

**Wisconsin Child Support
Attorney's Desk Reference
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Chapter 2: Paternity Establishment

Citation

42 USC 666(a)(5)(D)

42 USC 666(a)(5)(E)

767.805(1)

Paternity Acknowledgment

Federal law requires that states have a simple civil process for voluntarily acknowledging paternity and procedures under which a signed voluntary paternity acknowledgment is considered a legal finding of paternity, with the same effect as a judgment of paternity for forms signed after April 1, 1998. States are also prohibited from permitting either judicial or administrative proceedings to ratify an unchallenged acknowledgment of paternity.

The Paternity Acknowledgment Form (DPH-5024) in Wisconsin must be filed with the Bureau of Vital Records in the Wisconsin Department of Health Services. The acknowledgment process is **not** appropriate if:

- The mother was married at the time the child was conceived or born.
- The child is the result of rape or incest.
- The mother had sexual contact with more than one man in the 8-to-10-month period immediately preceding the birth.
- There is a concern that it might not be in the best interests of the child.
- Either parent is a minor.

69.15(3)(b)(3)

Filing the Form

Paternity Acknowledgment Forms must be filed with the [Vital Records Office](#).

767.805(2)

Rescinding the Form

69.15(3m)

After the form is filed with the State Registrar, it may only be rescinded by a person who signed the statement as a parent of the child on a form prescribed by the State Registrar. The form must be rescinded within the earlier of either:

- 60 days after the form is filed, **or**
- The date on which the court makes an order in an action affecting the family involving the man who signed the form.

Orders When Paternity Acknowledged

767.805 (3) (4)

An action affecting the family concerning custody, child support or physical placement may be brought with respect to any parties who signed and filed an acknowledgment of paternity.

A court order in an action under § 767.805 must contain **all** of the following:

- orders for the legal custody and physical placement of the child,
- an order requiring either or both parents to pay child support,
- a determination as to which parent is entitled to claim the child as a tax exemption,
- an order for contribution to birth expenses, **and**
- an order requiring either or both parents to pay or contribute to GAL fees, attorney fees and costs.

767.805(4m)

Liability for Past Support

Liability for past support is limited to the period after the day on which the motion, petition, or order to show cause requesting support is filed unless the party demonstrates to the satisfaction of the court all of the following:

- That he or she was induced to delay commencing the action by any of the following:
 - Duress or threats
 - Actions, promises or representations by the other party upon which the party relied
 - Actions taken by the other party to evade proceedings
- That after the inducement ceased, he or she did not delay in commencing the action.

Under no circumstances can liability for past support be imposed for a period prior to the birth of the child.

767.805(5)

Voiding Determinations

A determination of paternity made as a result of the filing of an acknowledgment may be voided at any time upon a motion or petition stating facts that show fraud, duress or a mistake of fact. If the court determines that the man is not the father of the child, the court must vacate any order entered with respect to the man. No paternity action may thereafter be brought against the man with respect to that child.

Paternity Actions

Jurisdiction and Venue

767.001(1)

Paternity actions are actions affecting the family, and circuit courts in Wisconsin have subject-matter jurisdiction over all actions affecting the family.

767.301(1m)

There is no residency requirement in paternity actions, but there is such a requirement in divorce, annulment and legal separation proceedings.

Personal jurisdiction can be obtained over a non-resident respondent if any of the following applies:

- 769.201(1) ■ The individual is personally served with a summons or other notice within this state.
- 769.201(2) ■ The individual submits to the jurisdiction of this state by consent, by entering a general appearance or by filing a responsive document having the effect of waiving any contest to personal jurisdiction.
- 769.201(3) ■ The individual resided with the child in this state.
- 769.201(4) ■ The individual resided in this state and provided prenatal expenses or support for the child.
- 769.201(5) ■ The child resides in this state as a result of the acts or directives of the individual.

*State ex. Rel. N.R.Z. v
GLC*, 152 Wis. 2d 97, 447
3 (1989)

- 769.201(6) The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse.
- 769.201(7) The individual asserted parentage in a [Declaration of Paternal Interest](#) (CFS-0019A) filed with the Wisconsin Department of Health Services under s.48.025 or in a statement acknowledging paternity filed with the state registrar under s.69.15(3)(b)1 or 3.
- 769.201(8) There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.
- 767.80(1m) **Venue** is in the county where the child or alleged father resides, or if the alleged father is deceased, in the county where his estate is or could be probated.

767.80(1)

Commencement of Action & Service of Process

The petitioner may be:

- The child;
- The child's natural mother,
- A man presumed to be the child's father under § 891.405 or 891.41 unless they have already acknowledged paternity under § 767.805,
- A man alleged or alleging himself to be the father of the child,
- The personal representative of the child, mother, or the presumed/alleged father if that person is deceased,
- The legal or physical custodian of the child,
- The state, whenever the circumstances under § 767.205(2) apply,
- The state within 6 months after the filing of a birth certificate for a child for whom no father is named on the birth certificate or if the mother is not married and paternity has not been adjudicated except as provided in § 69.14(1)(g) and (h) and as provided by DCF in rule,
- A guardian ad litem appointed for the child under § 48.235, 767.407(1)(c) or 938.235,
- A parent of the child's natural mother or the presumed or alleged father if the parent is liable or potentially liable for maintenance of a child of a dependent person under § 49.90(1)(a)2.

895.01

895.01(1)(a)

Paternity actions survive the death of a party.

767.865

In re the paternity of Joshua A.E.; State of Wisconsin v. Jody A.E., 171 Wis. 2d 327, 491 N.W.2d 136 (Ct. App. 1992)

The mother is a necessary party.

Time Limits for Commencing Action

s.893.88 Within 19 years of the child's birth. If brought by a child under 18, the action is commenced with a petition for the appointment of a guardian ad litem

s.767.80(3) An action may be commenced prior to the child's birth with service of process, filing of pleadings, first appearance and the taking of any depositions to preserve testimony, but all further proceedings are stayed until the child is born.

State v. Robin M.W.
310 Wis. 2d 786, 750 N.W.2d
957 (Ct. App. 2008)

A presumption of paternity under § 891.41 does not relieve the state of its obligation to commence a paternity action when no father's name is listed on the birth certificate.

767.80(6m)

Petition and Response

767.80(5)

Petition shall state:

767.215

- Name, and date of birth of the child if born or that the mother is pregnant if the child is unborn,
- 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.
- Whether a paternity action has been dismissed or a judgment rendered and if so, the name of the court and the date of the judgment;
- Notice that each party has the right to request genetic tests under § 49.225 or § 767.84.
- Notification to the court if the matter was referred under § 49.299(6)(a) or 938.299(6)(a).

Summons must be in the form required by § 767.813(5). A Notice to Respondent Statement must be attached to the summons in substantially the form provided for in ss.767.813(5g), except in those actions brought by a man alleging himself to be the father of the child.

- Summons must be accompanied by a document setting forth the percentage standard established under s.46.25(9)(a) and listing the factors which the court may consider under s.767.511(1m).
- 767.82(6) The court may order the respondent's arrest if it finds that service cannot be made in spite of due diligence, or if the respondent fails to appear after personal service.
- 818.02(6)
- 767.893(2)
- A default judgment must be entered by the court when a respondent is served personally for the first appearance and fails to appear, or fails to appear at scheduled, court-ordered genetic tests, pretrial hearing or trial.
- 767.215 (3) If the parties co-petition, service of a summons is not required
- The respondent's response or counterclaim must be served on the petitioner and the family court Commissioner within 20 days of the respondent's receipt of the petition. However, jurisdictional questions may be raised at any time prior to judgment.
- Respondent's Defenses:** At the first appearance, the court or family court commissioner must inform the respondent that he has certain defenses. Defenses may be raised orally or in writing as an answer to the petition. Defenses include:
- 767.863 The putative father was sterile or impotent at the time of conception
- 767.813(5g)
- The putative father did not have sexual intercourse with the mother during the 8-to-10-month period prior to the child's birth.
- Another man did have sexual intercourse with the mother during the conceptive period.

767.863

First Appearance/Temporary Order

767.85

This hearing is held to inform the parties of their rights. A temporary support order may be granted if the respondent is presumed to be the father under the law and, if the respondent does not dispute his paternity, a judgment of paternity may be entered. A genetic test result of 99.0% or higher is necessary to establish a presumption of paternity.

767.86

The first appearance may not be held sooner than 30 days after service or receipt of the summons and petition unless the parties agree to an earlier date.

767.853

Access to the hearing is closed

767.863

If the respondent is present, the judge or family court commissioner shall inform the parties of the following:

767.813(5)(g)

- A paternity judgment obligates the respondent to pay support until the child is 18 years old or 19 if still pursuing a high school diploma, and makes failure to pay support punishable by contempt,

767.83

- If the respondent cannot afford an attorney, counsel shall be appointed for the respondent only if he is not excluded by genetic tests and the statistical probability of paternity, as established by those tests is less than 99.0%,

767.813(5)(g)

- Petitioner has burden of proving by clear and satisfactory preponderance of evidence whether a man named as a possible father is the father.

767.863(1m)

767.855

In re the Paternity of C.A.S. and C.D.S., 156 Wis. 2d 446, 456 N.W.2d 899 (Ct. App. 1990)

- The family court commissioner or the judge may order genetic tests and, at the request of either party, genetic tests must be ordered unless a man other than the mother's husband alleges that he is the father and the court finds that judicial determination of whether that man is the father of the child would not be in the best interests of the child, or upon a motion of a party or a guardian ad litem, the court finds that a judicial determination of paternity would not be in the best interests of the child.

Randy A.J. v. Norma I.J.

- A party may utilize the status of equitable parent to assert an *equitable estoppel* defense to the commencement of a paternity action.

767.855

- The court has the authority to dismiss a paternity action on best interests of the child grounds only if genetic tests have not yet been taken.

767.863(1m)

State ex rel. Scott v. Slocum

109 Wis. 2d 397, 326 N.W.2d
118 (Ct. App. 1982)

- If at the first appearance it appears from a sufficient petition or affidavit of the child's mother that there is a probable cause to believe that any of the named males had sexual intercourse with the mother during the probable time of conception, they will be ordered to submit to genetic tests.

- Probable cause may be established by sufficient petition or affidavit of the mother filed with the court.

- If genetic tests do not exclude a man and those tests show a statistical probability of paternity greater than 99%, that man is rebuttably presumed to be the father.

- Respondent has the right to request genetic tests. Refusal to submit to genetic tests is punishable by contempt.

767.863(3)

- At the first appearance, if a statement acknowledging paternity under § 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.

Guardian ad Litem

767.82(1)(a)

If either the parent or the alleged parent is a minor, a guardian ad litem shall be appointed unless they are represented by an attorney.

767.82(1)(b)

The court shall appoint a guardian ad litem whenever the court has reason for special concern as to the welfare of the child.

767.407(1)(c) The court shall appoint a guardian ad litem whenever aid is provided on behalf of the child or an application for services has been filed under § 49.22, but the state is barred by the statute of limitations from commencing a paternity action.

891.39 The court may appoint a guardian ad litem for the child, and shall appoint one if there is a presumed father of the child other than the respondent. (The mother was married during the conceptive period or at the birth of the child.)

Pretrial Proceedings

767.88(1) A closed pretrial hearing is held by a judge or family court commissioner after the first hearing or in the same proceeding. At this hearing, the parties may present witnesses and cross-examine the other party's witnesses, request genetic tests, and present other evidence on the issue of paternity.

767.88(2) The judge or commissioner evaluates the probability of a paternity determination, and may recommend settlement which may include:

- dismissal of the action, with or without prejudice,
- voluntary acknowledgment of paternity,
- agreement to the court's determination of child support, custody, and placement.

767.88(3) If all the parties (including any guardian ad litem) accept the court's recommendations, judgment is entered accordingly.

767.88(4) If a party does not accept the recommendations and genetic tests have not been taken, the court shall order them. After this, the judge or commissioner makes appropriate final recommendations.

767.88(5) The action is set for trial if:

- The guardian ad litem or any party refuses to accept any final recommendation,
- or if at the hearing, the judge or commissioner determines that it is unlikely that the parties would accept the final recommendations.

Default Judgments

- 767.893(2)(a) Default judgment may be entered (although it can be reopened) and child support set if the respondent fails to appear at the first appearance, scheduled genetic tests, pretrial hearing, or trial:
- Default judgment takes effect immediately, unless the respondent presents to the court or court commissioner evidence of good cause for failure to appear or to have undergone a blood test,
- 806.02
- A default judgment is also available under the general civil procedure provisions,
- 767.893(2)(b)
- A default judgment may not be entered 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.
- 767.893(3)
- Default judgments may be reopened:
 - At any time upon a motion or petition for good cause shown,
 - Upon a motion under s.806.07,
 - Within one year after the judgment.

Stipulations

- 767.893(2m)(a) A stipulation:
- may be entered into if paternity is admitted in court or in writing, and if periodic support is included,
 - should include all the elements of a final support order and should be based on the same criteria.
- 767.80(2) No agreements, other than those approved by the court, will bar a paternity action. When the court evaluates an agreement not to bring a paternity action, it must determine if it is in the child's best interests.

767.855

Randy A.J. v. Norma I.J.

270 Wis.2d 384, 677 N.W.2d

Dismissal

Court may, upon the motion of a party or GAL, refuse to order genetic tests, and if genetic tests have not been taken, dismiss the action if the court determines that adjudication of paternity is not in the best interests of the child.

804.01

Discovery/Genetic Tests

Generally, discovery is conducted as provided in Chapter 804. Interrogatories may be used to gather much of the needed information and clarify the disputed areas.

767.82(4)

- No discovery may solicit information about the mother's sexual relations at any time other than the probable time of conception.
- No discovery may be obtained later than 30 days before the trial.

767.84(1)

The taking of genetic tests:

- The court or family court commissioner may, and on the party's request, shall, order 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 conception and any male witness testifying about sexual relations with the mother during the conceptive period to submit to genetic tests:
- The tests will be conducted by court-appointed experts,
- and on a party's request, the court shall order additional, independent genetic tests by other experts.

In re S.J.K. 132 Wis. 2d
262, 392N.W.2d 97 (Ct.
App. 1986) 767.48(2) (Ct.
App. 1984)

785.01(1)(b) *In re T.P.L.* 120
Wis. 2d 328, 354 N.W.2d 759

Refusal to submit to the tests is contempt of court.

See [Chapter 785, Wis. Stats.](#), for procedures.

In re the Paternity of D.A.A.P.,

117 Wis. 2d 120, 344 N.W.2d
200 (Ct. App. 1983)

767.84(4)

■ If the mother refuses to submit herself or the child and she brought the action, it is dismissed.

767.84(4)

■ If any other party refuses to submit, this fact is disclosed to the fact-finder and is a contempt of court.

767.84(1m)

■ If the genetic tests show that the alleged father is **not** excluded and that the statistical probability of the alleged father's parentage is 99% or higher, the alleged father is reasonably presumed to be the child's parent. If the alleged father **is** excluded, the case shall be dismissed with prejudice **only** against him as a respondent.

767.84(6)

Testimony of male witness requires advance notice. If a male witness is called to testify as to sexual relations with the mother during the conceptive period and the other parties are not provided with his name and address 20 days before the hearing, the court may adjourn for genetic tests of the witness before his testimony, if it finds the party calling the witness acted in good faith.

Genetic test results may be introduced into evidence without expert testimony, but it may be best to get a stipulation on the test results admissibility as to being properly done on the correct genetic samples. If this is not possible, the attorney should submit a "request for admissions" which includes these statements. If the respondent refuses to admit the truth of this information, and it is later proven correct, he could be liable for the costs incurred.

- 767.84(4)
State ex rel. J.A.S. v. M.E.S.,
142 Wis. 2d 300, 418
N.W.2d 32 (Ct. App.
1987)
- 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.
- In re the Paternity of Jeremy D.L.* 177 Wis. 2d 551, 503
N.W.2d 275 (Ct. App. 1997)
- The court may make an order preventing the respondent from engaging in discovery or presenting irrelevant evidence such as acts of intercourse with another man outside the period of conception.
- 767.84(4)
- Genetic test results are used in evidence if:
- They exclude the respondent, as conclusive evidence of non-paternity,
 - They exclude a male witness, as conclusive evidence of non-paternity,
 - Or a probability of parentage is shown to exist.
- 767.84(4)
- 885.23
- 767.84(5)
- Payment of genetic test costs is made by the county, but the court may order either or both parties to reimburse the county if either or both have sufficient resources. If two or more identical series of tests are performed on the same parties, the court may require advance payment by the party requesting the identical tests.
- 767.235
- Appearance of Litigants**
- The court may order both parties to appear at the trial.
- An order for appearance must be requested by a party and then served on the other party before the trial except in the case of a joint petition.
- Evidence**
- 891.395
- Evidence at the pretrial hearing or trial may include, but is not limited to:

State ex. Rel. J.A.S. v. M.E.S.

142 Wis. 2d 300, 418 N.W.2d 32 (Ct. App. 1987)

State ex re. Skowronski v. Mielde 112 Wis. 2d 110, 332 N.W.2d 289 (1983)

767.87(1)

767.87(1)

891.395

In re the Paternity of T.L.S.

135 Wis. 2d 280, 400 N.W.2d 48 (Ct. App. 1986)

767.87(3)

767.87(2)

In re the Paternity of A.M.C.

144 Wis. 2d 621, 424 N.W.2d 707 (1988)

767.87(1)

767.84(1)(b)

- Evidence of the conceptive period of the child if narrower than the presumptive period of 240 days to 300 days before birth of a child weighing at least 5 ½ pounds,

- Evidence of the conceptive period if the child weighs less than 5½ pounds,

- Evidence of sexual intercourse between the mother and respondent during the conceptive period, or evidence of a relationship between the mother and alleged father at anytime,

- Expert opinion on the statistical probability of the respondent's paternity based on genetic tests and/or the pregnancy's duration. (See § 891.395 for the statutory presumption of the pregnancy's duration.)

- Genetic test results and medical, scientific, or genetic evidence based on tests by experts,

- All other relevant evidence except the respondent cannot offer evidence about a man not subject to the court's jurisdiction who may have had sexual relations with the mother during the probable conception time, unless the respondent has undergone and made available genetic tests,

- Testimony relating to sexual relations or possible sexual relations of the mother anytime other than the possible time of conception is inadmissible in evidence unless offered by the mother. However, the fact-finder may infer the date of intercourse if it believes the mother is wrong about the dates,

767.87(1m) If the child was born in this state, petitioner must present certified copy of birth certificate to the court at the earliest possible time to show whether a father's name has been inserted.

767.87(2m) Medical and genetic information filed with DHFS in connection with a TPR is not admissible to prove paternity of the child.

Genetic test reports are self-authenticating and may be introduced into evidence. If the admissibility of genetic test results without expert testimony is challenged, despite the statute allowing it as evidence, the prosecutor can:

- Have the respondent admit the authenticity of the results, preferably in a written stipulation or a request for admission,
- Or argue that the genetic test results fall under the business record exception to the hearsay rule of evidence. This has been accepted in some other jurisdictions.

In re Carmen

7 F.L.R. 2709 (N.Y. Fam Ct.)

(1981)

49.19(4)(h)

767.87(6)

If the state brings an action in a case involving public assistance, and the mother refuses to cooperate, how the attorney should proceed will depend on whether or not the mother is determined to have "good cause" for her refusal.

- “Good Cause” proceedings are handled by the county income maintenance agency, with “Fair hearing” reviews conducted by state hearing officers;
- If she has established good cause for not cooperating with the state, the state may still bring the action if the income maintenance agency has determined that it will be in the child’s best interests, the mother will not be harmed, and there is other evidence which may establish paternity.
- If she has not established good cause, but continues to refuse to cooperate, the state may still bring the paternity action, subpoenaing the mother for her testimony before the court or court commissioner.

767.87(8)

The burden of proof in this action is as follows:

- The party bringing the action has the burden of proving both the probability of paternity and access to the mother by clear and satisfactory preponderance of the evidence,
- However, if there is a presumption of paternity under ss.767.84(1m), 891.39, or 891.41, the person rebutting that presumption has the burden of proof,
- If the genetic test results show that the probability that the alleged father is the biological father is 99% or higher, he is presumed to be the father and the burden of proof shifts to him.

Jury Trial

Trial is by jury only if respondent verbally requests a jury trial either at the initial appearance or pretrial, or requests a jury trial in writing prior to the pretrial hearing. (If he is not represented by counsel, the court may permit this request at a later stage.)

767.883

In re the Paternity of M.J.B.,

144 Wis. 2d 638, 425
N.W.2d 404 (1988)

- The jury, if requested, shall consist of six persons. The court may direct the jury to find a special verdict on some of the issues. If a party requests this before it introduces any testimony, the court must do so.

- The court may consider genetic test results in directing a verdict of paternity.

Judgment

767.89

A judgment or order determining paternity shall contain all of the following provisions:

- An adjudication of paternity,
- orders for legal custody and placement,
- support order,
- a determination as to which parent can claim dependency exemption,
- an order for father to pay or contribute to birth costs. Amount may not exceed one half of actual and reasonable expenses.
- an order requiring either or both parties to pay or contribute to gal fees, genetic tests, attorneys fees and other costs,

In re the Paternity of N.L.M.,
166 Wis. 2d 306, 429
N.W.2d 237 (Ct. App.
1991)

The court has no authority to order the mother to repay a portion of birth costs covered by Medical Assistance.

Disestablishment of Paternity

Hendrick v. Hendrick, 316 Wis.
2d 479, 765 N.W.2d 865 (Ct.
App. 2009)

891.41

When the husband is not the father, if a divorce action has been filed, file a notice of appearance and request that court address issue of presumption prior final hearing.

As an alternative, a paternity action can be commenced and presumption dealt with as a part of that action.