was proper to base child support on earning capacity and to provide for an offset against the payor's property division payout to provide for payment of the support obligation. Morrow v. Modrow, 2001 WI App 200, 247 Wis. 2d 889, 634 N.W.2d 852.

Subs. (1j), (1m), and (1n) give the court authority to determine and order some amount for child support. While that authority implicitly includes the authority to determine the amount to be zero, it does not implicitly include the authority to order the parents to divide expenses for the children among themselves in particular ways as an alternative to ordering one parent to pay child support to the other. Zawistowski v. Zawistowski, 2002 WI App 86, 253 Wis. 2d 630, 644 N.W.2d 252.

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

Poor Little Rich Kids: Revising Wisconsin's Child Support System to Accommodate High−Income Payers. Dodd. 83 MLR 807.

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

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

HSS 80: New Rules for Child Support Obligations. Hickey. Wis. Law. April, 1995.

Which Came First? The Serial Family Payer Formula. Stansbury. Wis. Law. April, 1995.

Cross−reference: See also notes to s. 767.32 for decisions regarding postjudgment modifications.

Cross−reference: See also Wisconsin Administrative Code Citations published in the Wisconsin Administrative Code for a list of citations to cases citing ch. HSS 80, HFS 80, and DWD 40, the child support percentage of income standard.

767.253 Seek−work orders. In an action for modification of a child support order under s. 767.32 or an action in which an order for child support is required under s. 767.25 (1), 767.51 (3) or 767.62 (4), the court may order either or both parents of the child to seek employment or participate in an employment or training program.

History: 1989 a. 212; 1997 a. 191; 1999 a. 9.

767.254 Unemployed teenage parent. (1) In this section, "unemployed teenage parent" means a parent who satisfies all of the following criteria:

(a) Is less than 20 years of age.

(b) Is unemployed.

(c) Is financially unable to pay child support.

(d) Would be ordered to make payments for the support of a child but for par. (c).

(2) In an action for revision of a judgment or order providing for child support under s. 767.32 or an action in which an order for child support is required under s. 767.25 (1), 767.51 (3) or 767.62

(4), the court shall order an unemployed teenage parent to do one or more of the following:

(a) Register for work at a public employment office established under s. 106.09.

(b) Apply for jobs.

(c) Participate in a job training program.

(d) Pursue or continue to pursue an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent if the unemployed teenage parent has not completed a recognized high school course of study or its equivalent, except that the court may not order the unemployed teenage parent to pursue instruction if the instruction requires the expenditure of funds by the unemployed teenage parent other than normal transportation and personal expenses.

History: 1991 a. 313; 1995 a. 27; 1997 a. 191; 1999 a. 9.

767.255 Property division. (1) 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 that 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.

(2) (a) Except as provided in par. (b), any property shown to have been acquired by either party prior to or during the course of the marriage in any of the following ways shall remain the property of that party and is not subject to a property division under this section:

1. As a gift from a person other than the other party.

2. By reason of the death of another, including, but not limited to, life insurance proceeds; payments made under a deferred employment benefit plan, as defined in s. 766.01 (4) (a), or an individual retirement account; and property acquired by right of survivorship, by a trust distribution, by bequest or inheritance or by a payable on death or a transfer on death arrangement under ch. 705.

3. With funds acquired in a manner provided in subd. 1. or 2.

(b) Paragraph (a) does not apply if the court finds that refusal to divide the property will create a hardship on the other party or on the children of the marriage. If the court makes such a finding, the court may divest the party of the property in a fair and equitable manner.

(3) The court shall presume that all property not described in sub. (2) (a) is to be divided equally between the parties, but may alter this distribution without regard to marital misconduct after considering all of the following:

(a) The length of the marriage.

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

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

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

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

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

(g) 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.

(h) The desirability of awarding the family home or the right to live therein for a reasonable period to the party having physical placement for the greater period of time.

(i) 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.

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

(k) The tax consequences to each party.

(L) 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.

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

History: 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.255; 1983 a. 186; 1985 a. 37; 1987 a. 355; 1993 a. 422.

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

Accounts receivable of a medical clinic in which the husband was a partner were properly viewed by the trial court as salary. Johnson v. Johnson, 78 Wis. 2d 137, 254 N.W.2d 198 (1977).

A veteran disability pension is to be considered as earned income and not as an asset to be divided between the parties. Leighton v. Leighton, 81 Wis. 2d 620, 261 N.W.2d 457 (1978).

There are at least 3 methods for valuing pension rights. Whether the use of any method is appropriate depends upon the status of the parties and whether the result is a reasonable valuation of the marital asset. Bloomer v. Bloomer, 84 Wis. 2d 124, 267 N.W.2d 235 (1978).

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

Compensation for a person who supported a spouse while the spouse was in school can be achieved through both property division and maintenance payments. Lundberg v. Lundberg, 107 Wis. 2d 1, 318 N.W.2d 918 (1982).

A federal pension in lieu of social security must be included in a marital property division. Mack v. Mack, 108 Wis. 2d 604, 323 N.W.2d 153 (Ct. App. 1982).

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

The trial court may consider a cross−purchase formula in a partnership agreement in determining the value of the partnership interest, including professional goodwill. Lewis v. Lewis, 113 Wis. 2d 172, 336 N.W.2d 171 (Ct. App. 1983).

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

This section does not mandatorily require a judge to terminate a joint tenancy. Lutzke v. Lutzke, 122 Wis. 2d 24, 361 N.W.2d 640 (1985).

The use of gift money to buy a home as joint tenants changed the character of the money from separate property to marital property. Weiss v. Weiss, 122 Wis. 2d 688, 365 N.W.2d 608 (Ct. App. 1985). See also Zirngibl v. Zirngibl, 165 Wis. 2d 130, 477 N.W.2d 637 (Ct. App. 1991).

A prenuptial agreement entered into prior to the adoption of sub. (11) [now sub. (3) (L)] was enforceable in a subsequent divorce. Hengel v. Hengel, 122 Wis. 2d 737, 365 N.W.2d 16 (Ct. App. 1985).

A premarital agreement intended to apply at death was not applicable to a divorce. Levy v. Levy, 130 Wis. 2d 523, 388 N.W.2d 170 (1986).

Whether property agreements are inequitable under sub. (11) [now sub. (3) (L)] is discussed. Button v. Button, 131 Wis. 2d 84, 388 N.W.2d 546 (1986).

A premarital agreement was inequitable because the parties did not fairly and reasonably disclose assets or have independent knowledge of one another's financial status. Schumacher v. Schumacher, 131 Wis. 2d 332, 388 N.W.2d 912 (1986).

A personal injury claim for medical malpractice is property subject to division. Richardson v. Richardson, 139 Wis. 2d 778, 407 N.W.2d 231 (1987).

The trial court may consider the former inherited status of divisible property although it has lost its exempt status through commingling. Schwartz v. Linders, 145 Wis. 2d 258, 426 N.W.2d 97 (Ct. App. 1988).

Increase in the value of inherited property attributable to the non−owning spouse's efforts is divisible property. It is no t necessary for the non−owning spouse to show that a failure to divide the asset will result in a hardship to him or her. Haldemann v. Haldemann, 145 Wis. 2d 296, 426 N.W.2d 107 (Ct. App. 1988).

Chapter 766, the Marital Property Act, does not supplant the divorce property division provisions of ch. 767. Kuhlman v. Kuhlman, 146 Wis. 2d 588, 432 N.W.2d 295 (Ct. App. 1988).

Gifted and inherited property is subject to division in cases of hardship. A party seeking division bears the burden of showing that failure to divide will result in financial privation. Popp v. Popp, 146 Wis. 2d 778, 432 N.W.2d 600 (Ct. App. 1988).

A presumption exists that an injured party is entitled to all future payments under a structured settlement, but the payments are subject to the s. 767.255 factors. Krebs v. Krebs, 148 Wis. 2d 51, 435 N.W.2d 240 (1989).

A property division may be modified under s. 806.07. However the supremacy clause prevents a division to be modified after a debt thereunder is discharged in bankruptcy. Spankowski v. Spankowski, 172 Wis. 2d 285, 493 N.W.2d 737 (Ct. App. 1992).

When gifted or inherited property has appreciated in value during the marriage due to the efforts of both spouses, the appreciation is a part of the marital estate. Schorer v. Schorer, 177 Wis. 2d 387, 501 N.W.2d 916 (Ct. App. 1993).

Determining fair market value of a closely−held corporation turns on the credibility of the experts as well as the methods and analyses employed by the witness. Schorer v. Schorer, 177 Wis. 2d 387, 501 N.W.2d 916 (Ct. App. 1993).

A buy−sell agreement may provide a method for determining the value of an interest in a partnership, but does not as a matter of law establish the value. Sharon v. Sharon, 178 Wis. 2d 481, 504 N.W.2d 415 (Ct. App. 1993).

Accounts receivable may be excluded from the marital estate if evidence indicates there is a link between the receivables and salary and that dividing the receivables would adversely affect the ability to pay support or maintain professional or personal obligations. Sharon v. Sharon, 178 Wis. 2d 481, 504 N.W.2d 415 (Ct. App. 1993).

While income from gifted property is subject to division, trust income received by a beneficiary with only a future interest in the trust corpus is a gift itself, not income from a gift, and not subject to division. Friebel v. Friebel, 181 Wis. 2d 285, 510 N.W.2d 767 (Ct. App. 1993).

A divorce decree that awarded 1/2 of the husband's pension to the wife divested the husband of that half interest. Although the husband had failed to effectuate the transfer as required by the divorce decree, the wife's half interest was not an asset in the husband's bankruptcy estate and there was no dischargeable debt to the wife. Dewey v. Dewey, 188 Wis. 2d 271, 525 N.W.2d 85 (Ct. App. 1994).

Hardship under sub. (2) (b) and "privation" under *Popp* requires something more than an inability to continue living at a predivorce standard. Fair and equitable is not the standard for including gifted and inherited property in a division. Doerr v. Doerr, 189 Wis. 2d 112, 525 N.W.2d 745 (Ct. App. 1994).

That individual property was placed in a joint checking account by the owner and used to pay the owner's individual obligations did not render the property subject to division in divorce. Gardner v. Gardner, 190 Wis. 2d 216, 527 N.W.2d 701 (Ct. App. 1994).

The offspring of gifted or inherited animals are not excluded from division by this section. If an asset no longer exists a court cannot exclude it from the marital estate. Preuss v. Preuss, 195 Wis. 2d 95, 536 N.W.2d 101 (Ct. App. 1995).

Bonuses and fees, like regular income, are not divisible as property but are to be considered in determining a fair division or maintenance. Long v. Long, 196 Wis. 2d 691, 539 N.W.2d 134 (Ct. App. 1995).

The marital estate is usually valued as of the date of divorce, but when conditions over which a party has no control arise the special circumstances may warrant deviation from the rule. Long v. Long, 196 Wis. 2d 691, 539 N.W.2d 134 (Ct. App. 1995).

For the character of inherited or gifted property to be changed to marital property subject to division, changes to the property as a result of the marital relationship, whether by labor or expenditures, must substantially increase its value. Spindler v. Spindler, 207 Wis. 2d 329, 558 N.W.2d 645 (Ct. App. 1996).

An uneven properly division is not the only remedy to deal with squandering of marital assets. Equitable claims against 3rd parties that affect the rights of parties to the divorce, such as a claim against a 3rd party title holder of property claimed to actually be part of the marital estate, may be appropriate. Zabel v. Zabel, 210 Wis. 2d 337, 565 N.W.2d 240 (Ct. App. 1997).

Income generated by an asset is separate and distinct from the asset itself. Income from the asset is also separate from the appreciation of the asset. As to property division, retained earnings, or the appreciation in value occasioned by the expenditure of the earnings, are a marital asset subject to division. Metz v. Keener, 215 Wis. 2d 620, 573 N.W.2d 865 (Ct. App. 1997).

Appellate review of a trial court's valuation of a closely−held business in a divorce action should proceed on the clearly erroneous standard. When the buyout provisions of a shareholder agreement did not replicate an arm's length transaction it was reasonable for the trial court to find that the buyout figure was not indicative of fair market value. Siker v. Siker, 225 Wis. 2d 522, 593 N.W.2d 830 (Ct. App. 1999).

There are 2 types of postnuptial agreements: 1) family settlement agreements that contemplate the continuation of the marriage, and 2) separation agreements that are made after separation in contemplation of a separation. The former are presumed to be binding on the parties under s. 767.255 (3) (L). The latter are governed by s. 767.10 and constitute a recommendation jointly made by the parties to the court regarding what the judgment should provide. Evenson v. Evenson, 228 Wis. 2d 676, 598 N.W.2d 232 (Ct. App. 1999). See also VanBoxtel v. VanBoxtel, 2001 WI 40, 242 Wis. 2d 474, 625 N.W.2d 284.

An agreement made in contemplation of divorce, entered into after the parties agreed to the divorce, was subject to s. 767.10, not 767.255. When a party withdrew his consent before court approval, the agreement was unenforceable. Ayres v. Ayres, 230 Wis. 2d 431, 602 N.W.2d 132 (Ct. App. 1999).

A spouse's pension, whether or not existing before the marriage, is part of the marital estate subject to division. Award of the premarital portion of a pension to the spouse holding title, based on a coverture fraction (the numerator of which is the length of the marriage and the denominator of which is the total years that the spouse was in the plan) was improper when there was not sufficient grounds for deviation from an equal property division. Hokin v. Hokin, 231 Wis. 2d 184, 605 N.W.2d 219 (Ct. App. 1999).

The fact that a property interest is contingent, and not vested, does not mean that it may be ignored in a property division. An insurance company deferred compensation plan for agents, although not a pension plan, was similar enough to a pension to be treated like one when dividing the marital estate. Garceau v. Garceau, 2000 WI App 7, 232 Wis. 2d 1, 606 N.W.2d 268.

If property has no fair market value, the court cannot place an independent value upon it and it should not be included in the marital estate. A state employee's sick leave account has no cash value and is not transferable and therefore has no fair market value. Preiss v. Preiss, 2000 WI App 185, 238 Wis. 2d 368, 617 N.W.2d 514.

Section 40.08 (1) does not permit the division of a state employee's deferred compensation account. Preiss v. Preiss, 2000 WI App 185, 238 Wis. 2d 368, 617 N.W.2d 514.

When a farm that a divorcing couple did not own but had lived on for the first 13 years of their marriage was gifted to one spouse and the couple divorced shortly thereafter, the trial court erred when it determined the farm's increase in value after the gift resulted from the efforts of the marital partnership without considering whether the couple's efforts throughout the marriage served as a catalyst for the increase in value. Richmond v. Richmond, 2002 WI App 25, 250 Wis. 2d 647, 640 N.W.2d 220.

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

An insured's beneficiary designation under servicemen's group life insurance policy prevailed over a constructive trust imposed by a state court. Ridgeway v. Ridgeway, 454 U.S. 46 (1981).

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

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

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

Enhanced value of a closely held corporation at the time of divorce: What role will Wisconsin's marital property act play? Podell, 69 MLR 82 (1985).

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

Prenuptial and postnuptial agreements. Loeb, WBB March 1981.

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

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

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

Divorce Provisions in Opt−out Marital Property Agreements. Rasmussen. Wis. Law. April, 1994.

A Decade Post−*Button v. Button*: Drafting Prenuptial Agreements. Garczynski. Wis. Law. Aug. 1999.

A Primer on Dividing a Military Pension. Halling & Drefahl. Wis. Law. Aug. 1999.

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

(1) The length of the marriage.

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

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

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

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

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

(7) The tax consequences to each party.

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

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

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

History: 1971 c. 220; 1973 c. 12 s. 37; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.26.

While arrearages under a temporary order for alimony and attorney fees and costs that the husband is required to pay do not constitute part of a wife's division of the estate, they are a charge against the entire estate. Tesch v. Tesch, 63 Wis. 2d 320, 217 N.W.2d 647 (1974).

An obligation to support children is a factor in determining the amount of maintenance payments. Besaw v. Besaw, 89 Wis. 2d 509, 279 N.W.2d 192 (1979).

The trial court abused its discretion by denying a mother's choice to remain at home to care for small children. Hartung v. Hartung, 102 Wis. 2d 58, 306 N.W.2d 16 (1981).

The trial court abused its discretion by terminating maintenance without sufficiently addressing the factors under this section. Vander Perren v. Vander Perren, 105 Wis. 2d 219, 313 N.W.2d 813 (1982).

Compensation for a person who supports a spouse while the spouse is in school can be achieved through both property division and maintenance payments. Lundberg v. Lundberg, 107 Wis. 2d 1, 318 N.W.2d 918 (1982).

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

The trial court may not consider marital misconduct as a relevant factor in granting maintenance payments. Dixon v. Dixon, 107 Wis. 2d 492, 319 N.W.2d 846 (1982).

It was improper to discontinue maintenance payments to a former wife solely upon the ground of her cohabitation with another man. Van Gorder v. Van Gorder, 110 Wis. 2d 188, 327 N.W.2d 674 (1983).

Three formulas were approved for calculating maintenance or property division awards in cases in which one spouse has contributed to the other's pursuit of an advanced degree. Haugan v. Haugan, 117 Wis. 2d 200, 343 N.W.2d 796 (1984).

An alcoholic spouse's refusal of treatment is relevant to the trial court's determination regarding a request for permanent maintenance. DeLaMatter v. DeLaMatter, 151 Wis. 2d 576, 445 N.W.2d 676 (Ct. App. 1989).

Military disability payments may be considered in assessing ability to pay maintenance. Weberg v. Weberg, 158 Wis. 2d 540, 463 N.W.2d 382 (Ct. App. 1990).

The trial court's use of a computer program to analyze financial evidence was not error. Bisone v. Bisone, 165 Wis. 2d 114, 477 N.W.2d 59 (Ct. App. 1991).

An award may be based on a percentage of the payer's income in "unusual circumstances". Unpredictable future income warrants a percentage award. Hefty v. Hefty, 172 Wis. 2d 124, 493 N.W.2d 33 (1992).

Maintenance furthers two objectives: 1) to support the recipient spouse in accordance with the needs and earning capacities of the parties, and 2) to ensure a fair and equitable financial agreement between the parties. In the interest of fairness, maintenance may exceed the recipient's budget. Hefty v. Hefty, 172 Wis. 2d 124, 493 N.W.2d 33 (1992).

Maintenance is measured by the parties' lifestyle immediately before the divorce and that they could anticipate enjoying if they were to stay married. The award may take into account income increases the parties could reasonably anticipate. Hefty v. Hefty, 172 Wis. 2d 124, 493 N.W.2d 33 (1992).

A maintenance award must account for the recipient's earning capacity and ability to be self−supporting at a level comparable to that during marriage. It is unfair to require one spouse to continue income production levels to maintain the standard of living of the other who chooses a decrease in production. Forester v. Forester, 174 Wis. 2d 78, 497 N.W.2d 78 (Ct. App. 1993).

Consideration of one spouse's solicitation to have the other murdered in denying maintenance did not violate the statutory scheme and was not an improper consideration of "marital misconduct". Brabec v. Brabec, 181 Wis. 2d 270, 510 N.W.2d 762 (1993).

A maintenance award based on equalization of income is not "self−evidently fair" and does not meet the statutory objectives of support and fairness. Olson v. Olson, 186 Wis. 2d 287, 520 N.W.2d 284 (Ct. App. 1994).

An otherwise short−term marriage should not be considered a long−term marriage because there are children. Luciani v. Montemurro−Luciani, 191 Wis. 2d 67, 528 N.W.2d 477 (Ct. App. 1995).

One spouse's contribution of child−rearing services and family support while the other spouse completed an education program was not sufficient grounds for awarding compensatory maintenance. Luciani v. Montemurro−Luciani, 191 Wis. 2d 67, 528 N.W.2d 477 (Ct. App. 1995).

Leaving maintenance open due to potential future health problems of one spouse without expert testimony was proper, but failure to limit the order accordingly was improper. Grace v. Grace, 195 Wis. 2d 153, 536 N.W.2d 109 (Ct. App. 1995).

Post−divorce increases in a pension fund valued in a divorce should be treated as an income stream available for maintenance. Olski v. Olski, 197 Wis. 2d 237, 540 N.W.2d 412 (1995).

A court may consider earning capacity rather than actual earnings in determining child support and maintenance if it find's a spouse's job choice voluntary and unreasonable. Sellers v. Sellers, 201 Wis. 2d 578, 549 N.W.2d 481 (Ct. App. 1996).

When parties have been married to each other more than once, a trial court can look at the total years of marriage when determining maintenance. The trial court is not bound by the terms of maintenance in the first divorce and may look to current conditions in setting maintenance. Wolski v. Wolski, 210 Wis. 2d 184, 565 N.W.2d 196 (Ct. App. 1997).

A stipulation incorporated into a divorce judgment is in the nature of a contract. That a stipulation appears imprudent is not grounds for construction of an unambiguous agreement. Rosplock v. Rosplock, 217 Wis. 2d 22, 577 N.W.2d 32 (Ct. App. 1998).

The purpose of maintenance is, at least in part, to put the recipient in a solid financial position that allows the recipient to become self−supporting by the end of the maintenance period. That the recipient becomes employed and makes productive investments of property division proceeds and maintenance payments is not a substantial change in circumstances, but an expected result of receiving maintenance. Rosplock v. Rosplock, 217 Wis. 2d 22, 577 N.W.2d 32 (Ct. App. 1998).

The trial court's exclusion of pension payments when considering the income available to a maintenance recipient was correct where the pension had been awarded to the recipient as part of the property division and had no value outside of the payments made from it. Seidlitz v. Seidlitz, 217 Wis. 2d 82, 576 N.W.2d 585 (Ct. App. 1998).

The "fairness objective" of equalizing total income does not apply in a postdivorce situation. Modification of maintenance has nothing to do with contributions, economic or noneconomic, made during the marriage. Johnson v. Johnson, 217 Wis. 2d 124, 576 N.W.2d 585 (Ct. App. 1998).

When a reviewing court finds that a trial court erroneously exercised its discretion in awarding maintenance, the case should be remanded for the trial to properly exercise its discretion. It was an abuse of discretion for a trial court to assume that a spouse is legally entitled to maintenance. King v. King, 224 Wis. 2d 235, 590 N.W.2d 480 (1999).

Equal division of income is a reasonable starting point in determining maintenance, but the goal is the standard of living enjoyed during the marriage, not 50% of the total predivorce earnings. Maintenance may surpass 50% of the couple's predivorce income, but the payee is not entitled to live a richer lifestyle than that enjoyed during the marriage. Johnson v. Johnson, 225 Wis. 2d 513, 593 N.W.2d 827 (Ct. App. 1999).

In most cases limited−term maintenance provides the recipient with funds for training intended to enable the recipient to be self−supporting by the end of the maintenance period. Another purpose may be to limit the responsibility of the payer to a certain time and to avoid future litigation and, absent a substantial change of circumstances, the parties may rightfully expect no change. The law of change of circumstances should not require a paying spouse to finance unwise financial decisions of the recipient. Maintenance is not intended to provide a permanent annuity. Murray v. Murray, 231 Wis. 2d 71, 604 N.W.2d 912 (Ct. App. 1999).

Under sub. (9), the contribution by one party to the other's eduction is not limited to contributions that arose only during the marital period. The court may freely consider the total contributions. Meyer v. Meyer, 2000 WI 132, 239 Wis. 2d 731, 620 N.W.2d 382.

It was not error for the trial court to consider under sub. (10) evidence of the parties having lived "separate lives" for much of their marriage. By not equalizing their incomes, the court in effect implemented what the parties had already agreed to in practice. Schmitt v. Schmitt, 2001 WI App 78, 242 Wis. 2d 565, 624 N.W.2d 14.

When a pension is divided by a qualified domestic relations order, and no value is assigned to either spouse's interest to be offset by other property awarded in the property division, a court is not prohibited by double−counting rules from considering pension distributions when determining maintenance. Wattstaedt v. Wattstaedt, 2001 WI App 94, 242 Wis. 2d 709, 625 N.W.2d 900.

A court's authority to order maintenance includes authority to impose obligations on the payee to ensure compliance with the payment order if those obligations are reasonably necessary to effect compliance with the payment order. Finley v. Finley, 2002 WI App 144, ___ Wis. 2d ___, 648 N.W.2d 536.

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.

See also notes to s. 767.32 for decisions regarding postjudgment modifications.

767.261 Family support. The court may make a financial order designated "family support" as a substitute for child support orders under s. 767.25 and maintenance payment orders under s. 767.26. A party ordered to pay family support under this section shall pay simple interest at the rate of 1% per month on any amount in arrears that is equal to or greater than the amount of child support due in one month. If the party no longer has a current obligation to pay child support, interest at the rate of 1% per month shall accrue on the total amount of child support in arrears, if any. Interest under this section is in lieu of interest computed under s. 807.01 (4), 814.04 (4) or 815.05 (8) and is paid to the department or its designee under s. 767.29. Except as provided in s. 767.29 (1m), the department or its designee, whichever is appropriate, shall apply all payments received for family support as follows:

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

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

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

History: 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); Stats. 1979 s. 767.261; 1983 a. 27; 1985 a. 29; 1993 a. 481; 1995 a. 279; 1997 a. 27, 191; 1999 a. 9, 32.

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

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

(b) If one party receives services under s. 49.22 or services provided by the state or county as a result of an assignment of income under s. 49.19, order the other party to pay any fee chargeable under s. 49.22 (6) or the cost of services rendered by the state or county under s. 49.19.

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

(3) The court may order that the amount be paid directly to the attorney or to the state or the county providing services under s. 49.22 or 49.19, who may enforce the order in its name.

(4) (a) Except as provided in par. (b), no court may order payment of costs under this section by the state or any county which may be a party to the action.

(b) The court may order payment of costs under this section by the department or its designee, whichever is appropriate, in an action in which the court finds that the record of payments and arrearages kept by the department or its designee is substantially incorrect and that the department or its designee has failed to correct the record within 30 days after having received information that the court determines is sufficient for making the correction.

History: 1977 c. 105; 1979 c. 32 s. 50; 1979 c. 352 s. 39; Stats. 1979 s. 767.262; 1983 a. 27; 1993 a. 481, 490; 1995 a. 201, 279, 404; 1997 a. 27, 35, 252.

An allowance for the wife's attorney's fees was not excessive where it was obvious that the court reasonably believed that a considerable portion of the attorney fees were attributable to the husband who, represented by 4 successive attorneys, caused a needlessly protracted trial, made numerous defense motions, and prosecuted a meritless appeal. Martin v. Martin, 46 Wis. 2d 218, 174 N.W.2d 468 (1970).

An allowance of $1,000 attorneys fees on appeal, after the award of a generous property settlement, constituted a penalty for appealing. Molloy v. Molloy, 46 Wis. 2d 682, 176 N.W.2d 292 (1970).

Attorney fees on appeal depend on need, ability to pay, and whether there is a reasonable ground for the appeal. Klipstein v. Klipstein, 47 Wis. 2d 314, 177 N.W.2d 57 (1970).

An order for attorney fees is enforceable by contempt. 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 by the spouse to whom the fees are payable. O'Connor v. O'Connor, 48 Wis. 2d 535, 180 N.W.2d 735 (1970).

Denial of the wife's motion for her husband to contribute to attorney fees to prosecute the wife's appeal was an abuse of discretion when the issues in the case were vigorously contested and in no way frivolous. Markham v. Markham, 65 Wis. 2d 735, 223 N.W.2d 616 (1974).

A circuit court does not have subject matter jurisdiction in a divorce action to determine attorney fees between an attorney and client that the attorney continues to represent in the divorce action. Stasey v. Stasey, 168 Wis. 2d 37, 483 N.W.2d 221 (1992).

Nonmarital assets may be considered in determining whether to order one party to contribute to the other's fees. Doerr v. Doerr, 189 Wis. 2d 112, 525 N.W.2d 745 (Ct. App. 1994).

767.263 Notice of change of employer, change of address and change in ability to pay; other information. **(1)** Each order for child support, family support, or maintenance payments shall include an order that the payer and payee notify the county child support agency under s. 59.53 (5) of any change of address within 10 business days of such change. Each order for child support, family support, or maintenance payments shall also include an order that the payer notify the county child support agency under s. 59.53 (5) and the payee, within 10 business days, of any change of employer and of any substantial change in the amount of his or her income, including receipt of bonus compensation, such that his or her ability to pay child support, family support, or maintenance is affected. The order shall also include a statement that clarifies that notification of any substantial change in the amount of the payer's income will not result in a change of the order unless a revision of the order under s. 767.32 or an annual adjustment of the child or family support amount under s. 767.33 is sought.

(2) When an order is entered under sub. (1), each party shall provide to the county child support agency under s. 59.53 (5) his or her social security number, residential and mailing addresses, telephone number, operator's license number and the name, address and telephone number of his or her employer. A party shall advise the county child support agency under s. 59.53 (5) of any change in the information provided under this subsection within 10 business days after the change.

History: 1977 c. 105; 1979 c. 32 s. 50; Stats. 1979 s. 767.263; 1989 a. 212; 1995 a. 279; 1997 a. 27, 191; 2001 a. 16.

767.265 Income withholding. (1) Each order for child support under this chapter, for maintenance payments under s. 767.23 or 767.26, for family support under this chapter, for costs ordered under s. 767.51 (3) or 767.62 (4), for support by a spouse under s. 767.02 (1) (f), or for maintenance payments under s. 767.02 (1) (g), each order for or obligation to pay the annual receiving and disbursing fee under s. 767.29 (1) (d), each order for a revision in a judgment or order with respect to child support, maintenance, or family support payments under s. 767.32, each stipulation approved by the court or a circuit court commissioner for child support under this chapter, and each order for child or spousal support entered under s. 948.22 (7) constitutes an assignment of all commissions, earnings, salaries, wages, pension benefits, benefits under ch. 102 or 108, lottery prizes that are payable in installments, and other money due or to be due in the future to the department or its designee. The assignment shall be for an amount sufficient to ensure payment under the order, obligation, or stipulation and to pay any arrearages due at a periodic rate not to exceed 50% of the amount of support due under the order, obligation, or stipulation so long as the addition of the amount toward arrearages does not leave the party at an income below the poverty line established under 42 USC 9902 (2).

(1m) If a party's current obligation to pay maintenance, child support, spousal support, or family support terminates but the party has an arrearage in the payment of one or more of those payments or in the payment of the annual receiving and disbursing fee, any assignment under sub. (1) shall continue in effect, in an amount up to the amount of the assignment before the party's current obligation terminated, until the arrearage is paid in full.

(2h) If a court−ordered assignment, including the assignment specified under sub. (1) for the payment of any arrearages due, does not require immediately effective withholding and a payer fails to make a required maintenance, child support, spousal support, family support or annual receiving and disbursing fee payment within 10 days after its due date, within 20 days after the payment's due date the court, circuit court commissioner or county child support agency under s. 59.53 (5) shall cause the assignment to go into effect by providing notice of the assignment in the manner provided under sub. (2r) and shall send a notice by regular mail to the last−known address of the payer. The notice sent to the payer shall inform the payer that an assignment is in effect and that the payer may, within a 10−day period, by motion request a hearing on the issue of whether the assignment should remain in effect. The court or circuit court commissioner shall hold a hearing requested under this subsection within 10 working days after the date of the request. If at the hearing the payer establishes that the assignment is not proper because of a mistake of fact, the court or circuit court commissioner may direct that the assignment be withdrawn. Either party may, within 15 working days after the date of a decision by a circuit court commissioner under this subsection, seek review of the decision by the court with jurisdiction over the action.

(2m) (a) 1. An obligation to pay unpaid fees under s. 767.29 (1) (dm) 1m. constitutes an assignment of all commissions, earnings, salaries, wages, pension benefits, benefits under ch. 102 or 108, lottery prizes that are payable in installments and other money due or to be due in the future to the department or its designee.

2. An obligation to pay unpaid fees under s. 767.29 (1) (dm) 2m. constitutes an assignment of all commissions, earnings, salaries, wages, pension benefits, benefits under ch. 102 or 108, lottery prizes that are payable in installments and other money due or to be due in the future to the clerk of court to whom the fees are owed, or to his or her successor.

(b) The county child support agency under s. 59.53 (5) may cause an assignment under par. (a) to go into effect by providing notice of the assignment in the manner provided under sub. (2r) and sending a notice by regular mail to the last−known address of the payer. The notice sent to the payer shall inform the payer that an assignment is in effect and that the payer may, within a 10−day period, by motion request a hearing on the issue of whether the assignment should remain in effect. The court or circuit court commissioner shall hold a hearing requested under this paragraph within 10 working days after the date of the request. If at the hearing the payer establishes that the assignment is not proper because of a mistake of fact, the court or circuit court commissioner may direct that the assignment be withdrawn. The payer or the county child support agency may, within 15 working days after the date of a decision by a circuit court commissioner under this paragraph, seek review of the decision by the court with jurisdiction over the action.

(2r) Upon entry of each order for child support, maintenance, family support, support by a spouse or the annual receiving and disbursing fee, and upon approval of each stipulation for child

support, unless the court finds that income withholding is likely to cause the payer irreparable harm or unless s. 767.267 applies, the court, circuit court commissioner or county child support agency under s. 59.53 (5) shall provide notice of the assignment by regular mail or by facsimile machine, as defined in s. 134.72 (1) (a), or other electronic means to the last−known address of the person from whom the payer receives or will receive money. The notice shall provide that the amount withheld may not exceed the maximum amount that is subject to garnishment under 15 USC 1673 (b) (2). If the department or its designee, whichever is appropriate, does not receive the money from the person notified, the court, circuit court commissioner or county child support agency under s. 59.53 (5) shall provide notice of the assignment to any other person from whom the payer receives or will receive money. Notice under this subsection may be a notice of the court, a copy of the executed assignment or a copy of that part of the court order directing payment.

(3h) A person who receives notice of assignment under this section or s. 767.23 (1) (L) or 767.25 (4m) (c) or similar laws of another state shall withhold the amount specified in the notice from any money that person pays to the payer later than one week after receipt of notice of assignment. Within 5 days after the day the person pays money to the payer, the person shall send the amount withheld to the department or its designee, whichever is appropriate, or, in the case of an amount ordered withheld for health care expenses, to the appropriate health care insurer, provider or plan. With each payment sent to the department or its designee, the person from whom the payer receives money shall report to the department or its designee the payer's gross income or other gross amount from which the payment was withheld. Except as provided in sub. (3m), for each payment sent to the department or its designee, the person from whom the payer receives money shall receive an amount equal to the person's necessary disbursements, not to exceed $3, which shall be deducted from the money to be paid to the payer. Section 241.09 does not apply to assignments under this section.

(3m) Benefits under ch. 108 may be assigned and withheld only in the manner provided in s. 108.13 (4). Any order to withhold benefits under ch. 108 shall be for a fixed sum unless the court−ordered obligation on which the withholding order is based is expressed in the court order as a percentage of the payer's income, in which case an order to withhold benefits under ch. 108 shall be for a percentage of benefits payable. When money is to be withheld from these benefits, no fee may be deducted from the amount withheld and no fine may be levied for failure to withhold the money.

(4) A withholding assignment or order under this section or s. 767.23 (1) (L) or 767.25 (4m) (c) has priority over any other assignment, garnishment or similar legal process under state law.

(6) (a) Except as provided in sub. (3m), if after receipt of notice of assignment the person from whom the payer receives money fails to withhold the money or send the money to the department or its designee or the appropriate health care insurer, provider or plan as provided in this section or s. 767.23 (1) (L) or 767.25 (4m) (c), the person may be proceeded against under the principal action under ch. 785 for contempt of court or may be proceeded against under ch. 778 and be required to forfeit not less than $50 nor more than an amount, if the amount exceeds $50, that is equal to 1% of the amount not withheld or sent.

(b) If an employer who receives an assignment under this section or s. 767.23 (1) (L) or 767.25 (4m) (c) fails to notify the department or its designee, whichever is appropriate, within 10 days after an employee is terminated or otherwise temporarily or permanently leaves employment, the employer may be proceeded against under the principal action under ch. 785 for contempt of court.

(c) No employer may use an assignment under this section or s. 767.23 (1) (L) or 767.25 (4m) (c) as a basis for the denial of employment to a person, the discharge of an employee or any disciplinary action against an employee. An employer who denies employment or discharges or disciplines an employee in violation of this paragraph may be fined not more than $500 and may be required to make full restitution to the aggrieved person, including reinstatement and back pay. Except as provided in this paragraph, restitution shall be in accordance with s. 973.20. An aggrieved person may apply to the district attorney or to the department for enforcement of this paragraph.

(d) Compliance by the person from whom the payer receives money with the order operates as a discharge of the person's liability to the payer as to that portion of the payer's commission, earnings, salaries, wages, benefits or other money so affected.

(6m) A county child support agency under s. 59.53 (5) may convert a support amount in an order for income withholding under this section that is expressed as a percentage of income to the equivalent sum certain amount for purposes of enforcing a child support order in another state under subch. V or VI of ch. 769. Nothing in this subsection authorizes a change, or may be construed to change, the support obligation specified in the underlying child support order.

(7) A person who receives more than one notice of assignment under sub. (3h) may send all money withheld to the department or its designee, whichever is appropriate, in a combined payment, accompanied by any information the department or its designee requires.

(7m) (a) In this subsection, "payroll period" has the meaning given in s. 71.63 (5).

(b) If after an assignment is in effect the payer's employer changes its payroll period, or the payer changes employers and the new employer's payroll period is different from the former employer's payroll period, the clerk of court may, unless otherwise ordered by a judge, amend the withholding assignment or order so that all of the following apply:

1. The withholding frequency corresponds to the new payroll period.

2. The amounts to be withheld reflect the adjustment to the withholding frequency.

(c) The clerk of court shall provide notice of the amended withholding assignment or order by regular mail to the payer's employer and to the payer.

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

History: 1971 c. 110; 1975 c. 94 s. 91 (3); 1975 c. 199; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196, 221; Stats. 1979 s. 767.265; 1981 c. 20, 186; 1983 a. 27, 384; 1985 a. 29; 1987 a. 38 s. 136; 1987 a. 332 s. 64; 1987 a. 398, 403; 1989 a. 31, 56, 212, 336; 1991 a. 287; 1993 a. 16, 326, 389, 481; 1995 a. 27 s. 9130 (4); 1995 a. 279, 404; 1997 a. 27, 191; 1999 a. 9; 2001 a. 16, 61, 105.

The maximum amount subject to assignment to collect an arrearage is 50% of the support currently due. A 25% wage assignment for current support limits an assignment for arrearages to an additional 12.5% of wages. Schnetzer v. Schnetzer, 174 Wis. 2d 458, 497 N.W.2d 772 (Ct. App. 1993).

The assignment under sub. (1) does not require earnings to be withheld and therefore is not a garnishment subject to federal restrictions. Carpenter v. Mumaw, 230 Wis. 2d 384, 602 N.W.2d 536 (Ct. App. 1999).

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

767.266 Effect on transfers at death. (1) REVOCATION OF DEATH PROVISIONS IN MARITAL PROPERTY AGREEMENT. Unless the judgment provides otherwise, a judgment of annulment, divorce or legal separation revokes a provision in a marital property agreement under s. 766.58 that provides for any of the following:

(a) That, upon the death of either spouse, any of either or both spouses' property, including after−acquired property, passes without probate to a designated person, trust or other entity by nontestamentary disposition.

(b) That one or both spouses will make a particular disposition in a will or other governing instrument, as defined in s. 854.01.

(2) REVOCATION OF REVOCABLE TRANSFERS AT DEATH. Unless sub. (1) applies, revocation of revocable transfers at death by a former spouse to the other former spouse, or to relatives of the other former spouse, under an instrument executed before the judgment of annulment, divorce or legal separation is governed by s. 854.15.

History: 1991 a. 301; 1997 a. 188.

NOTE: 1991 Wis. Act 301, which affected this section, contains extensive legislative council notes.

767.267 Account transfers. (1) If the court or circuit court commissioner determines that income withholding under s. 767.265 is inapplicable, ineffective, or insufficient to ensure payment under an order or stipulation specified in s. 767.265 (1), or that income withholding under s. 767.25 (4m) (c) is inapplicable, ineffective, or insufficient to ensure payment of a child's health care expenses, including payment of health insurance premiums, ordered under s. 767.25 (4m), the court or circuit court commissioner may require the payer to identify or establish a deposit account, owned in whole or in part by the payer, that allows for periodic transfers of funds and to file with the financial institution at which the account is located an authorization for transfer from the account to the department or its designee, whichever is appropriate. The authorization shall be provided on a standard form approved by the court and shall specify the frequency and the amount of transfer, sufficient to meet the payer's obligation under the order or stipulation, as required by the court or circuit court commissioner. The authorization shall include the payer's consent for the financial institution or an officer, employee, or agent of the financial institution to disclose information to the court, circuit court commissioner, county child support agency under s. 59.53 (5), department, or department's designee regarding the account for which the payer has executed the authorization for transfer.

(2) A financial institution that receives an authorization for transfer under sub. (1) shall transfer the amounts as specified in the authorization or shall transfer the amount available for transfer if at a time of transfer that amount is less than the amount specified in the authorization. The financial institution may accomplish the transfer by any lawful means, including payment by check, subject to the terms of the account. The financial institution may deduct from the payer's account for each transfer its usual fee for such fund transfers. If the account is closed or if no funds are available at a time of transfer, the financial institution shall notify the county child support agency under s. 59.53 (5) or the department or its designee, whichever is appropriate, within 10 days after the date on which the funds should have been transferred.

(3) An authorization for transfer under sub. (1) has priority over any other authorization for transfer and over an assignment, garnishment or similar legal process under state law or the laws of another state.

(4) An authorization for transfer under sub. (1) may not be revoked except by court order.

(5) A financial institution or an officer, employee or agent of a financial institution may disclose information to the court, circuit court commissioner, county child support agency under s. 59.53 (5), department or department's designee concerning an account for which a payer has executed an authorization for transfer under sub. (1).

(6) No financial institution or officer, employee or agent of a financial institution is liable to an account owner for any sum transferred, or for any information disclosed, in compliance with this section.

History: 1993 a. 481; 1995 a. 279; 1997 a. 27; 1999 a. 9; 2001 a. 38, 61, 105.

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, limited liability company or corporation, tangible personal property, income from employment, future interests whether vested or nonvested, and any other financial interest or source. The court shall also require each party to furnish, on the same standard form, information pertaining to all debts and liabilities of the parties. The form used shall contain a statement in conspicuous print that complete disclosure of assets and debts is required by law and deliberate failure to provide complete disclosure constitutes perjury. The court may on its own initiative and shall at the request of either party require the parties to furnish copies of all state and federal income tax returns filed by them for the past 2 years, and may require copies of such returns for prior years.

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

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

(2m) In every action in which the court has ordered a party to pay child or family support under this chapter, including an action to revise a judgment or order under s. 767.32, the court shall require the parties annually to exchange financial information. A party who fails to furnish the information as required by the court under this subsection may be proceeded against for contempt of court under ch. 785. If the court finds that a party has failed to furnish the information required under this subsection, the court may award to the party bringing the action costs and, notwithstanding s. 814.04 (1), reasonable attorney fees.

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

(b) The clerk of circuit court shall provide information from court records to the department under s. 59.40 (2) (p).

(4) Failure by either party timely to file a complete disclosure statement as required by this section shall authorize the court to accept as accurate any information provided in the statement of the other party or obtained under s. 49.22 (2m) by the department or the county child support agency under s. 59.53 (5).

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

History: 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; 1979 c. 352 s. 39; Stats. 1979 s. 767.27; 1985 a. 29; 1987 a. 413; 1993 a. 112, 481; 1995 a. 27 s. 9126 (19); 1995 a. 201, 404; 1997 a. 27, 35, 191; 2001 a. 16, 61, 105.

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. Trans-

fers which resulted in an exchange of assets of substantially equivalent value need not be specifically disclosed where such assets are otherwise identified in the statement of net worth.

History: 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 352 s. 39; Stats. 1979 s. 767.275.

767.28 Maintenance, legal custody and support when divorce or separation denied. In a judgment in an action for divorce or legal separation, although such divorce or legal separation is denied, the court may make such order for the legal custody of and periods of physical placement with any of the minor children and for the maintenance of either spouse and support of such children by either spouse out of property or income, as the nature of the case may render just and reasonable. If the court orders child support under this section, the court shall determine the child support payments in a manner consistent with s. 767.25, regardless of the fact that the court has not entered a judgment of divorce or legal separation.

History: 1971 c. 220; 1979 c. 32 s. 50; Stats. 1979 s. 767.28; 1987 a. 355; 1993 a. 481.

767.29 Maintenance, child support and family support payments, receipt and disbursement; circuit court commissioner, fees and compensation. (1) (a) All orders or judgments providing for temporary or permanent maintenance, child support or family support payments shall direct the payment of all such sums to the department or its designee for the use of the person for whom the same has been awarded. A party securing an order for temporary maintenance, child support or family support payments shall forthwith file the order, together with all pleadings in the action, with the clerk of court.

(b) Upon request, after the filing of an order or judgment or the receipt of an interim disbursement order, the clerk of court shall advise the county child support agency under s. 59.53 (5) of the terms of the order or judgment within 2 business days after the filing or receipt. The county child support agency shall, within the time required by federal law, enter the terms of the order or judgment into the statewide support data system, as required by s. 59.53 (5) (b).

(c) Except as provided in sub. (1m), the department or its designee shall disburse the money received under the judgment or order in the manner required by federal regulations and take receipts therefor, unless the department or its designee is unable to disburse the moneys because they were paid by check or other draft drawn upon an account containing insufficient funds. All moneys received or disbursed under this section shall be entered in a record kept by the department or its designee, whichever is appropriate, which shall be open to inspection by the parties to the action, their attorneys and the circuit court commissioner.

(d) For receiving and disbursing maintenance, child support, or family support payments, including arrears in any of those payments, and for maintaining the records required under par. (c), the department or its designee shall collect an annual fee of $35. The court or circuit court commissioner shall order each party ordered to make payments to pay the annual fee under this paragraph in each year for which payments are ordered or in which an arrearage in any of those payments is owed. In directing the manner of payment of the annual fee, the court or circuit court commissioner shall order that the annual fee be withheld from income and sent to the department or its designee, as provided under s. 767.265. All fees collected under this paragraph shall be deposited in the appropriation account under s. 20.445 (3) (ja). At the time of ordering the payment of an annual fee under this paragraph, the court or circuit court commissioner shall notify each party ordered to make payments of the requirement to pay the annual fee and of the amount of the annual fee. If the annual fee under this paragraph is not paid when due, the department or its designee may not deduct the annual fee from any maintenance, child or family support, or arrearage payment, but may move the court for a remedial sanction under ch. 785.

(dm) 1m. The department or its designee may collect any unpaid fees under s. 814.61 (12) (b), 1997 stats., that are shown on the department's automated payment and collection system on December 31, 1998, and shall deposit all fees collected under this subdivision in the appropriation account under s. 20.445 (3) (ja). The department or its designee may collect unpaid fees under this subdivision through income withholding under s. 767.265 (2m). If the department or its designee determines that income withholding is inapplicable, ineffective, or insufficient for the collection of any unpaid fees under this subdivision, the department or its designee may move the court for a remedial sanction under ch. 785. The department or its designee may contract with or employ a collection agency or other person for the collection of any unpaid fees under this subdivision and, notwithstanding s. 20.930, may contract with or employ an attorney to appear in any action in state or federal court to enforce the payment obligation. The department or its designee may not deduct the amount of unpaid fees from any maintenance, child or family support, or arrearage payment.

2m. A clerk of court may collect any unpaid fees under s. 814.61 (12) (b), 1997 stats., that are owed to the clerk of court, or to his or her predecessor, and that were not shown on the department's automated payment and collection system on December 31, 1998, through income withholding under s. 767.265 (2m). If the clerk of court determines that income withholding is inapplicable, ineffective or insufficient for the collection of any unpaid fees under this subdivision, the clerk of court may move the court for a remedial sanction under ch. 785.

(e) If the maintenance, child support or family support payments adjudged or ordered to be paid are not paid to the department or its designee at the time provided in the judgment or order, the county child support agency under s. 59.53 (5) or a circuit court commissioner of the county shall take such proceedings as he or she considers advisable to secure the payment of the sum including enforcement by contempt proceedings under ch. 785 or by other means. Copies of any order issued to compel the payment shall be mailed to counsel who represented each party when the maintenance, child support or family support payments were awarded. In case any fees of officers in any of the proceedings, including the compensation of the circuit court commissioner at the rate of $50 per day unless the commissioner is on a salaried basis, is not collected from the person proceeded against, the fees shall be paid out of the county treasury upon the order of the presiding judge and the certificate of the department.

(f) If the department determines that the statewide automated support and maintenance receipt and disbursement system will be operational before October 1, 1999, the department shall publish a notice in the Wisconsin Administrative Register that states the date on which the system will begin operating. Before that date or October 1, 1999, whichever is earlier, the circuit courts, county child support agencies under s. 59.53 (5), clerks of court and employers shall cooperate with the department in any measures taken to ensure an efficient and orderly transition from the countywide system of support receipt and disbursement to the statewide system.

(1m) Notwithstanding ss. 767.25 (6) and 767.261, if the department or its designee receives support or maintenance money that exceeds the amount due in the month in which it is received and that the department or its designee determines is for support or maintenance due in a succeeding month, the department or its designee may hold the amount of overpayment that does not exceed the amount due in the next month for disbursement in the next month if any of the following applies:

(a) The payee or the payer requests that the overpayment be held until the month when it is due.

(b) The court or circuit court commissioner has ordered that overpayments of child support, family support or maintenance

that do not exceed the amount of support or maintenance due in the next month may be held for disbursement in the next month.

(c) The party entitled to the support or maintenance money has applied for or is receiving aid to families with dependent children and there is an assignment to the state under s. 49.19 (4) (h) 1. b. of the party's right to the support or maintenance money.

(cm) A kinship care relative or a long−term kinship care relative of the child who is entitled to the support money has applied for or is receiving kinship care payments or long−term kinship care payments for that child and there is an assignment to the state under s. 48.57 (3m) (b) 2. or (3n) (b) 2. of the child's right to the support money.

(d) The department or its designee determines that the overpayment should be held until the month when it is due.

(2) If any party entitled to maintenance payments or support money, or both, is receiving public assistance under ch. 49, the party may assign the party's right thereto to the county department under s. 46.215, 46.22 or 46.23 granting such assistance. Such assignment shall be approved by order of the court granting the maintenance payments or support money, and may be terminated in like manner; except that it shall not be terminated in cases where there is any delinquency in the amount of maintenance payments and support money previously ordered or adjudged to be paid to the assignee without the written consent of the assignee or upon notice to the assignee and hearing. When an assignment of maintenance payments or support money, or both, has been approved by the order, the assignee shall be deemed a real party in interest within s. 803.01 but solely for the purpose of securing payment of unpaid maintenance payments or support money adjudged or ordered to be paid, by participating in proceedings to secure the payment thereof. Notwithstanding assignment under this subsection, and without further order of the court, the department or its designee, upon receiving notice that a party or a minor child of the parties is receiving public assistance under ch. 49 or that a kinship care relative or long−term kinship care relative of the minor child is receiving kinship care payments or long−term kinship care payments for the minor child, shall forward all support assigned under s. 48.57 (3m) (b) 2. or (3n) (b) 2., 49.19 (4) (h) 1. or 49.45 (19) to the assignee under s. 48.57 (3m) (b) 2. or (3n) (b) 2., 49.19 (4) (h) 1. or 49.45 (19).

(3) (a) 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 or 938 in an agency, department or relative, the court or a circuit 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.

(b) If a child who is the beneficiary of support under a judgment or order is placed by court order in a residential care center for children and youth, juvenile correctional institution, or state mental institution, the right of the child to support during the period of the child's confinement, including any right to unpaid support accruing during that period, is assigned to the state. If the judgment or order providing for the support of a child who is placed in a residential care center for children and youth, juvenile correctional institution, or state mental institution includes support for one or more other children, the support that is assigned to the state shall be the proportionate share of the child placed in the center or institution, except as otherwise ordered by the court or circuit court commissioner on the motion of a party.

(4) If an order or judgment providing for the support of one or more children not receiving aid under s. 48.57 (3m) or (3n) or 49.19 includes support for a minor who is the beneficiary of aid under s. 48.57 (3m) or (3n) or 49.19, any support payment made under the order or judgment is assigned to the state under s. 48.57 (3m) (b) 2. or (3n) (b) 2. or 49.19 (4) (h) 1. b. in the amount that is the proportionate share of the minor receiving aid under s. 48.57 (3m) or (3n) or 49.19, except as otherwise ordered by the court on the motion of a party.

History: 1971 c. 41 s. 12; Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1975 c. 82, 200; 1975 c. 401 s. 4; 1977 c. 105 s. 59; 1977 c. 271, 418, 447; 1979 c. 32 ss. 50, 92 (4); 1979 c. 257 s. 17; Stats. 1979 s. 767.29; 1981 c. 20 s. 2202 (20) (m); 1983 a. 27, 302; 1985 a. 29, 176; 1991 a. 39; 1993 a. 481; 1995 a. 27 ss. 7104tm, 9126 (19), 9130 (4); 1995 a. 77, 279, 289, 404; 1997 a. 27, 35, 105, 191, 252; 1999 a. 9; 2001 a. 16, 59, 61, 105.

A public welfare agency is entitled to collect unpaid alimony and support money that had accumulated prior to the effective date of an assignment under sub. (2) and prior to the assignor's receipt of public assistance. Schiavo v. Schiavo, 71 Wis. 2d 136, 237 N.W.2d 702 (1976).

The 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 Wis. 2d 150, 242 N.W.2d 907 (1976).

767.293 Affidavit for certain arrearages. (1) If an order for child support under this chapter or s. 948.22 (7), an order for family support under this chapter or a stipulation approved by the court or circuit court commissioner for child support under this chapter requires a payer to pay child or family support in an amount that is expressed as a percentage of parental income, the payee, including the state or a county child support agency under s. 59.53 (5) if the state is a real party in interest under s. 767.075 (1), may establish an arrearage by filing an affidavit in the action in which the order for the payment of support was entered or the stipulation for support was approved. The affidavit shall state the amount of the arrearage and the facts supporting a reasonable basis on which the arrearage was determined and may state the payer's current income and the facts supporting a reasonable basis on which the payer's current income was determined. Not later than 60 days after filing the affidavit, the payee shall serve the affidavit on the payer in the manner provided in s. 801.11 (1) (a) or (b) or by sending the affidavit by registered or certified mail to the last−known address of the payer. After the payee files a proof of service on the payer, the court shall send a notice to the payer by regular, registered or certified mail to the payer's last−known address. The notice shall provide that, unless the payer requests a hearing to dispute the arrearage or the amount of the arrearage not later than 20 days after the date of the notice, the court or circuit court commissioner may enter an order against the payer in the amount stated in the affidavit and may provide notice of assignment under s. 767.265. The notice shall include the mailing address to which the request for hearing must be mailed or delivered in order to schedule a hearing under sub. (2).

(2) If the payer makes a timely request for a hearing, the court or circuit court commissioner shall hold a hearing on the issue of the amount of the arrearage, if any. If the court or circuit court commissioner determines after hearing that an arrearage exists, the court or circuit court commissioner shall enter an order establishing an arrearage in the amount determined by the court or circuit court commissioner and may send notice of assignment under s. 767.265.

(3) If the court or circuit court commissioner sends the notice under sub. (1) and the payer fails to make a timely request for a hearing, the court or circuit court commissioner, if the affidavit demonstrates to the satisfaction of the court or circuit court commissioner that an arrearage exists, shall enter an order establishing an arrearage in the amount determined by the court or circuit court commissioner and may send notice of assignment under s. 767.265. The court or circuit court commissioner shall send the order to the payer's last−known address and shall inform the payer whether an assignment is in effect and that the payer may, within a 10−day period, by motion request a hearing on the issue of whether the order should be vacated or the assignment should be withdrawn.

(4) An assignment under sub. (2) or (3) shall replace any assignment in effect for the order or stipulation on which the arrearage is based. An assignment under sub. (2) or (3) shall be for an amount sufficient to ensure payment under the order or stipulation on which the arrearage is based and to pay the arrearage determined under sub. (2) or (3), together with any arrearages due

before the proceeding under this section, at a periodic rate not to exceed 50% of the amount of support due under the order or stipulation on which the arrearage determined under sub. (2) or (3) is based, except that the total amount withheld under the assignment may not leave the payer at an income below the poverty line established under 42 USC 9902 (2).

(5) The determination of an arrearage under this section may be enforced under s. 767.30 or 767.305.

(6) Section 814.025 applies to the filing of an affidavit under this section.

History: 1993 a. 481; 1995 a. 201; 1997 a. 27; 2001 a. 61.

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

(2) (a) In an action for modification of a child support order under s. 767.32, an action in which an order for child support is required under s. 767.25 (1), 767.51 (3) or 767.62 (4) or a contempt of court proceeding to enforce a child support or family support order in a county that contracts under s. 49.36 (2), the court may order a parent who is not a custodial parent to register for a work experience and job training program under s. 49.36 if all of the following conditions are met:

1. The parent is able to work full time.

1m. If the parent resides in a county other than the county in which the court action or proceeding takes place, the parent resides in a county with a work experience and job training program under s. 49.36 and that county agrees to enroll the parent in the program.

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

3. The parent's actual weekly gross income averages less than 40 times the federal minimum hourly wage under 29 USC 206 (a) (1) or the parent is earning less than the parent has the ability to earn, as determined by the court.

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

(c) If the court enters an order under par. (a), it shall order the parent to pay child support equal to the amount determined by applying the percentage standard established under s. 49.22 (9) to the income a person would earn by working 40 hours per week for the federal minimum hourly wage under 29 USC 206 (a) (1) or equal to the amount of child support that the parent was ordered to pay in the most recent determination of support under this chapter. The child support obligation ordered under this paragraph continues until the parent makes timely payment in full for 3 consecutive months or until the person participates in the program under s. 49.36 for 16 weeks, whichever comes first. The court shall provide in its order that the parent must make child support payments calculated under s. 767.25 (1j) or (1m) after the obligation to make payments ordered under this paragraph ceases.

History: 1987 a. 413; 1993 a. 16, 481; 1995 a. 27 ss. 7105 to 7109, 9130 (4); 1995 a. 404; 1997 a. 191; 1999 a. 9.

767.30 Enforcement of payments ordered. (1) If the court orders any payment for support under s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2), 938.183 (4), 938.355 (2) (b) 4., 938.357 (5m) (a) or 938.363 (2), support or maintenance under s. 767.08, child support, family support or maintenance under s. 767.23, child support under s. 767.25, maintenance under s. 767.26, family support under s. 767.261, attorney fees under s. 767.262, child support or a child's health care expenses under s. 767.477, paternity obligations under s. 767.458 (3), 767.51 or 767.62 (4), support arrearages under s. 767.293 or child or spousal support under s. 948.22 (7), the court may provide that any payment be paid in the amounts and at the times that it considers expedient.

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

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

(a) Execution of the order or judgment.

(b) Contempt of court under ch. 785.

(c) Money judgment for past due payments.

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

(e) Garnishment under ch. 812.

(f) For failure to pay child support or family support, satisfaction under s. 780.10 out of the proceeds of the sale of any ship, boat or vessel attached and sold under ch. 780.

(4) Upon the request of a county, the department of natural resources shall provide the county with a list of the names and addresses of all of the owners of boats that have a valid certificate of number or registration that has been issued by the department under s. 30.52. The department shall prepare the list annually before May 31 of each year.

History: 1971 c. 220; 1975 c. 401 s. 4; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196, 221; 1979 c. 257 s. 17; 1979 c. 355; Stats. 1979 s. 767.30; 1983 a. 27; 1985 a. 29; 1987 a. 332 s. 64; 1993 a. 481; 1995 a. 77, 287; 1997 a. 27, 191; 1999 a. 103.

A court is justified in requiring the creation of a trust to secure the payment of support money when the husband has a record of failing to obey prior court orders. Foregger v. Foregger, 48 Wis. 2d 512, 180 N.W.2d 578 (1970).

When parents each own a 1/2 interest in future proceeds of real estate and the state contributes to child support, the court may not order the custodial parent to pay child support in the form of an accumulating real estate lien in favor of the state. State ex rel. v. Reible, 91 Wis. 2d 394, 283 N.W.2d 427 (Ct. App. 1979).

The trial court had the power to order a father to look for additional or alternative employment or be held in contempt. Proper contempt procedures are discussed. Dennis v. Dennis, 117 Wis. 2d 249, 344 N.W.2d 128 (1984).

There is no authority under this section to grant credits against arrearages. To grant a credit requires modification of the judgment under s. 767.32. Under s. 767.32 (1r) a court is without discretion to grant credits against arrearages for direct payments made for child support regardless of when the order was entered. Douglas County Child Support v. Fisher, 200 Wis. 2d 807, 547 N.W.2d 801 (Ct. App. 1996).

767.303 Enforcement of child support; suspension of operating privilege. (1) If a person fails to pay a payment ordered for support under s. 767.077, support under s. 767.08, child support or family support under s. 767.23, child support under s. 767.25, family support under s. 767.261, revised child or family support under s. 767.32, child support under s. 767.458 (3), child support under s. 767.477, child support under s. 767.51, child support under s. 767.62 (4), child support under ch. 769 or child support under s. 948.22 (7), the payment is 90 or more days past due and the court finds that the person has the ability to pay the amount ordered, the court may suspend the person's operating privilege, as defined in s. 340.01 (40), until the person pays all arrearages in full or makes payment arrangements that are satisfactory to the court, except that the suspension period may not exceed 2 years. If otherwise eligible, the person is eligible for an occupational license under s. 343.10 at any time.

(2) Whenever the court orders suspension of a person's operating privilege under sub. (1), the court shall notify the department of transportation, in the form and manner prescribed by the department. The notice to the department shall include the name and last−known address of the person against whom the support order was entered, certification by the court that the person has been notified of the entry of the support order and that there are arrearages in support payments that are 90 or more days past due, the place where the arrearages may be paid and that the person's operating privilege shall remain suspended until the person pays all arrearages in full or makes payment arrangements that are satisfactory

to the court, except that the suspension period may not exceed 2 years.

(3) If the person subsequently pays the full amount of the arrearages or makes payment arrangements that are satisfactory to the court, the court shall immediately notify the department of transportation of the payment, in the form and manner prescribed by the department.

(4) This section applies to support arrearages existing on or after October 1, 1996, regardless of when the arrearages accrued or when the order or judgment requiring the payment of support was entered.

(5) The remedy permitted under this section is in addition to any other remedies authorized by law.

History: 1995 a. 401; 1997 a. 84, 191; 1999 a. 9, 32.

767.305 Enforcement; contempt proceedings. In all cases where a party has incurred a financial obligation under s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2), 767.23, 767.25, 767.255, 767.26, 767.261, 767.262, 767.293, 767.458 (3), 767.477, 767.51, 767.62 (4), 938.183 (4), 938.355 (2) (b) 4., 938.357 (5m) (a) or 938.363 (2) 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 and the account transfer under s. 767.267 are inapplicable, impractical or unfeasible, the court may on its own initiative, and shall on the application of the receiving party, issue an order requiring the payer to show cause at some reasonable time therein specified why he or she should not be punished for such misconduct as provided in ch. 785.

History: 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; 1979 c. 257 s. 17; Stats. 1979 s. 767.305; 1993 a. 481; 1995 a. 77; 1997 a. 27, 191; 1999 a. 103.

Contempt is an appropriate means to enforce child support arrearages after a child has reached majority. Griffin v. Reeve, 141 Wis. 2d 699, 416 N.W.2d 612 (1987).

When a contemnor's liberty interests are at risk, he or she must be given an opportunity to show the court that the failure to comply with the purge conditions was not willful and intentional. V.J.H. v. C.A.B. 163 Wis. 2d 833, 472 N.W.2d 939 (Ct. App. 1991).

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

History: 1971 c. 220; 1979 c. 32 s. 50; 1979 c. 196; Stats. 1979 s. 767.31.

767.32 Revision of certain judgments. (1) (a) After a judgment or order providing for child support under this chapter or s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2), 938.183 (4), 938.355 (2) (b) 4., 938.357 (5m) (a), 938.363 (2), or 948.22 (7), maintenance payments under s. 767.26, or family support payments under this chapter, or for the appointment of trustees under s. 767.31, the court may, from time to time, on the petition, motion, or order to show cause of either of the parties, or upon the petition, motion, or order to show cause of the department, a county department under s. 46.215, 46.22, or 46.23, or a county child support agency under s. 59.53 (5) if an assignment has been made under s. 46.261, 48.57 (3m) (b) 2. or (3n) (b) 2., 49.19 (4) (h), or 49.45 (19) or if either party or their minor children receive aid under s. 48.57 (3m) or (3n) or ch. 49, and upon notice to the office of family court commissioner, revise and alter such judgment or order 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 or order respecting any of the matters that such court might have made in the original action, except that a judgment or order that waives maintenance payments for either party shall not thereafter be revised or altered in that respect nor shall the provisions of a judgment or order with respect to final division of property be subject to revision or modification. Except as provided in par. (d), a revision under this section of a judgment or order with respect to an amount of child or family support may be made only upon a finding of a substantial change in circumstances. In any action under this section to revise a judgment or order with respect to maintenance payments, 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 or order with respect to the amount of maintenance, except that a change in an obligor's cost of living is not in itself sufficient if payments are expressed as a percentage of income.

(b) In any action under this section to revise a judgment or order with respect to an amount of child support, any of the following shall constitute a rebuttable presumption of a substantial change in circumstances sufficient to justify a revision of the judgment or order:

1. Commencement of receipt of aid to families with dependent children under s. 49.19 or participation in Wisconsin works under ss. 49.141 to 49.161 by either parent since the entry of the last child support order, including a revision of a child support order under this section.

2. Unless the amount of child support is expressed in the judgment or order as a percentage of parental income, the expiration of 33 months after the date of the entry of the last child support order, including a revision of a child support order under this section.

3. Failure of the payer to furnish a timely disclosure under s. 767.27 (2m).

4. A difference between the amount of child support ordered by the court to be paid by the payer and the amount that the payer would have been required to pay based on the percentage standard established by the department under s. 49.22 (9) if the court did not use the percentage standard in determining the child support payments and did not provide the information required under s. 46.10 (14) (d), 301.12 (14) (d) or 767.25 (1n), whichever is appropriate.

(c) In any action under this section to revise a judgment or order with respect to an amount of child support, any of the following may constitute a substantial change of circumstances sufficient to justify revision of the judgment or order:

1. Unless the amount of child support is expressed in the judgment or order as a percentage of parental income, a change in the payer's income, evidenced by information received under s. 49.22 (2m) by the department or the county child support agency under s. 59.53 (5) or by other information, from the payer's income determined by the court in its most recent judgment or order for child support, including a revision of a child support order under this section.

2. A change in the needs of the child.

3. A change in the payer's earning capacity.

4. Any other factor that the court determines is relevant.

(d) In an action under this section to revise a judgment or order with respect to child or family support, the court is not required to make a finding of a substantial change in circumstances to change to a fixed sum the manner in which the amount of child or family support is expressed in the judgment or order.

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

(1r) In an action under sub. (1) to revise a judgment or order with respect to child support or family support, the court may grant credit to the payer against support due prior to the date on which the petition, motion or order to show cause is served for payments made by the payer other than payments made as pro-

vided in s. 767.265 or 767.29, in any of the following circumstances:

(b) The payer shows by documentary evidence that the payments were made directly to the payee by check or money order, and shows by a preponderance of the evidence that the payments were intended for support and not intended as a gift to or on behalf of the child, or as some other voluntary expenditure, or for the payment of some other obligation to the payee.

(c) The payer proves by clear and convincing evidence, with evidence of a written agreement, that the payee expressly agreed to accept the payments in lieu of child or family support paid as provided in s. 767.265 or 767.29, not including gifts or contributions for entertainment.

(d) The payer proves by documentary evidence that, for a period during which unpaid support accrued, the child received benefits under 42 USC 402 (d) based on the payer's entitlement to federal disability insurance benefits under 42 USC 401 to 433. Any credit granted under this paragraph shall be limited to the amount of unpaid support that accrued during the period for which the benefits under 42 USC 402 (d) were paid.

(e) The payer proves by a preponderance of the evidence that the child lived with the payer, with the agreement of the payee, for more than 60 days beyond a court−ordered period of physical placement. Credit may not be granted under this paragraph if, with respect to the time that the child lived with the payer beyond the court−ordered period of physical placement, the payee sought to enforce the physical placement order through civil or criminal process or if the payee shows that the child's relocation to the payer's home was not mutually agreed to by both parents.

(f) The payer proves by a preponderance of the evidence that the payer and payee resumed living together with the child and that, during the period for which a credit is sought, the payer directly supported the family by paying amounts at least equal to the amount of unpaid court−ordered support that accrued during that period.

(2) Except as provided in sub. (2m) or (2r), if the court revises a judgment or order with respect to child support payments, it shall do so by using the percentage standard established by the department under s. 49.22 (9).

(2m) Upon request by a party, the court may modify the amount of revised child support payments determined under sub. (2) if, after considering the factors listed in s. 767.25 (1m), the court finds, by the greater weight of the credible evidence, that the use of the percentage standard is unfair to the child or to any of the parties.

(2r) If the court revises a judgment or order providing for child support that was entered under s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2), 938.183 (4), 938.355 (2) (b) 4., 938.357 (5m) (a) or 938.363 (2), the court shall determine child support in the manner provided in s. 46.10 (14) or 301.12 (14), whichever is applicable.

(2s) In an action under sub. (1), the court may not approve a stipulation for the revision of a judgment or order with respect to an amount of child support or family support unless the stipulation provides for payment of an amount of child support or family support that is determined in the manner required under s. 46.10 (14), 301.12 (14), 767.25, 767.51 or 767.62 (4), whichever is appropriate.

(2w) A revision of a judgment or order with respect to child support, family support or maintenance payments has the effect of modifying the original judgment or order with respect to such payments to the extent of the revision from the date on which the order revising such payments is effective. The child support, family support or maintenance payments modified by the order for revision shall cease to accrue under the original judgment or order from the date on which the order revising such payments is effective.

(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 shall review the support obligation periodically and whenever circumstances so warrant, petition the court for revision of the judgment or order with respect to the support obligation.

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

History: 1971 c. 220; 1977 c. 105 ss. 38, 48, 49; 1977 c. 418; 1979 c. 32 ss. 50, 92 (4); Stats. 1979 s. 767.32; 1981 c. 20 s. 2202 (20) (m); 1981 c. 314 s. 146; 1983 a. 27; 1985 a. 176; 1987 a. 27, 355, 413; 1989 a. 212; 1991 a. 39; 1993 a. 16, 481, 491; 1995 a. 27 s. 9126 (19); 1995 a. 77, 201, 225, 279, 289, 404, 417; 1997 a. 27, 35, 105, 191, 237, 273; 1999 a. 9, 103; 2001 a. 16, 61, 105.

That a child needs more support at age 6 than age 2 is sufficient to justify an increase in payments if the father is able to make them. Klipstein v. Klipstein, 47 Wis. 2d 314, 177 N.W.2d 57 (1970).

Even though the mother took the children out of the state without court approval or letting the father know where he could visit them, the court may not suspend payment of a support allowance without a hearing as to the effect on the children. Krause v. Krause, 58 Wis. 2d 499, 206 N.W.2d 589 (1973).

Even assuming the parties' agreement as to child support gave rise to a contractual obligations, these obligations remained subject to modification by the court under this section. Vaccaro v. Vaccaro, 67 Wis. 2d 477, 227 N.W.2d 62 (1975).

While a divorced party owes no duty of sexual fidelity to the former spouse, cohabitation by the party can be 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 alimony payments should be modified. Taake v. Taake, 70 Wis. 2d 115, 233 N.W.2d 449 (1975).

A child support provision reducing payments proportionately as each of several minor children attains majority is not against public policy. Severson v. Severson, 71 Wis. 2d 382, 238 N.W.2d 116 (1976).

The trial court abused its discretion in denying the former husband's motion to terminate alimony by failing to consider the former wife's increased estate as the result of an inheritance. Lemm v. Lemm, 72 Wis. 2d 457, 241 N.W.2d 593 (1976).

The trial court abused its discretion by terminating maintenance without sufficiently addressing the factors under s. 767.26. Vander Perren v. Vander Perren, 105 Wis. 2d 219, 313 N.W.2d 813 (1982).

It was improper to discontinue maintenance payments to a former wife solely upon the ground of her cohabitation with another man. Van Gorder v. Van Gorder, 110 Wis. 2d 188, 327 N.W.2d 674 (1983).

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

A court may revise a judgment incorporating a stipulation regarding limited maintenance if the petition to revise is filed before expiration of a maintenance obligation. Fobes v. Fobes, 124 Wis. 2d 72, 368 N.W.2d 643 (1985).

A petition for revision filed 20 days after receipt of the final scheduled maintenance payment was properly dismissed as untimely. Lippstreu v. Lippstreu, 125 Wis. 2d 415, 373 N.W.2d 53 (Ct. App. 1985).

A state family court may modify the paying spouse's support obligation following the his or her discharge in bankruptcy. Eckert v. Eckert, 144 Wis. 2d 770, 424 N.W.2d 759 (Ct. App. 1988).

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

It is within trial court's discretion to apply the percentage standards to a child support revision. If applied to a remarried parent, gross income for must be computed as if the remarried parent is still single. The trial court retains discretion to adjust the percentage calculation based on the circumstances. Abitz v. Abitz, 155 Wis. 2d 161, 455 N.W.2d 609 (1990).

A remarriage, though unlawful in Wisconsin and dissolved through annulment, is sufficient to terminate maintenance under sub. (3). The requirement that maintenance be terminated following remarriage is unconditional. Falk v. Falk, 158 Wis. 2d 184, 462 N.W.2d 547 (Ct. App. 1990).

A party is estopped from seeking a maintenance revision if the parties stipulated to permanent nonmodifiable maintenance that was part of a comprehensive settlement of all property and maintenance issues that was approved by the court and was fair and not illegal or against public policy at the time and relief is being sought on the grounds that the court did not have power to enter the order the parties had agreed to. Nichols v. Nichols, 162 Wis. 2d 96, 469 N.W.2d 619 (1991).

A divorce judgment provision waiving maintenance takes precedence over other provisions arguably reserving or awarding maintenance. Tyson v. Tyson, 162 Wis. 2d 551, 469 N.W.2d 913 (Ct. App. 1991).

In determining income for maintenance revision, investment income from property awarded in an equal property division may be included. Interest payments to the payee spouse under the division may not to be deducted. Hommel v. Hommel, 162 Wis. 2d 782, 471 N.W.2d 1 (1991).

Lottery proceeds won after a divorce may be considered a change in financial circumstances in determining whether a change in maintenance is justified. A maintenance award is to assure the recipient spouse a standard of living comparable to that enjoyed during the marriage. Gerrits v. Gerrits, 167 Wis. 2d 429, 482 N.W.2d 134 (Ct. App. 1992).

The absence of a mortgage obligation is relevant to the assessment of a party's economic circumstances, but does not translate into imputed income under the applicable administrative rule. Zimmerman v. Zimmerman, 169 Wis. 2d 516, 485 N.W.2d 294 (Ct. App. 1992).

Even though incarceration results from intentional criminal conduct, it is a change of circumstance under sub. (1). Voecks v. Voecks, 171 Wis. 2d 184, 491 N.W.2d 107 (Ct. App. 1992).

When a paying spouse's termination of employment is voluntary, an order may be based on the spouse's earning capacity whether or not bad faith is shown. Roberts v. Roberts, 173 Wis. 2d 406, 496 N.W.2d 210 (Ct. App. 1992).

A paying spouse should be allowed a fair choice of livelihood even though an income reduction may result, but the spouse may be found to be shirking if the choice is not reasonable in light of the payer's support obligation. Van Offeren v. Van Offeren, 173 Wis. 2d 482, 496 N.W.2d 660 (Ct. App. 1992).

The parties' extrajudicial agreement that child support payments be discontinued was enforceable via the doctrine of equitable estoppel. Harms v. Harms, 174 Wis. 2d 780, 498 N.W.2d 229 (1993). But see Monicken v. Monicken, 226 Wis. 2d 119, 593 N.W.2d 509 (Ct. App. 1999).

The date when a maintenance order is vacated under sub. (3) is a discretionary determination based on the specific facts and equities of the case. Hansen v. Hansen, 176 Wis. 2d 327, 500 N.W.2d 357 (Ct. App. 1993).

In the absence of a specific agreement that maintenance payments continue after the payee's remarriage, the payer was not estopped from seeking termination upon the payee's remarriage. Jacobson v. Jacobson, 177 Wis. 2d 539, 502 N.W.2d 869 (Ct. App. 1993).

An agreement that the husband would complete his education when the wife completed hers and the wife's increased income upon completion of her education were both relevant to the husband's request for a change in support upon returning to graduate school full time. Kelly v. Hougham, 178 Wis. 2d 546, 504 N.W.2d 440 (Ct. App. 1993).

When a broadly worded settlement agreement required the payer to meet the children's current and changing needs rather than to pay a set amount or percentage, a change in the children's needs, although a change in circumstances, did not require a modification of child support to impose percentage guidelines when the court found those needs were being met. Jacquart v. Jacquart 183 Wis. 2d 372, 515 N.W.2d 539 (Ct. App. 1994).

Unlike an initial award of maintenance, a party seeking to change maintenance has the burden of proof. Haeuser v. Haeuser, 200 Wis. 2d 750, 548 N.W.2d 750 (Ct. App. 1996).

Under sub. (1r) a court is without discretion to grant credits against arrearages for direct payments made for child support regardless of when the order was entered. Douglas County Child Support v. Fisher, 200 Wis. 2d 807, 547 N.W.2d 801 (Ct. App. 1996).

A change in an administrative rule, absent a change in factual circumstances, is not grounds for modification a child support order. Beaupre v. Airriess, 208 Wis. 2d 238, 560 N.W.2d 285 (Ct. App. 1997).

When a support order is not based on the percentage standards, the passage of 33 months gives a party a prima facie claim under sub. (1) (b) 2. that child support should be modified, but the family court maintains it discretion whether the percentage guidelines should be applied. Zutz v. Zutz, 208 Wis. 2d 338, 559 N.W.2d 914 (Ct. App. 1997).

A stipulation incorporated into a divorce judgment is in the nature of a contract. That a stipulation appears imprudent is not grounds for construction of an unambiguous agreement. Rosplock v. Rosplock, 217 Wis. 2d 22, 577 N.W.2d 32 (Ct. App. 1998).

The purpose of maintenance is, at least in part, to put the recipient in a solid financial position that allows the recipient to become self−supporting by the end of the maintenance period. That the recipient becomes employed and makes productive investments of property division proceeds and maintenance payments is not a substantial change in circumstances, but an expected result of receiving maintenance. Rosplock v. Rosplock, 217 Wis. 2d 22, 577 N.W.2d 32 (Ct. App. 1998).

The "fairness objective" of equalizing total income does not apply in a postdivorce situation. Modification of maintenance has nothing to do with contributions, economic or noneconomic, made during the marriage. Johnson v. Johnson, 217 Wis. 2d 124, 576 N.W.2d 585 (Ct. App. 1998).

The limitation under sub. (1m) that a court may not revise the amount of child support due or the amount of arrearages restricts the court's authority to that of correcting mathematical errors only. State v. Jeffrie C. B. 218 Wis. 2d 145, 579 N.W.2d 69 (Ct. App. 1997).

Sub. (1r) modifies the common law. A court may grant credit for support payments not made in accordance with a judgment only under the circumstances enumerated under sub. (1r). Equitable estoppel does not apply. Monicken v. Monicken, 226 Wis. 2d 119, 593 N.W.2d 509 (Ct. App. 1999).

Once the court determined that a reduction in support was warranted, even though the reduction was based on a finding that the payment level was inequitable and not that the payer had an inability to pay, the court did not have authority to condition that reduction on payment of arrearages. Benn v. Benn, 230 Wis. 2d 301, 602 N.W.2d 65 (Ct. App. 1999).

If a motion seeks to clarify a court's ambiguous property division rather than revise or modify it, it is not barred by sub. (1) (a). Section 767.01 (1) grants the power to effectuate a divorce judgment by construing an ambiguous provision of a final division of property. Washington v. Washington, 2000 WI 47, 234 Wis. 2d 689, 611 N.W.2d 261.

Equitable estoppel does not apply to prevent modification of a stipulation for nonmodifiable maintenance if at the time that the stipulation was entered into it violated public policy because it indefinitely burdened only one party with the entire risk of financial hardship. Patrickus v. Patrickus, 2000 WI App 255, 239 Wis. 2d 340, 620 N.W.2d 205.

A change in amount of placement days does not, in and of itself, establish a substantial change in circumstances. State v. Beaudoin, 2001 WI App 42, 241 Wis. 2d 350, 625 N.W.2d 619.

Mere silence regarding whether interest was owed on a specified sum to be paid over time did not render a judgment ambiguous. Hutjens v. Hutjens, 2002 WI App 162, ___ Wis. 2d ___, 647 N.W.2d 448.

Cross−reference: See also Wisconsin Administrative Code Citations published in the Wisconsin Administrative Code for a list of citations to cases citing ch. HSS 80, HFS 80, and DWD 40, Wis. Adm. Code, the child support percentage of income standard.

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

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

1. An order of legal custody.

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

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

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

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

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

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

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

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

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

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

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

(2m) MODIFICATION OF PERIODS OF PHYSICAL PLACEMENT FOR FAILURE TO EXERCISE PHYSICAL PLACEMENT. Notwithstanding subs. (1) and (2), upon petition, motion or order to show cause by a party, a court may modify an order of physical placement at any time with respect to periods of physical placement if it finds that a parent has repeatedly and unreasonably failed to exercise periods of physical placement awarded under an order of physical placement that allocates specific times for the exercise of periods of physical placement.

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

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

(4m) DENIAL OF PHYSICAL PLACEMENT FOR KILLING OTHER PARENT. (a) Notwithstanding subs. (1) to (4), upon petition, motion or order to show cause by a party or on its own motion, a court shall modify a physical placement order by denying a parent physical placement with a child if the parent has been convicted under s. 940.01 of the first−degree intentional homicide, or under s. 940.05 of the 2nd−degree intentional homicide, of the child's other parent, and the conviction has not been reversed, set aside or vacated.

(b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that physical placement with the parent would be in the best interests of the child. The court shall consider the wishes of the child in making the determination.

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

(5m) FACTORS TO CONSIDER. In all actions to modify legal custody or physical placement orders, the court shall consider the factors under s. 767.24 (5) and shall make its determination in a manner consistent with s. 767.24.

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

(6m) PARENTING PLAN. In any action to modify a legal custody or physical placement order under sub. (1), the court may require the party seeking the modification to file with the court a parenting plan under s. 767.24 (1m) before any hearing is held.

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

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

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

History: 1987 a. 355, 364; 1995 a. 27 s. 9126 (19); 1999 a. 9.

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

"Necessary" implies that a change of custody itself is needed because custodial conditions are harmful in some way to the best interest of the child.. Millikin v. Millikin, 115 Wis. 2d 16, 339 N.W.2d 573 (1983).

The revision of s. 767.24 allowing joint custody in cases where both parties did not agree was not a "substantial change in circumstances" justifying a change to joint custody. Licary v. Licary, 168 Wis. 2d 686, 484 N.W.2d 371 (Ct. App. 1992).

Sub. (1) (a) prohibits a change of custody solely to correct a mother's unreasonable interference with physical placement of the child with the father. Sub. (1) (a) provides a 2−year truce period. Judicial intervention during this period must be compelling. Paternity of Stephanie R.N. 174 Wis. 2d 745, 488 N.W.2d 235 (1993).

"Necessary" embodies at least 2 concepts: 1) that the modification must operate to protect the child from alleged harmful custodial conditions, and 2) that the physical or emotional harm threatened by the current custodial conditions must be severe enough to warrant modification. Paternity of Stephanie R.N. 174 Wis. 2d 745, 488 N.W.2d 235 (1993).

Section 767.325 does not limit a court's authority to hold a hearing or enter an order during the 2−year "truce period" with the order effective on the conclusion of the truce period. Paternity of Bradford J.B. 181 Wis. 2d 304, 510 N.W.2d 775 (Ct. App. 1993).

There is no authority to order a change of custody at an unknown time in the future upon the occurrence of some stated contingency. Koeller v. Koeller, 195 Wis. 2d 660, 536 N.W.2d 216 (Ct. App. 1995).

Sub. (1) (b) is inapplicable in guardianship litigation between a parent and a 3rd party guardian. Howard M. v. Jean R. 196 Wis. 2d 16, 539 N.W.2d 104 (Ct. App. 1995).

Neither sub. (4) nor s. 767.24 (4) (b) permits a prospective order prohibiting a parent from requesting a change of physical placement in the future. Jocius v. Jocius, 218 Wis. 2d 103, 580 N.W.2d 708 (Ct. App. 1998).

Sections 767.325 and 767.327 do not conflict. If one party files a notification of intention to move under s. 767.327, the other parent may file a motion to modify placement under s. 767.325, and the court may consider all relevant circumstances, including, but not limited to, the move. Hughes v. Hughes, 223 Wis. 2d 111, 588 N.W.2d 346 (Ct. App. 1998).

The sub. (1) prohibition against modification of placement orders applies to both primary placement and physical placement. Trost v. Trost, 2000 WI App 222, 239 Wis. 2d 1, 619 N.W.2d 105.

When a court denies a parent physical placement, it has the authority to impose conditions for regaining placement, which may include mental health treatment, anger management, individual or family counseling, and parenting training. Conditions imposed must be necessary to protect the child from the danger of physical, emotional, or mental harm if the child is placed with the parent. State v. Alice H. 2000 WI App 228, 239 Wis. 2d 194, 619 N.W.2d 151.

By asking the trial court for what constituted a substantial modification of placement, the movant effectively conceded that there was a substantial change in circumstances to merit placement modification under sub. (1) (b) 1. and could not maintain a contrary position on appeal. Keller v. Keller, 2002 WI App 161, ___ Wis. 2d ___, 647 N.W.2d 426.

767.327 Moving the child's residence within or outside the state.

(1) NOTICE TO OTHER PARENT. (a) If the court grants periods of physical placement to more than one parent, it shall order a parent with legal custody of and physical placement rights to a child to provide not less than 60 days written notice to the other parent, with a copy to the court, of his or her intent to:

1. Establish his or her legal residence with the child at any location outside the state.

2. Establish his or her legal residence with the child at any location within this state that is at a distance of 150 miles or more from the other parent.

3. Remove the child from this state for more than 90 consecutive days.

(b) The parent shall send the notice under par. (a) by certified mail. The notice shall state the parent's proposed action, including the specific date and location of the move or specific beginning and ending dates and location of the removal, and that the other parent may object within the time specified in sub. (2) (a).

(2) OBJECTION; PROHIBITION; MEDIATION. (a) Within 15 days after receiving the notice under sub. (1), the other parent may send to the parent proposing the move or removal, with a copy to the court, a written notice of objection to the proposed action.

(b) If the parent who is proposing the move or removal receives a notice of objection under par. (a) within 20 days after sending a notice under sub. (1) (a), the parent may not move with or remove the child pending resolution of the dispute, or final order of the court under sub. (3), unless the parent obtains a temporary order to do so under s. 767.23 (1) (bm).

(c) Upon receipt of a copy of a notice of objection under par. (a), the court or circuit court commissioner shall promptly refer the parents for mediation or other family court counseling services under s. 767.11 and may appoint a guardian ad litem. Unless the parents agree to extend the time period, if mediation or counseling services do not resolve the dispute within 30 days after referral, the matter shall proceed under subs. (3) to (5).

(3) STANDARDS FOR MODIFICATION OR PROHIBITION IF MOVE OR REMOVAL CONTESTED. (a) 1. Except as provided under par. (b), if the parent proposing the move or removal has sole legal or joint legal custody of the child and the child resides with that parent for the greater period of time, the parent objecting to the move or removal may file a petition, motion or order to show cause for modification of the legal custody or physical placement order affecting the child. The court may modify the legal custody or physical placement order if, after considering the factors under sub. (5), the court finds all of the following:

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

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

2. With respect to subd. 1.:

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

interest of the child. This presumption may be overcome by a showing that the move or removal is unreasonable and not in the best interest of the child.

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

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

(b) 1. If the parents have joint legal custody and substantially equal periods of physical placement with the child, either parent may file a petition, motion or order to show cause for modification of the legal custody or physical placement order. The court may modify an order of legal custody or physical placement if, after considering the factors under sub. (5), the court finds all of the following:

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

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

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

(c) 1. If the parent proposing the move or removal has sole legal or joint legal custody of the child and the child resides with that parent for the greater period of time or the parents have substantially equal periods of physical placement with the child, as an alternative to the petition, motion or order to show cause under par. (a) or (b), the parent objecting to the move or removal may file a petition, motion or order to show cause for an order prohibiting the move or removal. The court may prohibit the move or removal if, after considering the factors under sub. (5), the court finds that the prohibition is in the best interest of the child.

2. Under this paragraph, the burden of proof is on the parent objecting to the move or removal.

(4) GUARDIAN AD LITEM; PROMPT HEARING. After a petition, motion or order to show cause is filed under sub. (3), the court shall appoint a guardian ad litem, unless s. 767.045 (1) (am) applies, and shall hold a hearing as soon as possible.

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

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

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

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

(5m) DISCRETIONARY FACTORS TO CONSIDER. In making a determination under sub. (3), the court may consider the child's adjustment to the home, school, religion and community.

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

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

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

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

History: 1987 a. 355, 364; 1991 a. 32, 269; 1995 a. 70; 1999 a. 9; 2001 a. 61.

The sub. (5) factors are an addenda to the best interest of the child considerations of 767.24 and a re a reminder to the court to taylor the best interest of the child standard to problems unique to a removal situation. Kerkvliet v. Kerkvliet, 166 Wis. 2d 930, 480 N.W.2d 823 (Ct. App. 1992).

Sections 767.325 and 76.327 do not conflict. If one party files a notification of intent to move under s. 767.327, the other parent may file a motion to modify placement under s. 767.325, and the court may consider all relevant circumstances, including the move. Hughes v. Hughes, 223 Wis. 2d 111, 588 N.W.2d 346 (Ct. App. 1998).

There is no law prohibiting a parent with joint legal custody and physical placement from taking a child outside the state, including to a foreign country, for less than 90 days. When parents agree that one parent must move the court to prohibit the other from taking a particular trip with the children, the moving party has the burden of producing evidence and persuading the court that prohibiting the trip is in the children's best interests. Long v. Ardestant, 2001 WI App 46, 241 Wis. 2d 498, 624 N.W.2d 405.

Wisconsin's Child Removal Law. Wis. Law. June 1993.

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

History: 1987 a. 355.

Acceptance of a stipulation is not mandatory. The trial court is not prohibited from examining the best interests of the child. Paternity of S.A. 165 Wis. 2d 530, 478 N.W.2d 21 (Ct. App. 1991).

767.33 Annual adjustments in support orders. (1) (a) An order for child or family support under this chapter may provide for an annual adjustment in the amount to be paid based on a change in the payer's income if the amount of child or family support is expressed in the order as a fixed sum and based on the percentage standard established by the department under s. 49.22 (9). No adjustment may be made under this section unless the order provides for the adjustment.

(b) An adjustment under this section may not be made more than once in a year and shall be determined on the basis of the percentage standard established by the department under s. 49.22 (9).

(c) In the order the court or circuit court commissioner shall specify what information the parties must exchange to determine whether the payer's income has changed, and shall specify the manner and timing of the information exchange.

(2) If the court or circuit court commissioner provides for an annual adjustment, the court or circuit court commissioner shall make available to the parties, including the state if the state is a real party in interest under s. 767.075 (1), a form approved by the court or circuit court commissioner for the parties to use in stipulating to an adjustment of the amount of child or family support and to modification of any applicable income−withholding order. The form shall include an order, to be signed by a judge or circuit court commissioner, for approval of the stipulation of the parties.

(3) (a) If the payer's income changes from the amount found by the court or circuit court commissioner or stipulated to by the parties for the current child or family support order, the parties may implement an adjustment under this section by stipulating, on the form under sub. (2), to the changed income amount and the adjusted child or family support amount, subject to sub. (1) (b).

(b) The stipulation form must be signed by all parties, including the state if the state is a real party in interest under s. 767.075 (1), and filed with the court. If the stipulation is approved, the order shall be signed by a judge or circuit court commissioner and implemented in the same manner as an order for a revision under s. 767.32. An adjustment under this subsection shall be effective as of the date on which the order is signed by the judge or circuit court commissioner.

(4) (a) Any party, including the state if the state is a real party in interest under s. 767.075 (1), may file a motion, petition, or order to show cause for implementation of an annual adjustment under this section if any of the following applies:

1. A party refuses to provide the information required by the court under sub. (1) (c).

2. The payer's income changes, but a party refuses to sign the stipulation for an adjustment in the amount of child or family support.

(b) If the court or circuit court commissioner determines after a hearing that an adjustment should be made, the court or circuit court commissioner shall enter an order adjusting the child or

family support payments by the amount determined by the court or circuit court commissioner, subject to sub. (1) (b). An adjustment under this subsection may not take effect before the date on which the party responding to the motion, petition, or order to show cause received notice of the action under this subsection.

(c) Notwithstanding par. (b), the court or circuit court commissioner may direct that all or part of the adjustment not take effect until such time as the court or circuit court commissioner directs, if any of the following applies:

1. The payee was seeking an adjustment and the payer establishes that extraordinary circumstances beyond his or her control prevent fulfillment of the adjusted child or family support obligation.

2. The payer was seeking an adjustment and the payee establishes that the payer voluntarily and unreasonably reduced his or her income below his or her earning capacity.

3. The payer was seeking an adjustment and the payee establishes that the adjustment would be unfair to the child.

(d) If in an action under this subsection the court or circuit court commissioner determines that a party has unreasonably failed to provide the information required under sub. (1) (c) or to provide the information on a timely basis, or unreasonably failed or refused to sign a stipulation for an annual adjustment, the court or circuit court commissioner may award to the aggrieved party actual costs, including service costs, any costs attributable to time missed from employment, the cost of travel to and from court, and reasonable attorney fees.

(5) (a) Nothing in this section affects a party's right to file at any time a motion, petition, or order to show cause under s. 767.32 for revision of a judgment or order with respect to an amount of child or family support.

(b) Nothing in this section affects a party's right to move the court for a finding of contempt of court or for remedial sanctions under ch. 785 if the other party unreasonably fails to provide or disclose information required under this section or unreasonably fails or refuses to sign a stipulation for an annual adjustment.

History: 1981 c. 20; 1983 a. 27; 1993 a. 481; 1995 a. 27 s. 9126 (19); 1995 a. 404; 1997 a. 27; 2001 a. 16, 61, 105.

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 written judgment in any action affecting the family shall include the social security numbers of the parties and of any child of the parties. 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 circuit court commissioner has appeared at the trial of the action, such papers shall also be sent to the circuit 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 office of family court commissioner. The court may direct a circuit court commissioner or appoint some other attorney, to bring appropriate proceedings for the vacation of the judgment. The compensation of the circuit 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 circuit court commissioner or other attorney in connection with such vacation proceedings. Whenever a judgment of divorce is set aside under this subsection, the court shall order the record in the action impounded without regard to s. 767.19; and thereafter neither the record nor any part of the record shall be offered or admitted into evidence in any action or proceeding except by special order of the court of jurisdiction upon good cause shown in any paternity proceedings under this chapter or by special order of any court of record upon a showing of necessity to clear title to real estate.

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

History: 1971 c. 220; 1975 c. 41, 199, 200; 1975 c. 401 s. 4; 1975 c. 421; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 175 ss. 41, 53; 1979 c. 196; 1979 c. 257 s. 17; 1979 c. 352 ss. 23, 39; 1979 c. 355 s. 241; Stats. 1979 s. 767.37; 1997 a. 191; 2001 a. 61.

Sub. (2) does not authorize vacating or modifying a finding of paternity of children determined in the original divorce judgment. E. v. E. 57 Wis. 2d 436, 204 N.W.2d 503 (1973).

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

The death of party within 6 months of a divorce judgment did not void the judgment or divest the court of jurisdiction to order property division. Roeder v. Roeder, 103 Wis. 2d 411, 308 N.W.2d 904 (Ct. App. 1981).

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

History: 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 352; Stats. 1979 s. 767.38.

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

(2) Allowances specified in sub. (1), if made at all, shall be made by the proper trial court upon motion made and decided after the entry of the order or judgment appealed from and prior to the return of the record to an appellate court, provided, that if the allowance is ordered before the appeal is taken the order shall be

conditioned upon the taking of the appeal and shall be without effect unless and until the record is transmitted to the court of appeals.

History: 1975 c. 94; 1977 c. 105; 1977 c. 187 s. 89; 1979 c. 32 s. 50; 1979 c. 352 s. 39; Stats. 1979 s. 767.39; Sup. Ct. Order, 146 Wis. 2d xiii (1988).

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

History: 1977 c. 323; 1979 c. 32 s. 50; Stats. 1979 s. 767.40.

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

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

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

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

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

History: Sup. Ct. Order, 67 Wis. 2d 585, 773 (1975); 1977 c. 449; 1979 c. 352; 1985 a. 29 ss. 1115, 3200 (23); 1985 a. 332.

767.45 Determination of paternity. (1) The following persons may bring an action or motion, including an action or motion for declaratory judgment, for the purpose of determining the paternity of a child or for the purpose of rebutting the presumption of paternity under s. 891.405 or 891.41 (1):

(a) The child.

(b) The child's natural mother.

(c) Unless s. 767.62 (1) applies, a man presumed to be the child's father under s. 891.405 or 891.41 (1).

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

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

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

(g) This state whenever the circumstances specified in s. 767.075 (1) apply, including the delegates of the state as specified in sub. (6).

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

(i) A guardian ad litem appointed for the child under s. 48.235, 767.045 (1) (c) or 938.235.

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

(k) In conjunction with the filing of a petition for visitation with respect to the child under s. 767.245 (3), a parent of a person who has filed a declaration of paternal interest under s. 48.025 with respect to the child or a parent of a person who, before April 1, 1998, signed and filed a statement acknowledging paternity under s. 69.15 (3) (b) 3. with respect to the child.

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

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

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

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

(b) An action under this section may be joined with any other action for child support and shall be governed by the procedures specified in s. 767.05 relating to child support, except that the title of the action shall be "In re the paternity of A.B." The petition shall state the name and date of birth of the child if born or that the mother is pregnant if the child is unborn, the name of any alleged father, whether or not an action by any of the parties to determine the paternity of the child or rebut the presumption of paternity to the child has at any time been commenced, or is pending before any judge or circuit 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 genetic test under s. 49.225 or 767.48.

(c) If a matter is referred under s. 48.299 (6) (a) or 938.299 (6) (a) to an attorney designated under sub. (6) (a), that attorney shall also include in the petition notification to the court that the matter was referred under s. 48.299 (6) (a) or 938.299 (6) (a).

(5m) Except as provided in ss. 767.458 (3), 767.465 (2) and (2m), 767.477, 767.62 and 769.401, unless a man is presumed the child's father under s. 891.41 (1), is adjudicated the child's father either under s. 767.51 or by final order or judgment of a court of competent jurisdiction in another state or has acknowledged himself to be the child's father under s. 767.62 (1) or a substantially similar law of another state, no order or temporary order may be entered for child support, legal custody or physical placement until the man is adjudicated the father using the procedure set forth in ss. 767.45 to 767.60. Except as provided in ss. 767.477, 767.62 and 769.401, the exclusive procedure for establishment of child support obligations, legal custody or physical placement rights for a man who is not presumed the child's father under s. 891.41 (1), adjudicated the father or acknowledged under s. 767.62 (1) or a

substantially similar law of another state to be the father is by an action under ss. 767.45 to 767.60 or under s. 769.701. No person may waive the use of this procedure. If a presumption under s. 891.41 (1) exists, a party denying paternity has the burden of rebutting the presumption.

(6) (a) The attorney responsible for support enforcement under s. 59.53 (6) (a) shall provide the representation for the state as specified under s. 767.075 (1) in cases brought under this section.

(b) The attorney under s. 59.53 (6) (a) is the only county attorney who may provide representation when the state delegates its authority under sub. (1) (g).

(c) The attorney under s. 59.53 (6) (a) or any state attorney acting under par. (b) may not represent the state as specified under s. 767.075 (1) in an action under this section and at the same time act as guardian ad litem for the child or the alleged child of the party.

(6m) The attorney designated under sub. (6) (a) shall commence an action under this section on behalf of the state within 6 months after receiving notification under s. 69.03 (15) that no father is named on the birth certificate of a child who is a resident of the county if paternity has not been acknowledged under s. 767.62 (1) or a substantially similar law of another state or adjudicated, except in situations under s. 69.14 (1) (g) and (h) and as provided by the department by rule.

(6r) (a) The attorney designated under sub. (6) (a) who receives a referral under s. 48.299 (6) (a) or 938.299 (6) (a) shall do all of the following:

1. Give priority to matters referred under s. 48.299 (6) (a) or 938.299 (6) (a), including priority in determining whether an action should be brought under this section and, if the determination is that such an action should be brought, priority in bringing the action and in establishing the existence or nonexistence of paternity.

2. As soon as possible, but no later than 30 days after the date on which the referral is received, notify the court that referred the matter of one of the following:

a. The date on which an action has been brought under this section or the approximate date on which such an action will be brought.

b. That a determination has been made that an action should not be brought under this section or, if such a determination has not been made, the approximate date on which a determination will be made as to whether such an action should be brought.

c. That the man designated in s. 48.299 (6) (a) or 938.299 (6) (a) has previously been excluded as the father of the child.

3. If an action is brought under this section, notify the court that referred the matter as soon as possible of a judgment or order determining the existence or nonexistence of paternity.

(b) The attorney designated under sub. (6) (a) who receives a referral under s. 48.299 (7) or 938.299 (7) may bring an action under this section on behalf of the state and may give priority to the referral and notify the referring court in the same manner as is required under par. (a) when a matter is referred under s. 48.299 (6) (a) or 938.299 (6) (a).

(7) The clerk of court shall provide without charge, to each person bringing an action under this section, except to the state under sub. (1) (g) or (6m), a document setting forth the percentage standard established by the department under s. 49.22 (9) and listing the factors which a court may consider under s. 767.25 (1m).

History: 1979 c. 352; 1981 c. 20 s. 2202 (20) (m); 1983 a. 447; 1985 a. 29; 1987 a. 27, 355, 399, 413; 1989 a. 31, 212; 1993 a. 326, 481; 1995 a. 27 s. 9126 (19); 1995 a. 68, 100, 201, 275, 404; 1997 a. 191; 1999 a. 9; 2001 a. 61.

Cross Reference: See also ch. DWD 41, Wis. adm. code.

A paternity proceeding may not be maintained posthumously. Estate of Blumreich, 84 Wis. 2d 545, 267 N.W.2d 870 (1978). See also Paternity of N.L.B. 140 Wis. 2d 400, 411 N.W.2d 144 (Ct. App. 1987).

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

A posthumous paternity action is allowable if it is brought by the putative father's personal representative. Le Fevre v. Schreiber, 167 Wis. 2d 733, 482 N.W.2d 904 (1992).

A paternity action may not be used to challenge paternity previously decided in a divorce action. That paternity was not challenged in the divorce is irrelevant if it could have been litigated. Paternity of Nathan T. 174 Wis. 2d 352, 497 N.W.2d 740 (Ct. App. 1993).

The full faith and credit clause of the U.S. Constitution did not bar a petition to determine paternity when a paternity decree of another state would have been subject to collateral attack in that state. Paternity of R.L.L. 176 Wis. 2d 224, N.W.2d (Ct. App. 1993).

Because a child has a right to bring an independent action for paternity under sub. (1) (a), if the child was not a party to an earlier paternity action, it would be a violation of the child's due process rights to preclude the child from litigating the paternity issue. Mayonia M.M. v. Kieth N. 202 Wis. 2d 461, 551 N.W.2d 34 (Ct. App. 1996).

An alleged father has a statutory right to a determination of paternity. A hearing to determine whether the child's best interests would be served by a paternity proceeding is not authorized by statute. Thomas M.P. v. Kimberly J.L. 207 Wis. 2d 390, 558 N.W.2d 897 (Ct. App. 1996).

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 the court. The clerk of the court shall set the date and hour at which the summons is returnable.

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

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

STATE OF WISCONSIN, CIRCUIT COURT: ....COUNTY

In re the Paternity of A. B.
STATE OF WISCONSIN
and
C. D.
Address
City, State Zip Code File No. ...
, Petitioners
vs. S U M M O N S
E. F.
Address .... (Case Classification Type):.... (Code No.)
City, State Zip Code
, Respondent

THE STATE OF WISCONSIN, To the Respondent:

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

Date: . . . . . .
Time: . . . . . .
Room: . . . . . .
Judge or Circuit Court Commissioner: . . . . . .
Address: . . . . . .

If you do not appear, the court will enter a default judgment finding you to be the father. A default judgment will take effect 30 days after it is served on or mailed to you, unless within those 30 days you present to the court evidence of good cause for failure to appear. If you plan to be represented by an attorney, you should contact the attorney prior to the court appearance listed above. If you are unable to afford an attorney, the court will appoint one for you only upon the blood tests showing that you are not excluded as the father and the probability of your being the father is less than 99.0%. Appearance is not required if you complete the attached waiver of first appearance statement and send it to the court at least 10 days prior to the date of your scheduled appearance in this summons.

Dated: ...., ... (year)

Signed:.... ....

G. H., Clerk of Circuit Court

or

Petitioner's Attorney

State Bar No.: ....

Address: ....

City, State Zip Code: ....

Phone No.: ....

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

NOTICE TO RESPONDENT

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

2. You have the right to be represented by an attorney. If you are unable to afford an attorney, the court will appoint one for you only if the results of one or more genetic tests show that you are not excluded as the father and that the statistical probability of your being the father is less than 99.0%. In order to determine whether you are entitled to have an attorney appointed for you, you may call the following telephone number .....

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

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

5. The following defenses are available to you:

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

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

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

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

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

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

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

WAIVER OF FIRST APPEARANCE

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

2. I understand that I will be notified by the court of all future stages in the proceeding and agree to appear at those stages. If I fail to appear at any stage, including a scheduled court−ordered genetic test, the court will enter a default judgment finding me to be the father. A default judgment will take effect 30 days after it is served on or mailed to me, unless within those 30 days I present to the court evidence of good cause for my failure to appear or my failure to have undergone a court−ordered genetic test.

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

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

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

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

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

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

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

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

.....
Street address and apartment number

.....
City State Zip Code

....
Date Signature of Respondent

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

(6) DOCUMENT. The summons served on the respondent shall be accompanied by a document, provided without charge by the clerk of court, setting forth the percentage standard established by the department under s. 49.22 (9) and listing the factors which a court may consider under s. 767.25 (1m).

History: 1979 c. 352; 1981 c. 314; 1983 a. 447; 1985 a. 29; 1987 a. 27, 413; Sup. Ct. Order, 171 Wis. 2d xix (1992); 1993 a. 16, 481; 1995 a. 27 ss. 7112, 7113b, 9126 (19); 1995 a. 100, 404, 417; 1997 a. 35, 191, 250; 1999 a. 9; 2001 a. 61, 105.

Failure to object to personal jurisdiction prior to returning a completed "Waiver of First Appearance" form under sub. (5r) constituted a submission to the court's jurisdiction and waiver of objection. Paternity of K.J.E. 168 Wis. 2d 209, 483 N.W.2d 588 (Ct. App. 1992).

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

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

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

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

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

History: 1983 a. 447.

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

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

History: 1987 a. 27; 1991 a. 313.

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

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

(b) If the respondent is unable to afford counsel due to indigency, and the petitioner is represented by a government attorney under s. 767.45 (1) (g) or (6) or the action is commenced on behalf of the child by an attorney appointed under s. 767.045 (1) (c), counsel shall be appointed for the respondent as provided in s. 767.52 and ch. 977, unless the respondent knowingly and voluntarily waives the appointment of counsel;

(c) Except as provided under sub. (1m) and s. 767.463, the respondent may request the administration of genetic tests which either demonstrate that he is not the father of the child or which demonstrate the probability that he is or is not the father of the child;

(d) Except as provided in subs. (1m) and (2) and s. 767.463, the court will order genetic tests upon the request of any party; and

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

(1m) In an action to establish the paternity of a child who was born to a woman while she was married, where a man other than the woman's husband alleges that he, not the husband, is the child's father, a party may allege that a judicial determination that a man other than the husband is the father is not in the best interest of the child. If the court or a circuit or supplemental court commissioner under s. 757.675 (2) (g) determines that a judicial determination of whether a man other than the husband is the father is not in the best interest of the child, no genetic tests may be ordered and the action shall be dismissed.

(2) At the first appearance, if it appears from a sufficient petition or affidavit of the child's mother or an alleged father, or from sworn testimony of the child's mother or an alleged father, that there is probable cause to believe that any of the males named has had sexual intercourse with the mother during a possible time of the child's conception, the court may, or upon the request of any party shall, order any of the named persons to submit to genetic tests. The tests shall be conducted in accordance with s. 767.48. The court is not required to order a person who has undergone a genetic test under s. 49.225 to submit to another genetic test under this subsection unless a party requests additional tests under s. 767.48 (2).

(3) At the first appearance, if a statement acknowledging paternity under s. 69.15 (3) (b) 1. or 3. that was signed and filed before April 1, 1998, is on file, the court may enter an order for child support, legal custody or physical placement and, if the respondent who filed the statement does not dispute his paternity, may enter a judgment of paternity.

History: 1979 c. 352; 1983 a. 447 s. 34; Stats. 1983 s. 767.457; 1987 a. 27 ss. 2136t, 2137d, 2137e; Stats. 1987 s. 767.458; 1987 a. 403, 413; 1993 a. 16, 481; 1995 a. 100; 1997 a. 191; 2001 a. 61.

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

Sub. (1m) is constitutional. The court has an obligation to refuse to allow blood tests if the tests may result in a determination that the person alleging his paternity is the natural father and that determination would not be in the best interest of the children. Paternity of C.A.S. 161 Wis. 2d 1015, 468 N.W.2d 719 (1991).

In re Paternity of C.A.S. and C.D.S.: The New Status of Putative Fathers' Rights in Wisconsin. 1992 WLR 1669.

767.459 Appearance on behalf of deceased respondent. The personal representative or an attorney may appear for a deceased respondent who is the alleged father whenever an appearance by the respondent is required.

History: 1993 a. 481.

767.46 Pretrial paternity proceedings. (1) A pretrial hearing shall be held before the court or a circuit or supplemental court commissioner under s. 757.675 (2) (g). A record or minutes of the proceeding shall be kept. At the pretrial hearing the parties may present and cross−examine witnesses, request genetic tests and present other evidence relevant to the determination of paternity.

(2) On the basis of the information produced at the pretrial hearing, the court shall evaluate the probability of determining the existence or nonexistence of paternity in a trial and shall so advise the parties. On the basis of the evaluation, the court may make an appropriate recommendation for settlement to the parties. This recommendation may include any of the following:

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

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

(c) If the alleged father voluntarily acknowledges paternity of the child, that he agree to the duty of support, the legal custody of the child, periods of physical placement of the child and other matters as determined to be in the best interests of the child by the court.

(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 genetic tests have not yet been taken, the court shall require the appropriate parties to submit to genetic tests. After the genetic tests have been taken the court shall make an appropriate final recommendation.

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

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

History: 1979 c. 352; 1983 a. 447; 1987 a. 27; Sup. Ct. Order, 141 Wis. 2d xxxix (1987); 1987 a. 355; 1993 a. 481; 1995 a. 100; 2001 a. 61.

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

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

Notwithstanding s. 804.12 (2) (a) 4., the trial court may find a party in civil contempt for refusing to submit to a blood test. Paternity of T.P.L. 120 Wis. 2d 328, 354 N.W.2d 759 (Ct. App. 1984).

Nothing in this section authorizes ordering a name change in the best interests of the child in a paternity judgement. Sub. (2) (c) only authorizes a court to make settlement recommendations in pretrial proceedings if paternity is acknowledged. Although s. 69.15 (1) (a) provides for changing a name according to an order in a paternity action, it does not provide authority to order a name change in a paternity action without complying with the procedural requirements for a name change under s. 786.36. Paternity of Noah J.M. 223 Wis. 2d 768, 590 N.W.2d 21 (Ct. App. 1998).

767.463 Dismissal if adjudication not in child's best interest. Except as provided in s. 767.458 (1m), at any time in an action to establish the paternity of a child, upon the motion of a party or guardian ad litem, the court or circuit or supplemental court commissioner under s. 757.675 (2) (g) may, with respect to a man, refuse to order genetic tests, if genetic tests have not yet been taken, and dismiss the action if the court or circuit or supplemental court commissioner determines that a judicial determina-

tion of whether the man is the father of the child is not in the best interest of the child.

History: 1997 a. 191; 2001 a. 61.

767.465 Default and stipulated judgments. (1) JUDGMENT WHEN PETITIONER FAILS TO APPEAR OR IS UNABLE TO PROCEED. If a petitioner, other than the state, fails to appear and plead on the date set for the pretrial hearing or the date set for the trial or if the state is the petitioner and is unable to proceed on the date set for the pretrial hearing or the date set for the trial, the court may enter a judgment for the respondent dismissing the action, on the motion of the respondent or upon its own motion.

(1m) JUDGMENT WHEN MOTHER FAILS TO APPEAR. Notwithstanding sub. (1), a court may enter an order adjudicating the alleged father, or man alleging that he is the father, to be the father of the child under s. 767.51 if the mother of the child fails to appear at the first appearance, unless the first appearance is not required under s. 767.457 (2), scheduled genetic test, pretrial hearing or trial if sufficient evidence exists to establish the man as the father of the child.

(2) JUDGMENT WHEN RESPONDENT FAILS TO APPEAR. (a) Except as provided in sub. (2m), if a respondent is the alleged father and fails to appear at the first appearance, unless the first appearance is not required under s. 767.457 (2), scheduled court−ordered genetic test, pretrial hearing or trial, the court shall enter an order adjudicating the respondent to be the father and appropriate orders for support, legal custody and physical placement. The orders shall be either served on the respondent or mailed by regular, registered or certified mail, to the last−known address of the respondent. The orders shall take effect 30 days after service or 30 days after the date on which the orders were mailed unless, within that time, the respondent presents to the court or a circuit or supplemental court commissioner under s. 757.675 (2) (g) evidence of good cause for failure to appear or failure to have undergone a court−ordered genetic test.

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

(2m) JUDGMENT UPON STIPULATION. (a) At any time after service of the summons and petition, a respondent who is the alleged father may, with or without appearance in court and subject to the approval of the court, in writing acknowledge that he has read and understands the notice under s. 767.455 (5g) and stipulate that he is the father of the child and for child support payments, legal custody and physical placement. The court may not approve a stipulation for child support unless it provides for payment of child support determined in a manner consistent with s. 767.25 or 767.51.

(b) If the respondent timely files a completed waiver of first appearance statement under s. 767.455 (5r), as provided in s. 767.457 (2), and files the acknowledgment and stipulation in conjunction with the waiver of first appearance statement or before the scheduled pretrial hearing, the respondent need not appear in court in the proceeding unless required to do so by the court.

(c) If the court approves the stipulation, the court shall enter an order adjudicating the respondent to be the father as well as appropriate orders for support, legal custody and physical placement. The orders shall either be served on the respondent or mailed by regular, registered or certified mail to the last−known address of the respondent. The orders shall take effect upon entry if the respondent has so stipulated. If the respondent has not so stipulated, the orders shall take effect 30 days after service or 30 days after the date on which the orders were mailed unless, within that time, the respondent presents to the court evidence of good cause why the orders should not take effect.

(3) MOTION TO REOPEN. A default judgment, or a judgment upon stipulation unless each party appeared personally before the court at least one time during the proceeding, that is rendered under this section and that adjudicates a person to be the father of a child may be reopened:

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

(b) Upon a motion under s. 806.07.

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

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

History: 1979 c. 352; 1983 a. 447; 1987 a. 27, 403, 413; 1989 a. 31, 56, 212; 1993 a. 481; 1995 a. 100; 1997 a. 191; 2001 a. 61.

The respondent must appear personally under sub. (2) (a). An attorney's appearance is insufficient. Paternity of Tiffany B. 173 Wis. 2d 864, 496 N.W.2d 711 (Ct. App. 1993).

767.466 Motion to reopen judgment based on statement acknowledging paternity. A judgment which adjudicates a person to be the father of a child and which was based upon a statement acknowledging paternity that was signed and filed before April 1, 1998, may, if no trial was conducted, be reopened under any of the following circumstances:

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

(2) Upon a motion under s. 806.07.

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

History: 1987 a. 413; 1997 a. 191.

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

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

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

(c) Genetic test results under ss. 49.225, 767.48 or 885.23.

(cm) Genetic test results under s. 48.299 (6) (e) or 938.299 (6) (e).

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

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

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

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

(a) The initial appearance.

(b) The pretrial hearing.

(c) The trial.

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

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

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

(3) Except as provided in s. 767.48 (4), 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 genetic tests and made the results available to the court.

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

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

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

(6) (a) Whenever the state brings the action to determine paternity pursuant to an assignment under s. 46.261, 48.57 (3m) (b) 2. or (3n) (b) 2., 49.19 (4) (h) 1. or 49.45 (19), or receipt of benefits under s. 49.148, 49.155, 49.157 or 49.159, 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 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. 48.57 (3m) (b) 2. or (3n) (b) 2., 49.19 (4) (h) 1. or 49.45 (19), or receipt of benefits under s. 49.148, 49.155, 49.157 or 49.159, where evidence other than the testimony of the mother may establish the paternity of the child.

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

(8) The party bringing an action for the purpose of determining paternity or for the purpose of declaring the nonexistence of paternity presumed under s. 891.405 or 891.41 (1) 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.

(10) A record of the testimony of the child's mother relating to the child's paternity, made as provided under s. 48.299 (8) or 938.299 (8), is admissible in evidence on the issue of paternity.

(11) Bills for services or articles related to the pregnancy, childbirth or genetic testing may be admitted into evidence and are prima facie evidence of the costs incurred for such services or articles.

History: 1979 c. 352; 1981 c. 20 s. 2202 (20) (m); 1981 c. 359 ss. 13, 17; 1983 a. 447; 1987 a. 413; 1989 a. 31, 122, 212; 1993 a. 395, 481; 1995 a. 27 s. 9126 (19); 1995 a. 77, 100, 275, 289, 404; 1997 a. 27, 105, 191, 252; 1999 a. 185.

It is not necessary for an alleged father to produce evidence of who the real father is in order to sustain a verdict of non−paternity. State v. Michael J. W. 210 Wis. 2d 132, 565 N.W.2d 179 (Ct. App. 1997).

767.475 Paternity procedures. (1) (a) Except as provided in par. (b), the court 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.

(b) The court shall appoint a guardian ad litem for the child if s. 767.045 (1) (a) or (c) applies or if the court has concern that the child's best interest is not being represented.

(2) Presumption of paternity shall be as provided in ss. 891.39, 891.405 and 891.41 (1).

(2m) If there is no presumption of paternity under s. 891.41 (1), the mother shall have sole legal custody of the child until the court orders otherwise.

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

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

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

(6) The respondent in a paternity action may be arrested as provided in s. 818.02 (6).

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

(7m) The court shall give priority to an action brought under s. 767.45 whenever the petition under s. 767.45 (5) indicates that the matter was referred under s. 48.299 (6) (a) or 938.299 (6) (a) by a court assigned to exercise jurisdiction under chs. 48 and 938.

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

History: 1979 c. 352; 1981 c. 391; 1983 a. 447; 1989 a. 212; 1993 a. 481; 1995 a. 275; 1997 a. 191; 1999 a. 9.

A trust under sub. (7) is not restricted to cases in which the custodial parent is a spendthrift. Paternity of Tukker M.O. 189 Wis. 2d 440, 525 N.W.2d 793 (Ct. App. 1994). See also Paternity of Tukker M.O. 199 Wis. 2d 186, 544 N.W.2d 417 (1996).

767.477 Temporary orders. (1) At any time during the pendency of an action to establish the paternity of a child, if genetic tests show that the alleged father is not excluded and that the statistical probability of the alleged father's parentage is 99.0% or higher, on the motion of a party, the court shall make an appropriate temporary order for the payment of child support and may make a temporary order assigning responsibility for and directing the manner of payment of the child's health care expenses.

(2) Before making any temporary order under sub. (1), the court shall consider those factors that the court is required to consider when granting a final judgment on the same subject matter. If the court makes a temporary child support order that deviates from the amount of support that would be required by using the percentage standard established by the department under s. 49.22 (9), the court shall comply with the requirements of s. 767.25 (1n).

History: 1997 a. 191; 1999 a. 9.

767.48 Genetic tests in paternity actions. (1) (a) The court may, and upon request of a party shall, require the child, mother, any male for whom there is probable cause to believe that he had sexual intercourse with the mother during a possible time of the child's conception, or any male witness who testifies or will testify about his sexual relations with the mother at a possible time of conception to submit to genetic tests. Probable cause of sexual intercourse during a possible time of conception may be established by a sufficient petition or affidavit of the child's mother or an alleged father, filed with the court, or after an examination under oath of a party or witness, when the court determines such an examination is necessary. The court is not required to order a person who has undergone a genetic test under s. 49.225 to submit to another test under this paragraph unless a party requests additional tests under sub. (2).

(b) The genetic tests shall be performed by an expert qualified as an examiner of genetic markers present on the cells of the specific body material to be used for the tests, appointed by the court. A report completed and certified by the court−appointed expert stating genetic test results and the statistical probability of the alleged father's paternity based upon the genetic tests is admissible as evidence without expert testimony and may be entered into the record at the trial or pretrial hearing if all of the following apply:

1. At least 10 days before the trial or pretrial hearing, the party offering the report files it with the court and notifies all other parties of that filing.

2. At least 10 days before the trial or pretrial hearing, the department or county child support agency under s. 59.53 (5) noti-

fies the alleged father of the results of the genetic tests and that he may object to the test results by submitting an objection in writing to the court no later than the day before the hearing.

3. The alleged father, after receiving the notice under subd. 2., does not object to the test results in the manner provided in the notice under subd. 2.

(1m) If genetic tests ordered under this section or s. 49.225 show that the alleged father is not excluded and that the statistical probability of the alleged father's parentage is 99.0% or higher, the alleged father shall be rebuttably presumed to be the child's parent.

(2) The court, upon request by a party, shall order that independent tests be performed by other experts qualified as examiners of genetic markers present on the cells of the specific body material to be used for the tests. 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 genetic tests exclude an alleged father as the father of the child, this evidence shall be conclusive evidence of nonpaternity and the court shall dismiss any paternity action with respect to that alleged father. Whenever the results of genetic tests exclude any male witness from possible paternity, the tests shall be conclusive evidence of nonpaternity of the male witness. Testimony relating to sexual intercourse or possible sexual intercourse of the mother with any person excluded as a possible father, as a result of a genetic test, is inadmissible as evidence. If any party refuses to submit to a genetic test, this fact shall be disclosed to the fact finder. Refusal to submit to a genetic test ordered by the court is a contempt of the court for failure to produce evidence under s. 767.47 (5). If the action was brought by the child's mother but she refuses to submit herself or the child to genetic tests, the action shall be dismissed.

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

(a) Except as provided in par. (b), 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 genetic tests.

(b) If 2 or more identical series of genetic tests are performed upon the same person, regardless of whether the tests were ordered under this section or s. 49.225 or 767.458 (2), the court shall require the person requesting the 2nd or subsequent series of tests to pay for it in advance, unless the court finds that the person is indigent.

(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 genetic 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 genetic tests under this section.

History: 1979 c. 352; 1983 a. 447; 1987 a. 27; 1993 a. 481; 1995 a. 100; 1997 a. 191.

When initial blood tests excluded the alleged father and the state moved for additional tests under sub. (2), the trial court erred in denying the motion and dismissing the action under sub. (4). Paternity of S. J. K. 132 Wis. 2d 262, 392 N.W.2d 97 (Ct. App. 1986).

The chain of custody, or authentication, must be established prior to admission of evidence under sub. (1) (b). Paternity of J. S. C. 135 Wis. 2d 820, 400 N.W.2d 48 (Ct. App. 1986).

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

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

If more than one set of blood test results are presented, the sub. (1m) presumption is inapplicable if the statistical probability of only one test reaches the 99% level. Paternity of J.M.K. 160 Wis. 2d 429, 465 N.W.2d 833 (Ct. App. 1991).

When only one potential father named by the mother is not excluded by blood tests, sub. (4) does not prevent showing that the mother on several occasions did not name him as a person with whom she had sex during the conceptual period. Paternity of Jeremy D.L. 177 Wis. 2d 551, 503 N.W.2d 275 (Ct. App. 1993).

That sub. (1m) applies only to children born to a woman while she is married does not violate principles of equal protection. Thomas M.P. v. Kimberly J.L. 207 Wis. 2d 390, 558 N.W.2d 897 (Ct. App. 1996).

A mere denial of intercourse when access during the conceptive period is established and no other potential fathers are identified is sufficient to rebut the presumption under sub. (1m) for purposes of preventing entry of a summary judgment of paternity. State v. Michael J. W. 210 Wis. 2d 132, 565 N.W.2d 179 (Ct. App. 1997).

The term "statistical probability" in sub. (1m) means the probability determined by combining the results of all the different types of tests performed. State v. Michael J. W. 210 Wis. 2d 132, 565 N.W.2d 179 (Ct. App. 1997).

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

767.50 Trial. (1) The trial shall be divided into 2 parts. The first part shall deal with the determination of paternity. The 2nd part shall deal with child support, legal custody, periods of physical placement, and related issues. At the first part of the trial, the main issue shall be whether the alleged or presumed father is or is not the father of the mother's child, but if the child was born to the mother while she was the lawful wife of a specified man there shall first be determined, as provided in s. 891.39, the prior issue of whether the husband was not the father of the child. The first part of the trial shall be by jury only if the defendant verbally requests a jury trial either at the initial appearance or pretrial hearing or requests a jury trial in writing prior to the pretrial hearing. The court may direct, and if requested by either party, before the introduction of any testimony in the party's behalf, shall direct the jury, in cases where there is a jury, to find a special verdict as to any of the issues specified in this section except that the court shall make all the findings enumerated in s. 767.51 (2) to (4). If the mother is dead, becomes insane, cannot be found within the jurisdiction, or fails to commence or pursue the action, the proceeding does not abate if any of the persons under s. 767.45 (1) makes a motion to continue. The testimony of the mother taken at the pretrial hearing may in any such case be read in evidence if it is competent, relevant, and material. The issues of child support, custody and visitation, and related issues shall be determined by the court either immediately after the first part of the trial or at a later hearing before the court.

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

History: 1979 c. 352 s. 10; Stats. 1979 s. 767.50; 1983 a. 27, 447; 1987 a. 27, 355, 403; 1993 a. 481; 2001 a. 38.

A preponderance of the evidence standard of proof in paternity actions meets due process requirements. Rivera v. Minnich, 483 U.S. 574 (1987).

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

(2) The clerk of court shall file with the state registrar, within 30 days after the entry of a judgment or order determining paternity, a report showing the names, dates and birth places of the child and the father, the social security numbers of the mother, father and child and the maiden name of the mother on a form designated by the state registrar, along with the fee set forth in s. 69.22 (5), which the clerk of court shall collect.

(3) A judgment or order determining paternity shall contain all of the following provisions:

(a) An adjudication of the paternity of the child.

(b) Orders for the legal custody of and periods of physical placement with the child, determined in accordance with s. 767.24.

(c) An order requiring either or both of the parents to contribute to the support of any child of the parties who is less than 18 years old, or any child of the parties who is less than 19 years old if the

child is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent, determined in accordance with s. 767.25.

(d) A determination as to which parent, if eligible, shall have the right to claim the child as an exemption for federal tax purposes under 26 USC 151 (c) (1) (B), or as an exemption for state tax purposes under s. 71.07 (8) (b).

(e) An order requiring the father to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth, based on the father's ability to pay or contribute to those expenses.

(f) An order requiring either or both parties to pay or contribute to the costs of the guardian ad litem fees, genetic tests as provided in s. 767.48 (5) and other costs.

(g) An order requiring either party to pay or contribute to the attorney fees of the other party.

(3m) (a) Upon the request of both parents, the court shall include in the judgment or order determining paternity an order changing the name of the child to a name agreed upon by the parents.

(b) Except as provided in par. (a), the court may include in the judgment or order determining paternity an order changing the surname of the child to a surname that consists of the surnames of both parents separated by a hyphen or, if one or both parents have more than one surname, of one of the surnames of each parent separated by a hyphen, if all of the following apply:

1. Only one parent requests that the child's name be changed, or both parents request that the child's name be changed but each parent requests a different name change.

2. The court finds that such a name change is in the child's best interest.

(c) Section 786.36 does not apply to a name change under this subsection.

(4) (a) Subject to par. (b), liability for past support of the child shall be limited to support for the period after the day on which the petition in the action under s. 767.45 is filed, unless a party shows, to the satisfaction of the court, all of the following:

1. That he or she was induced to delay commencing the action by any of the following:

a. Duress or threats.

b. Actions, promises or representations by the other party upon which the party relied.

c. Actions taken by the other party to evade paternity proceedings.

2. That, after the inducement ceased to operate, he or she did not unreasonably delay in commencing the action.

(b) In no event may liability for past support of the child be imposed for any period before the birth of the child.

(6) Sections 767.24, 767.245, 767.263, 767.265, 767.267, 767.29, 767.293, 767.30, 767.305, 767.31, 767.32 and 767.325, where applicable, shall apply to a judgment or order under this section.

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

History: 1979 c. 352; 1983 a. 27, 192, 447; 1985 a. 29; 1985 a. 315 s. 22; 1987 a. 27, 37, 355, 413; 1989 a. 212; 1991 a. 39; 1993 a. 481; 1995 a. 27 ss. 7115, 7116, 9126 (19); 1995 a. 100, 201, 279, 375, 404; 1997 a. 27, 35, 191; 1999 a. 9; 2001 a. 16.

Cross Reference: See also ch. DWD 40, Wis. adm. code.

Determining a father's support obligation by applying percentage standards is inappropriate when the children live in several households. Paternity of B. W. S. 131 Wis. 2d 301, 388 N.W.2d 615 (1986).

Regardless of whether a 15 year old boy's fathering of a child resulted from sexual assault as defined in criminal law, the trial court could find that intercourse and parenthood were voluntary for purposes of imposing child support. Whether nonconsent is a defense available to a putative father in a paternity action has not been determined. Paternity of J.L.H. 149 Wis. 2d 349, 411 N.W.2d 273 (Ct. App. 1989).

There is no statutory authority for an order requiring the mother to repay lying−in expenses paid by medical assistance. Paternity of N.L.M. 166 Wis. 2d 306, 479 N.W.2d 237 (Ct. App. 1991).

An order for payment of expert witness fees under sub. (3) is not limited to $100 by s. 814.04 (2). Paternity of Tiffany B. 173 Wis. 2d 864, 496 N.W.2d 711 (Ct. App. 1993).

Sub. (4m) applies to back and future support, subject to the court's discretion. A discount in back support based on the father's assertion of paternity and lack of contact with the child was improper. Paternity of Ashleigh N.H. 178 Wis. 2d 478, 504 N.W.2d 422 (Ct. App. 1993).

The assignment to the state of child support by AFDC recipients under s. 49.19 (4) does not prevent a trial court acting under sub. (5) from giving the father credit for amounts actually contributed for support prior to the entry of an order even though the credit results in there being no payments owing from the father from which AFDC payments can be recovered. Paternity of Cheyenne D.L. 181 Wis. 2d 868, 112 N.W.2d 522 (Ct. App. 1994).

Money may be set aside in trust under sub. (5) during a child's minority for future support including higher education expenses that may be incurred after the child's majority. The percentage standards may be used to generate future support. Paternity of Tukker M.O. 199 Wis. 2d 186, 544 N.W.2d 417 (1996).

Summary judgment is inappropriate when the presumptive conception period under s. 891.395 does not apply and there is no evidence establishing the period or when there is an untested male whom a reasonable fact finder could conclude had intercourse with the mother during the possible conceptive period. Paternity of Taylor R.T. 199 Wis. 2d 500, 544 N.W.2d 926 (Ct. App. 1996).

The retroactive application of sub. (4) does not violate the constitutional prohibition of *ex post facto* laws. Brad Michael L. v. Lee D. 210 Wis. 2d 438, 564 N.W.2d 354 (Ct. App. 1997).

A father's lack of knowledge of a child's existence and resulting inability to visit and provide for the child may not be considered in deviating from the percentage standards for support. Support in a paternity action must be set exclusive of any marital property law principles. Brad Michael L. v. Lee D. 210 Wis. 2d 438, 564 N.W.2d 354 (Ct. App. 1997).

A court does not have authority to create a child support obligation directly to an adult child who has received a high school diploma at the time that person commences an action for support. Roberta Jo W. v. Leroy W. 218 Wis. 2d 225, 578 N.W.2d 185 (1998).

Nothing in this section authorizes ordering a name change in the best interests of the child in a paternity judgement. Although s. 69.15 (1) (a) provides for changing a name according to an order in a paternity action, it does not provide authority to order a name change in a paternity action without complying with the procedural requirements for a name change under s. 786.36. Paternity of Noah J.M. 223 Wis. 2d 768, 590 N.W.2d 21 (Ct. App. 1998).

In concluding that a deviation from the percentage standards is warranted, all 14 factors under sub. (5) need not be applied. State v. Alonzo R. 230 Wis. 2d 17, 601 N.W.2d 328 (Ct. App. 1999).

A paternity judgment determines between two parties who pays what expenses; it does not bind creditors who were not parties. Dean Medical Center, S.C. v. Conners, 2000 WI App 202, 238 Wis. 2d 636, 618 N.W.2d 194.

Sub. (4) dictates that a father is responsible for a child's support for all years following the child's birth; whether or not the father knew of the birth. However, under sub. (4m), a court can deviate from the percentage standards in setting back and future support if, after considering the sub. (5) factors, the court finds by the greater weight of the evidence that use of the percentage standards is unfair. State v. Patrick G.B. 2001 WI App 85, 242 Wis. 2d 550, 627 N.W.2d 898.

HSS 80: New Rules for Child Support Obligations. Hickey. Wis. Law. April, 1995.

Which Came First? The Serial Family Payer Formula. Stansbury. Wis. Law. April, 1995.

Wisconsin's Custody, Placement and Paternity Reform Legislation. Walther. Wis.Law. April 2000.

Cross−reference: See also Wisconsin Administrative Code Citations published in the Wisconsin Administrative Code for a list of citations to cases citing ch. HSS 80, HFS 80, and DWD 40, the child support percentage of income standard.

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), the petitioner is represented by a government attorney as provided in s. 767.45 (6) or the action is commenced on behalf of the child by an attorney appointed under s. 767.045 (1) (c), counsel shall be appointed for the respondent as provided in ch. 977, and subject to the limitations under sub. (2m), unless the respondent knowingly and voluntarily waives the appointment of counsel.

(2) An attorney appointed under sub. (1) who is appearing on behalf of a party in a paternity action shall represent that party, subject to the limitations under sub. (2m), in all issues and proceedings relating to the paternity determination. The appointed attorney may not represent the party in any proceeding relating to child support, legal custody, periods of physical placement or related issues.

(2m) Representation by an attorney appointed under sub. (1) shall be provided only after the results of any genetic tests have been completed and only if all of the results fail to show that the alleged father is excluded and fail to give rise to the rebuttable presumption under s. 767.48 (1m) that the alleged father is the father of the child.

(3) This section does not prevent an attorney responsible for support enforcement under s. 59.53 (6) (a) or any other attorney employed under s. 49.22 or 59.53 (5) from appearing in any paternity action as provided under s. 767.45 (6).

History: 1979 c. 352; 1983 a. 27; 1987 a. 355; 1989 a. 31; 1993 a. 16, 481; 1995 a. 27, 100, 201, 404; 1997 a. 35, 191.

A paternity respondent does not have a constitutional right to effective assistance of counsel. A paternity action is not a criminal prosecution. Paternity of P.L.S. 158 Wis. 2d 712, 463 N.W.2d 403 (Ct. App. 1990).

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

(1) Access to the record of any pending proceeding involving the paternity of the same child shall be allowed to all of the following:

(a) The child's parents.

(b) The parties to that proceeding and their attorneys or their authorized representatives.

(c) If the child is the subject of a proceeding under ch. 48 or 938, all of the following:

1. The court assigned to exercise jurisdiction under chs. 48 and 938 in which the proceeding is pending.

2. The parties to the proceeding under ch. 48 or 938 and their attorneys.

3. The person under s. 48.09 or 938.09 who represents the interests of the public in the proceeding under ch. 48 or 938.

4. A guardian ad litem for the child and a guardian ad litem for the child's parent.

5. Any governmental or social agency involved in the proceeding under ch. 48 or 938.

(2) The clerk of circuit court shall provide information from court records to the department under s. 59.40 (2) (p).

(3) Subject to s. 767.19, a record of a past proceeding is open to public inspection if all of the following apply:

(a) Paternity was established in the proceeding.

(b) The record is filed after May 1, 2000.

(c) The record relates to a post−adjudication issue.

History: 1979 c. 352; 1983 a. 447; 1985 a. 29; 1995 a. 27 s. 9126 (19); 1995 a. 201, 275, 404; 1997 a. 80, 252; 1999 a. 9.

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

History: 1979 c. 32 ss. 48, 92 (2); Stats. 1979 s. 765.25; 1979 c. 352; Stats. 1979 s. 767.60; 1981 c. 314 s. 146; 1983 a. 447; 1985 a. 315.

767.62 Voluntary acknowledgment of paternity.

(1) CONCLUSIVE DETERMINATION OF PATERNITY. A statement acknowledging paternity that is on file with the state registrar under s. 69.15 (3) (b) 3. after the last day on which a person may timely rescind the statement, as specified in s. 69.15 (3m), is a conclusive determination, which shall be of the same effect as a judgment, of paternity.

(2) RESCISSION OF ACKNOWLEDGMENT. (a) A statement acknowledging paternity that is filed with the state registrar under s. 69.15 (3) (b) 3. may be rescinded as provided in s. 69.15 (3m) by a person who signed the statement as a parent of the child who is the subject of the statement.

(b) If a statement acknowledging paternity is timely rescinded as provided in s. 69.15 (3m), a court or circuit court commissioner may not enter an order specified in sub. (4) with respect to the man who signed the statement as the father of the child unless the man is adjudicated the child's father using the procedures set forth in ss. 767.45 to 767.60.

(3) ACTIONS WHEN PATERNITY ACKNOWLEDGED. (a) Unless the statement acknowledging paternity has been rescinded, an action affecting the family concerning custody, child support or physical placement rights may be brought with respect to persons who, with respect to a child, jointly signed and filed with the state registrar under s. 69.15 (3) (b) 3. as parents of the child a statement acknowledging paternity.

(b) Except as provided in s. 767.045, in an action specified in par. (a) the court or a circuit court commissioner may appoint a guardian ad litem for the child and shall appoint a guardian ad litem for a party who is a minor, unless the minor party is represented by an attorney.

(4) ORDERS WHEN PATERNITY ACKNOWLEDGED. In an action under sub. (3) (a), if the persons who signed and filed the statement acknowledging paternity as parents of the child had notice of the hearing, the court or circuit court commissioner shall make an order that contains all of the following provisions:

(a) Orders for the legal custody of and periods of physical placement with the child, determined in accordance with s. 767.24.

(b) An order requiring either or both of the parents to contribute to the support of any child of the parties who is less than 18 years old, or any child of the parties who is less than 19 years old if the child is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent, determined in accordance with s. 767.25.

(c) A determination as to which parent, if eligible, shall have the right to claim the child as an exemption for federal tax purposes under 26 USC 151 (c) (1) (B), or as an exemption for state tax purposes under s. 71.07 (8) (b).

(d) An order requiring the father to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth, based on the father's ability to pay or contribute to those expenses.

(e) An order requiring either or both parties to pay or contribute to the costs of the guardian ad litem fees and other costs.

(f) An order requiring either party to pay or contribute to the attorney fees of the other party.

(4m) LIABILITY FOR PAST SUPPORT. (a) Subject to par. (b), liability for past support of the child shall be limited to support for the period after the day on which the petition, motion or order to show cause requesting support is filed in the action for support under sub. (3) (a), unless a party shows, to the satisfaction of the court, all of the following:

1. That he or she was induced to delay commencing the action by any of the following:

a. Duress or threats.

b. Actions, promises or representations by the other party upon which the party relied.

c. Actions taken by the other party to evade proceedings under sub. (3) (a).

2. That, after the inducement ceased to operate, he or she did not unreasonably delay in commencing the action.

(b) In no event may liability for past support of the child be imposed for any period before the birth of the child.

(5) VOIDING DETERMINATION. (a) A determination of paternity that arises under this section may be voided at any time upon a motion or petition stating facts that show fraud, duress or a mistake of fact. Except for good cause shown, any orders entered under sub. (4) shall remain in effect during the pendency of a proceeding under this paragraph.

(b) If a court in a proceeding under par. (a) determines that the man is not the father of the child, the court shall vacate any order

entered under sub. (4) with respect to the man. The court or the county child support agency under s. 59.53 (5) shall notify the state registrar, in the manner provided in s. 69.15 (1) (b), to remove the man's name as the father of the child from the child's birth certificate. No paternity action may thereafter be brought against the man with respect to the child.

(6) APPLICABILITY. (a) This section does not apply unless all of the following apply to the statement acknowledging paternity:

1. The statement is made on a form prescribed by the state registrar for use beginning on April 1, 1998.

2. The statement was signed and filed on or after April 1, 1998.

3. The statement contains an attestation clause showing that both parties, before signing the statement, received oral and written notice of the legal consequences of, the rights and responsibilities arising from and the alternatives to, signing the statement.

(b) Parties who signed and filed a statement acknowledging paternity before April 1, 1998, may sign and file a new statement that fulfills the requirements under par. (a). Such a statement supersedes any statement previously filed with the state registrar and has the effects specified in this section.

(c) The notice requirements under s. 69.15 (3) (b) 3. apply to this section beginning with forms for the acknowledgment of paternity that are prescribed by the state registrar on April 1, 1998.

History: 1993 a. 481; 1995 a. 100; 1997 a. 191; 1999 a. 9; 2001 a. 16, 61.

Wisconsin's Custody, Placement and Paternity Reform Legislation. Walther. Wis.Law. April 2000.