



1995 ASSEMBLY BILL 916

February 21, 1996 - Introduced by Representatives AINSWORTH, WOOD, LADWIG, GUNDERSON, GOETSCH, NASS, HAHN, LEHMAN, OLSEN, OTT, OWENS, BRANDEMUEHL, MUSSER, ALBERS, JOHNSRUD and LORGE. Referred to Committee on Children and Families.

1 **AN ACT to repeal** 767.25 (1m) (ej); **to renumber and amend** 767.25 (1j); **to**
2 **amend** 46.25 (9) (a), 767.085 (2) (b), 767.085 (2m) (a) 2., 767.085 (2m) (b), 767.23
3 (1n), 767.25 (1) (a), 767.25 (1m) (intro.), 767.25 (1n), 767.32 (1) (b) 4., 767.32 (2),
4 767.32 (2m), 767.45 (7), 767.455 (6), 767.51 (4m), 767.51 (5) (intro.), 767.51 (5d)
5 and 948.22 (7) (bm); and **to create** 767.25 (1j) (b), 767.25 (1j) (c) and 767.32 (1)
6 (b) 5. of the statutes; **relating to:** calculating child support on the basis of both
7 parents' incomes and, in certain situations, the amount of time spent with the
8 child.

Analysis by the Legislative Reference Bureau

Under current law in an action affecting the family in which child support is ordered, (most commonly divorce and paternity actions), including actions to revise child support, the court must determine child support payments by using the percentage standard established by administrative rule by the department of health and social services. The percentage standard is a percentage of the payer's gross monthly income. The percentage of income required to be paid varies with the number of children to be supported. The calculation of child support does not take into account the level of personal expenses of the payer or, except in certain situations, the income of the payee or the amount of time that the payer cares for the child during periods of physical placement ordered by the court. If the payer has physical placement of the child between 31% and 40% of the time, the rules provide for a specified reduction in the amount of child support that the payer would be required to pay by using the percentage standard alone. (For example, a payer with physical placement of the child for 37% of the time pays 76.69% of the amount that

he or she would pay by using the percentage standard alone.) Also under the rules, if a parent has physical placement of the child between 41% and 59% of the time and the other parent has physical placement the remainder of the time, the amount of child support that each would pay by using the percentage standard alone is calculated, reduced by a specified percentage depending upon the amount of time each parent has physical placement of the child and compared with the other parent's similarly calculated and reduced amount of child support. (For example, a parent with physical placement of the child for 46% of the time would be obligated to pay 46.72% of the amount of child support that he or she would be obligated to pay by using the percentage standard alone while the other parent with physical placement for 54% of the time would be obligated to pay 20.08% of the amount calculated by using the percentage standard alone.) The parent with the larger calculated and reduced amount must pay the difference as child support to the other parent. In addition under current law, the court is authorized to modify the amount of child support that would be ordered by using the percentage standard, upon the request of a party. The court must find that use of the percentage standard is unfair to the child or either of the parties after considering a number of factors, such as the earning capacity of each parent, the desirability that the custodian remain in the home as a full-time parent and extraordinary travel expenses incurred in exercising physical placement rights.

This bill changes the method of determining the amount of child support to be paid in actions affecting the family, including actions to revise child support. Under the bill, if only one parent is granted periods of physical placement and the other parent is denied periods of physical placement, the child support obligation is determined simply by using the percentage standard. If, however, both parents are granted periods of physical placement but one parent has physical placement of the child for less than 15% of the time, the parent with the larger gross child support obligation, as determined by applying the percentage standard to the income of each parent, pays child support to the other parent in the amount of the difference between the 2 gross child support obligations, as long as the parent with the larger gross child support obligation has physical placement of the child for less than 15% of the time. Neither parent would pay child support if the parent with the smaller gross child support obligation has physical placement for less than 15% of the time. If both parents are granted periods of physical placement and each parent has physical placement of the child for at least 15% of the time, the court computes child support in the following manner:

1. The court first determines the gross child support obligation of each parent by using the percentage standard. Thus, the parent with the higher income of the 2 would have the higher gross child support obligation.

2. The court next multiplies each parent's gross child support obligation by the parent's percentage of time spent with the child or children, based on the periods of physical placement ordered by the court.

3. That product for each parent is then subtracted from the parent's gross child support obligation to produce the parent's net child support obligation. Thus, the

parent who cares for the child or children the greater amount of time has his or her gross child support obligation reduced by a larger proportion of that obligation.

4. The parent with the resulting larger net child support obligation pays child support to the other parent in the amount of the difference between the 2 net child support obligations.

As under current law, the court may upon request modify the amount of support that would be determined by using the method of calculating child support that is outlined in the law, after considering the same factors as under current law and upon finding that use of the new method is unfair to the child or either of the parties.

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

1 **SECTION 1.** 46.25 (9) (a) of the statutes is amended to read:

2 46.25 (9) (a) The department shall promulgate rules that provide a standard
3 for courts to use in determining a child support obligation based upon a percentage
4 of the gross income and assets of either or both parents. ~~The rules shall provide for~~
5 ~~consideration of the income of each parent and the amount of physical placement~~
6 ~~with each parent in determining a child support obligation in cases in which a child~~
7 ~~has substantial periods of physical placement with each parent.~~

8 **SECTION 2.** 767.085 (2) (b) of the statutes is amended to read:

9 767.085 (2) (b) The clerk of court shall provide without charge, to each person
10 filing a petition requesting child support, a document setting forth the percentage
11 standard established by the department of health and social services under s. 46.25
12 (9) (a) and the method of calculating child support under s. 767.25 (1j) and listing the
13 factors which that a court may consider under s. 767.25 (1m).

14 **SECTION 3.** 767.085 (2m) (a) 2. of the statutes is amended to read:

15 767.085 (2m) (a) 2. Shall be accompanied by a document, provided without
16 charge by the clerk of court, setting forth the percentage standard established by the
17 department of health and social services under s. 46.25 (9) (a) and the method of

1 calculating child support under s. 767.25 (1j) and listing the factors ~~which~~ that a
2 court may consider under s. 767.25 (1m).

3 **SECTION 4.** 767.085 (2m) (b) of the statutes is amended to read:

4 767.085 **(2m)** (b) If service is by publication, notification regarding s. 948.31
5 may consist of references to the statute numbers and titles, and information relating
6 to the percentage standard, the method of calculating child support and the factors
7 need not be provided.

8 **SECTION 5.** 767.23 (1n) of the statutes is amended to read:

9 767.23 **(1n)** Before making any temporary order under sub. (1), the court or
10 family court commissioner shall consider those factors ~~which~~ that the court is
11 required by this chapter to consider before entering a final judgment on the same
12 subject matter. If the court or family court commissioner makes a temporary child
13 support order that deviates from the amount of support that would be required by
14 using the ~~percentage standard established by the department of health and social~~
15 ~~services under s. 46.25 (9)~~ method of calculating child support under s. 767.25 (1j),
16 the court or family court commissioner shall comply with the requirements of s.
17 767.25 (1n) or 767.51 (5d), whichever is appropriate. A temporary order under sub.
18 (1) may be based upon the written stipulation of the parties, subject to the approval
19 of the court or the family court commissioner. Temporary orders made by the family
20 court commissioner may be reviewed by the court as provided in s. 767.13 (6).

21 **SECTION 6.** 767.25 (1) (a) of the statutes is amended to read:

22 767.25 **(1)** (a) ~~Order~~ Except as provided in sub. (1j) (b) 3., order either or both
23 parents to pay an amount reasonable or necessary to fulfill a duty to support a child.
24 The support amount may be expressed as a percentage of parental income or as a

1 fixed sum, or as a combination of both in the alternative by requiring payment of the
2 greater or lesser of either a percentage of parental income or a fixed sum.

3 **SECTION 7.** 767.25 (1j) of the statutes is renumbered 767.25 (1j) (a) and
4 amended to read:

5 767.25 (1j) (a) Except as provided in sub. (1m), if the court denies periods of
6 physical placement to one parent, the court shall determine child support payments
7 by using the percentage standard established by the department of health and social
8 services under s. 46.25 (9) (a).

9 **SECTION 8.** 767.25 (1j) (b) of the statutes is created to read:

10 767.25 (1j) (b) Except as provided in sub. (1m), if the court grants periods of
11 physical placement to both parents but one parent has physical placement of the
12 child for less than 15% of the time, the court shall determine child support payments
13 in the following manner:

14 1. The gross child support obligation of each parent shall be calculated by using
15 the percentage standard established by the department of health and social services
16 under s. 46.25 (9) (a).

17 2. If the parent with the greater gross child support obligation under subd. 1.
18 has physical placement of the child for less than 15% of the time, that parent shall
19 pay as child support to the parent with the smaller gross child support obligation
20 under subd. 1., the difference between those gross child support obligations.

21 3. If the parent with the smaller gross child support obligation under subd. 1.
22 has physical placement of the child for less than 15% of the time, neither parent shall
23 be ordered to pay child support to the other parent.

24 **SECTION 9.** 767.25 (1j) (c) of the statutes is created to read:

1 767.25 (1j) (c) Except as provided in sub. (1m), if the court grants periods of
2 physical placement to both parents and each parent has physical placement of the
3 child for at least 15% of the time, the court shall determine child support payments
4 in the following manner:

5 1. The gross child support obligation of each parent shall be calculated by using
6 the percentage standard established by the department of health and social services
7 under s. 46.25 (9) (a).

8 2. Each parent's gross child support obligation calculated under subd. 1. shall
9 be multiplied by that parent's percentage of time spent with the child or children,
10 based on the periods of physical placement granted to the parent.

11 3. The net child support obligation of each parent shall be calculated by
12 subtracting the product determined under subd. 2. for the parent from the gross child
13 support obligation of that parent calculated under subd. 1.

14 4. The parent with the greater net child support obligation under subd. 3. shall
15 pay as child support, to the parent with the smaller net child support obligation
16 under subd. 3., the difference between those net child support obligations.

17 **SECTION 10.** 767.25 (1m) (intro.) of the statutes is amended to read:

18 767.25 (1m) (intro.) Upon request by a party, the court may modify the amount
19 of child support payments determined under sub. (1j) if, after considering the
20 following factors, the court finds by the greater weight of the credible evidence that
21 use of the ~~percentage standard~~ method of calculating child support under sub. (1j)
22 is unfair to the child or to any of the parties:

23 **SECTION 11.** 767.25 (1m) (ej) of the statutes is repealed.

24 **SECTION 12.** 767.25 (1n) of the statutes is amended to read:

1 767.25 (1n) If the court finds under sub. (1m) that use of the percentage
2 standard method of calculating child support under sub. (1j) is unfair to the child or
3 the requesting party, the court shall state in writing or on the record the amount of
4 support that would be required by using the ~~percentage standard~~ method of
5 calculating child support under sub. (1j), the amount by which the court's order
6 deviates from that amount, its reasons for finding that use of the percentage
7 ~~standard~~ method of calculating child support under sub. (1j) is unfair to the child or
8 the party, its reasons for the amount of the modification and the basis for the
9 modification.

10 **SECTION 13.** 767.32 (1) (b) 4. of the statutes is amended to read:

11 767.32 (1) (b) 4. ~~A~~ If the judgment or order was entered under s. 48.355 (2) (b)
12 4., 48.357 (5m) or 48.363 (2), a difference between the amount of child support
13 ordered by the court to be paid by the payer and the amount that the payer would
14 have been required to pay based on the percentage standard established by the
15 department of health and social services under s. 46.25 (9) if the court did not use the
16 percentage standard in determining the child support payments and did not provide
17 the information required under s. 46.10 (14) (d), ~~767.25 (1n) or 767.51 (5d), whichever~~
18 ~~is appropriate.~~

19 **SECTION 14.** 767.32 (1) (b) 5. of the statutes is created to read:

20 767.32 (1) (b) 5. If the judgment or order was entered under this chapter or s.
21 948.22 (7), a difference between the amount of child support ordered by the court to
22 be paid by the payer and the amount that the payer would have been required to pay
23 based on the method of calculating child support under s. 767.25 (1j) if the court did
24 not use that method in determining the child support payments and did not provide

1 the information required under s. 767.25 (1n) or 767.51 (5d), whichever is
2 appropriate.

3 **SECTION 15.** 767.32 (2) of the statutes is amended to read:

4 767.32 (2) Except as provided in sub. (2m) or (2r), if the court revises a judgment
5 or order with respect to child support payments, it shall do so by using the percentage
6 standard established by the department of health and social services under s. 46.25
7 (9) method of calculating child support under s. 767.25 (1j).

8 **SECTION 16.** 767.32 (2m) of the statutes is amended to read:

9 767.32 (2m) Upon request by a party, the court may modify the amount of
10 revised child support payments determined under sub. (2) if, after considering the
11 factors listed in s. 767.25 (1m) or 767.51 (5), as appropriate, the court finds, by the
12 greater weight of the credible evidence, that the use of the percentage standard
13 method of calculating child support under s. 767.25 (1j) is unfair to the child or to any
14 of the parties.

15 **SECTION 17.** 767.45 (7) of the statutes is amended to read:

16 767.45 (7) The clerk of court shall provide without charge, to each person
17 bringing an action under this section, except to the state under sub. (1) (g) or (6m),
18 a document setting forth the percentage standard established by the department of
19 health and social services under s. 46.25 (9) (a) and the method of calculating child
20 support under s. 767.25 (1j) and listing the factors ~~which~~ that a court may consider
21 under s. 767.51 (5).

22 **SECTION 18.** 767.455 (6) of the statutes is amended to read:

23 767.455 (6) DOCUMENT. The summons served on the respondent shall be
24 accompanied by a document, provided without charge by the clerk of court, setting
25 forth the percentage standard established by the department of health and social

1 services under s. 46.25 (9) (a) and the method of calculating child support under s.
2 767.25 (1j) and listing the factors which that a court may consider under s. 767.51
3 (5).

4 **SECTION 19.** 767.51 (4m) of the statutes is amended to read:

5 767.51 **(4m)** Except as provided in sub. (5), the court shall determine child
6 support payments by using the ~~percentage standard established by the department~~
7 ~~of health and social services under s. 46.25 (9)~~ method of calculating child support
8 under s. 767.25 (1j).

9 **SECTION 20.** 767.51 (5) (intro.) of the statutes is amended to read:

10 767.51 **(5)** (intro.) Upon request by a party, the court may modify the amount
11 of child support payments determined under sub. (4m) if, after considering the
12 following factors, the court finds by the greater weight of the credible evidence that
13 use of the ~~percentage standard~~ method of calculating child support under s. 767.25
14 (1j) is unfair to the child or to the requesting party:

15 **SECTION 21.** 767.51 (5d) of the statutes is amended to read:

16 767.51 **(5d)** If the court finds under sub. (5) that use of the ~~percentage standard~~
17 method of calculating child support under s. 767.25 (1j) is unfair to the child or the
18 requesting party, the court shall state in writing or on the record the amount of
19 support that would be required by using the ~~percentage standard~~ method of
20 calculating child support under s. 767.25 (1j), the amount by which the court's order
21 deviates from that amount, its reasons for finding that use of the ~~percentage~~
22 ~~standard~~ method of calculating child support under s. 767.25 (1j) is unfair to the child
23 or the party, its reasons for the amount of the modification and the basis for the
24 modification.

25 **SECTION 22.** 948.22 (7) (bm) of the statutes is amended to read:

