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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2003-04

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on ... Children and Families (AC-CF)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
  (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (May 2012)

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TO: Assembly Committee on Children and Families

FROM: Bob Andersen

RE: Assembly Clearinghouse Rule 03-022, Relating to Child Support Guidelines

DATE: August 6, 2003

Legal Action of Wisconsin, Inc. (LAW) is a nonprofit organization funded by the federal Legal Services Corporation, Inc., to provide legal services for low income people in 39 counties in Wisconsin. LAW provides representation for low income people across a territory that extends from the very populous southeastern corner of the state up through Brown County in the east and La Crosse County in the west. Family law is one of the three principal areas in which LAW provides services (housing and public benefits are the other two). As a result, LAW is extensively involved in child support issues, on behalf of both payees and payers.

We are in favor of the proposed rules, provided that a few amendments are made to address the hardship experienced by low income payers.

Under current law, child support orders that are set for low income payers are often set at unrealistic levels. This is because there is not a realistic assessment made of the earning capacity of low income payers. Unfortunately, the current administrative rule, DWD 40.03 (2), allows courts to simply choose an alternative for establishing child support for low income payers, by setting support at 40 times the federal minimum wage:

> **(2)** SUPPORT OBLIGATION BASED ON EARNING CAPACITY. In situations where the income of the parent obligated to pay child support in accordance with the standard under sub. (1) is less than that parent's earning capacity, or in situations where both parents incomes are considered under s. DWD 40.04(2)(c) and the income of one parent is less than that parent's earning capacity, the court may establish support by applying the percentage standard to (a) an amount determined by the court to represent the payer's ability to earn, based on the payer's education, training and work experience, and the availability of work in or near the payer's community; ***or (b) the income a person would earn by working 40 hours per week for the federal minimum wage under 29 USC 206(a)(1)*** [emphasis added].

While the law allows courts to look at earning capacity, this simple alternative is what courts gravitate to. Unfortunately, many payers cannot earn this kind of income on a regular basis.

They are frequently limited by many factors, including their own job skills, physical or mental barriers that exist to working at these levels, records of criminal convictions, or the lack of jobs.

The situation has been exacerbated by the recent repeal of the authority in the state to establish percentage expressed orders. Under this authority, in the past, courts were able to establish a support order by setting a percentage to be applied to whatever income the payer had. Unfortunately, because this system made it difficult to keep track of payments, the federal government compelled the state to repeal the authority for percentage expressed orders in the past legislative session. As a result, courts are now even more inclined to ***automatically*** set support at 40 times the federal minimum wage.

The kind of process that Wisconsin uses has recently come under sharp criticism at the federal level. The federal ***Office of Inspector General of the Department of Health and Human Services*** filed a report in July, 2000, that contained some remarkable conclusions:

- "the policies reviewed do not usually generate child support payments by low income non custodial parents."

- "the greater the length of time for which non-custodial parents are charged retroactive support, the less likely they are to make any payments on their child support order, once established

- ***"In order to increase payments, States must exercise every possible means to base awards on actual, rather than imputed income***" [emphasis added]

As a result, the federal ***Office of Child Support Enforcement (OCSE)*** produced a publication – Policy Interpretation Question, PIQ-00-03 – outlining several options for the states, in the wake of the OIG report –

- arrearages may be reduced by participation in fatherhood or employment programs, may be excused by amnesty programs, or may be postponed.

- ***the imputation of income should be limited to cases in which the noncustodial parent has the ability to pay, but is uncooperative.***

- states are encouraged to respond appropriately to modifications of child support where circumstances change significantly, particularly in cases of incarceration, in order to ensure that the orders are based on a current ability to pay.

- states may choose not to establish retroactive child support for low income obligors in public assistance cases.

The result of such policies in Wisconsin is that low income payers suffer a never ending cycle of incarceration and joblessness that feed off of each other. Inmates in county jails, some with Huber law privileges, give anecdotal reports of the failure of the current system, including –

-- high child support orders that are imposed against them even though they have no ability to get the jobs that would be necessary to abide by the orders;

-- losing jobs that helped them make some payments because they are arrested on child support warrants;

-- child support orders that do not commence until they are incarcerated after having been removed from their families on some other violations;

-- contempt orders for nonpayment of child support that are entered against them for failing to appear in court while they are incarcerated;

-- arrearages that snowball against them that make it impossible for them ever to catch up on their orders;

-- the uneven enforcement of orders among the counties, resulting in automatic incarceration in places like Dane County, while other counties do not have a policy of automatic incarceration.

In accordance with the recommendations of the federal authorities cited above, the initial reaction of LAW was to favor what these federal authorities said – ***for people without income or whose income is low, income should not be imputed in the absence of proof that the payers were failing to cooperate***. This would amount to a restoration of what the law used to be in the past – income would not be imputed for payers in the absence of a showing that the payers were ***shirking*** their responsibilities.

However, because that requirement would impose such a higher burden for payees, instead LAW decided to favor the approach that is followed in the proposed rule – which is to make it clear that courts are to make a realistic assessment of a payees earning capacity before setting orders at 40 times the federal minimum wage, under proposed DWD 40.03 (4). Section DWD 40.03 (4) provides that courts may not impute income at 40 times the federal minimum wage unless "evidence has been presented that due diligence has been exercised to ascertain information on the parent's actual income or ability to earn and that information is unavailable."

We would ask that the department amend this section, however, to provide that income be imputed at 35 times the federal minimum wage, instead of 40 times the federal minimum wage, where that imputation is appropriate. The Department of Workforce Development, in its administration of Unemployment Insurance defines a full time job as ***35 hours per week***, under DWD 100.02 (28). In order to be eligible for UI, a person has to be able and available for a full time job of ***35 hours of work per week.***

The proposed revision of the provision for the imputation of income may well result in the establishment of higher orders for payees who do have a greater earning capacity, because, hopefully, courts will not simply be automatically imposing an order of 40 times the federal minimum wage – they will take the time to engage in a realistic assessment of the payeee's earning capacity.

The second amendment that we would like the department to make to the proposed rule would be to delete proposed DWD 40.04 (4), relating to low income payers, and to substitute a new provision which we describe below.

In this proposed rule, the department omitted a low income chart that was agreed to by all the members of the DWD Child Support Advisory Committee. In its place, the department substituted a new section, DWD 40.04 (4), for low income payers. This provision for low income people ***imposes the burden*** on low income people to prove that they are low income and it contains an unrealistic and limited definition of low income. Under this proposal, a person has the duty to show ***all*** of the following: (1) they have less than a high school education (2) they have been employed less than 6 months in the past 12 months and (3) there is limited availability for work in or near the parent's community. Of course, there are poor people who do have ***high school educations***, who may have been ***underemployed*** during those 6 months, and placing the burden on ***them*** to prove the availability for work in the community is a requirement that goes far beyond their expertise.

In many counties, people will be worse off with this standard, because in those counties, the courts set minimal orders for people who are not employed – $0 in some counties; $50 in others. This new rule would give local courts the impression that they would have to resort to this section whenever they are addressing low income payers. This section is also confusing, because of the existence of the earlier section, DWD 40.03 (3), imputing income for people with income at less than their earning capacity. The two sections cover the same circumstances. Questions will arise as to when one applies and the other does not. This section should be deleted.

In place of proposed DWD 40.04 (4), the following should be substituted:

DWD 40.04(4) Alternate Support Order for Low Income Payers.
As an alternative for the calculation of the support amount under DWD 40.03(1), the court may use the monthly support amount provided in the schedule in Appendix C where the parent's income is below 125% of the federal poverty guidelines and his or her total economic circumstances limit his or her ability to pay support at the level set forth in DWD 40.03(1).

Schedule C should contain either a mathematical formula or a chart setting forth a minimum child support obligation of $50 for all payers and then setting a requirement that payers pay a graduated amount of one half of the current percentage support amount beginning at 75% of the FPL up to an amount based upon current percentages at 125% of the FPL. Whether a chart or formula is selected, it should result in removing any "cliffs" for payers with income between 75% and 125% of poverty. (If a chart is selected, we suggest that it be drafted in $25 income increments, similar to one that was done for the DWD Child Support Advisory Committee. Such a chart would be simpler and give a better idea at a glance what the proposal entails. Courts would have discretion to set amounts within those increments.) This would mean that at 75% of poverty: parents of one child would pay 8.5% of the current amount (amounting to $49 under the current FPL, which would amount to $50 under our minimum); parents of two children would pay 12.5% of the current amount; parents of three children would pay 14.5% of the current amount, and so on.

This amendment would attempt to restore some of the aspects of the low income chart that was omitted by the department. The low income chart in the original draft approved by the Advisory Committee was intended as a compromise in setting orders for low income payers, ***in lieu of the federal recommendation not to impute income except where people are shirking.*** As indicated above, we felt that a requirement that shirking be proven in all cases imposed too great a burden on payees. However, we felt that something should be done to reduce orders for low income payers.

The department omitted the chart because of the concerns of many that the chart had too low an order for payers with incomes below 100% of poverty: $21.

As a result, we have revised the formula to provide a ***minimum*** order of $50 in all cases and a reduced order for payers with incomes between 75% of the federal poverty line and 125% of the federal poverty line. This formula accomplishes many things. It sets a ***minimum*** order of $50 that does not exist now. It establishes a lower order for payers that should result in more money being paid, according to the findings of the federal OIG study cited above. It establishes a ***uniform*** order that all counties can follow – under current practices, orders run the gamut. Some counties set orders of $0, others impose orders of $50, and others set orders based on 40 times the federal minimum wage. ***Finally, this alternative is completely discretionary.*** It only provides an alternative for different jurisdictions.

Regarding the different treatment of these child support cases by different counties, one of the serious problems with respect to child support is the attendant practices in those counties to enforce these orders. For some authorities, a proposal like ours is criticized for not setting a high enough standard for payees to aspire to. The thought is that it is better to establish a higher standard for the payment of support in order to ***encourage*** people to seek high paying jobs. While this is a noble endeavor, the problem with this approach lies in the different enforcement that exists among the counties. In some counties where this philosophy is espoused, nonpayment of child support is not ***systematically*** enforced by incarceration. On the other hand, in other counties, delinquency in the payment of child support is ***systematically*** punished by incarceration.

It is especially important to have this kind of alternative in view of the profound change in the law that is being made by this administrative rule. For the first time, the income of women will be considered once the noncustodial parent has physical placement 25% of the time. This is a very big change from current law, where women's income is not considered until the father has physical placement 40% of the time. ***When you combine this with the provision for imputed income for parents who are unemployed or who are underemployed, the effect of these new rules for women with children has the potential for having a profound effect.*** For women who have been ***unemployed or underemployed*** because of child care responsibilities, the new rule will impute income for them – quite possibly at a high level based on "earning capacity" or based on 40 X the federal minimum wage. Suddenly, these women will experience a huge drop in their child support. If they do not have a ***real*** income, this will put them and their children in a very difficult position. Some may even have to turn to public assistance.

Our proposed alternative formula would help address that situation, because for women who are

unemployed or underemployed, a more realistic support order can be assessed for them. Without this alternative, women and their children, where they have physical placement most of the time, will suffer where income is ***imputed*** for them at a level that exceeds their actual earnings. It is the combined effect of the ***new*** threshold at 25% (for income shares) ***and*** the ***imputation*** of income for people who have no ***real*** income to speak of that threatens to have a radical effect.

The proposed rule attempts to address this problem by providing, in the shared placement section, DWD 40.04 (2), the following provision,

> "In determining whether to impute income based on earning capacity for an unemployed parent or a parent who is employed less than full time . . . the court shall consider the benefits to the child of having a parent remain in the home during periods of physical placement and the additional variable day care costs that would be incurred if the parent worked more."

This is an oblique and vague provision. Does this mean that income is not to be imputed at all or it is to be imputed at some lower amount? We think that our alternative formula, that provides the court with a tangible reduced order in accordance with a lower income is a better approach.

In addition, we recommend that the section on imputed income, DWD 40.03 (3), should be amended to refer specifically to a consideration of "and history of child care responsibilities as person with primary physical placement, " at the end of the list of factors that are considered in determining earning capacity.

We feel that the adoption of these provisions relating to low income payers will go a long way toward resolving some of the inequities that exist. It will also result in the increased payment of child support to payees and the increased ability of payers to grow in their employment success and in the ability to make increased child support payments in the future. Finally, it will also benefit the children by increasing the payment for their support and by improving their relationship with their noncustodial parents.


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WISCONSIN CHILD SUPPORT ENFORCEMENT ASSOCIATION

Memorandum

TO : Assembly Committee on Children and Families

FROM : Janet Nelson, Chair, Legislative Committee,
Wisconsin Child Support Enforcement Association

DATE : August 7, 2003

SUBJECT : Testimony on the Child Support Guidelines within Clearinghouse Rule 03-022 and Assembly Bill 250

The Wisconsin Child Support Enforcement Association represents Wisconsin's county and tribal child support agencies. Our members manage approximately 340,000 support cases each year. The WCSEA supports the proposed revisions to the child support guidelines within Chapter DWD 40 and opposes AB 250.

To be effective, child support guidelines must balance three criteria:

1. They must be fair. Support collection occurs more efficiently when payers voluntarily comply with support orders, and payers are more likely to voluntarily comply with orders they see as fair. To be perceived as fair, the guidelines themselves must take into account the variety of circumstances that families find themselves in, and the courts and the commissioners who apply the guidelines must have the discretion to fashion support orders that fit those circumstances.

2. They must be predictable. Those who pay support should be able to reasonably anticipate what his or her obligation will be, without regard to what county or court hears his or her case.

3. They must be easy to administer. Because of the large volume of support cases within the State, the child support agencies must be able to calculate support requests quickly and efficiently.

Additionally, it is important to remember that Wisconsin has a history of establishing child support orders based upon the philosophy that children of parents who do not live together deserve no less support than children of parents in an intact family. First and foremost, this philosophy supports families by encouraging parents to stay together for the benefit of their children, but it protects the innocent bystanders (the children) when parents' relationships break down.

The WCSEA supports the DWD rule revisions over AB 250 because the revisions better maintain this philosophy. The revisions also do a better job of balancing fairness with predictability and ease of use than does AB 250.

Fairness. In order to generate the revisions to the rules, the Department of Workforce Development created an advisory committee composed of members who represented a wide variety of interests in the state's child support system. The fact that the courts, the Wisconsin Bar, the child support agencies and a number of community–based organizations (representing both payers and payees) participated in this process helps assure that the final product can be viewed as fair.

In addition, fairness requires that courts have latitude to evaluate families' particular circumstances to determine whether the application of the guidelines in any individual case may be unfair. Any standard for setting support, no matter how well thought-out, cannot account for every possible family situation. To maintain fairness in Wisconsin's child support system, the law must balance a courts' ability to exercise discretion with the need for predictability. This balance is better struck by the revisions than the all-or-nothing nature of AB 250.

Predictability. The adjustments to the shared-time formula and the addition of provisions for low-income and high-income payers in the rule will give courts clearer guidance for these situations. In the past, deviations from the percentage standards under these circumstances were unpredictable. While AB 250 addresses high income issues, it does nothing to assist courts in dealing with the vast number of low income cases that the child support agencies see.

Ease of use. While the rules are somewhat more complex to administer than the present guidelines, the child support agencies recognize that this complexity is warranted by the variety of circumstances in which Wisconsin's families find themselves. With training, the WCSEA believes that individual agencies will be able to effectively apply the new rules in short order. Child support calculations under AB 250 are a great deal more complex. So complex, in fact, that the bill requires DWD to generate computer software to help courts calculate support orders under its provisions.

The philosophy behind child support orders in Wisconsin. The revised guidelines in CR 03-22 maintain the philosophy that children should be supported by both parents as closely as possible as had the parents had an intact relationship. By lowering the amount of support that can be ordered in a broad number of cases, AB 250 provides little encouragement for parents to work together for their children's benefit. The philosophy behind the bill seems to be that children of parents who live apart from one another are only entitled to a subsistence level of support from each parent, rather than a lifestyle closer to that they would have had had their parents lived together.

The Changes to DWD 40

Shared time situations. A shared placement situation is recognized once placement for each parent is at least one-quarter of the year, or 92 days. The revised formula recognizes the duplicate costs incurred when both parents have substantial placement time, allowing both parents to reasonably support their children when they have placement. While there are a couple of concerns with this formula - as a result of this change, child support agencies will have to use the shared-time calculation much more frequently than they do now, and such use will reduce the amount of child support paid in a number of cases - this is a reasonable attempt to accommodate the concerns of parents who have substantial placement, yet do not qualify for an adjusted order under the present regulations.

Low income payers. The new provision regarding low-income payers recognizes that outside circumstances can limit a parent's ability to pay child support. The proposal allows a court to impute income at less than 40 hours per week at minimum wage when a parent does not have a high school education, nor a stable work history, and community employment opportunities are limited. While some members of the Association are concerned that this provision does not go far enough in making realistic (and affordable) support orders for low-income payers, it is an improvement over the present regulations' lack of any consideration for the low-income payer.

High income payers. The creation of this special provision for high-income payers accounts for the reality that parents with higher incomes spend a somewhat lower percentage of their income on their children. Presently, high–income payers may perceive their child support orders under the current regulations as a disguised form of support for the other parent, rather than support for the child. The reduction of the percentage assessed as support at incomes over $102,000 should alleviate this perception without substantially reducing support for Wisconsin's children or encouraging parents to live apart to lower their support obligations.

The WCSEA applauds DWD's diligent efforts at accommodating the concerns of all of the participants in Wisconsin's child support system as it revises the child support regulations, and we encourage this committee to support CR 03-22.

Thank you for your time and attention.

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ASSEMBLY COMMITTEE ON CHILDREN AND FAMILIES

Testimony on Clearinghouse Rule 03-022
Relating to the Child Support Guidelines
August 7, 2003

Carol W. Medaris
Senior Staff Attorney

I am here today on behalf of the Wisconsin Council on Children and Families, a statewide, non-profit, non-partisan child advocacy organization that works to improve the well-being of children and families, particularly vulnerable children.

In that capacity I served on the Department's Child Support Guidelines Advisory Committee which met approximately once a month for nearly a year. Committee members were chosen to represent a wide range of interests: children, mothers and fathers, including low-income parents, domestic violence victims, the state bar, and the court system, including child support agencies, family court commissioners, and the chief judges' sub-committee on child support. Following those meetings, in February, 2002, the Committee proposed a number of changes to the current administrative rule, most of which are included in the proposal before you today.

I am here generally in support of the proposed guidelines except that one very important part of the Committee's recommendations were left out: special provisions for reducing the percentage of income guidelines for low-income payers – those with incomes less than 150% of poverty. The Committee, as widely representational as it was, recommended these special provisions unanimously, except for one member (a father's group representative).

The Committee was very concerned about the state system's lack of recognition for low-income fathers who are legitimately unable to pay the standard child support percentages.

The federal Department of Health and Human Services Office of Inspector General (OIG) looked at child support orders set for low-income fathers and found,

> "While some low-income non-custodial parents are delinquent because they are unwilling to pay support, an estimated 60% have a limited ability to pay based on their income levels, employment history, education levels and rates of institutionalization."

"Child Support for Children on TANF," February 2002. The report concluded,

> "The most effective way to achieve both immediate and long-term child support payments for children on TANF is to set realistic support orders when compared to a non-custodial parent's earnings. The support order can be raised gradually as a non-custodial parent's earnings increase. This action would likely result in increasing child support payments rather than starting with a support order that is unrealistic when compared to a non-custodial parent's earnings. . . .Starting a support order too high is more likely to have the opposite effect on payment compliance with little improvement over time."

These findings were consistent with several IRP reports indicating that compliance with child support orders increased as percentages of income ordered decreased among low-income payers.

The Committee was also concerned with studies showing lowered child support compliance as arrearages increased; and, arrearages obviously increase as payers are unable to pay amounts ordered. Further, the Committee was concerned with payers dropping out of the formal economy as they became unable to support themselves on what is left after their wages are assigned.

Also, state law requires courts to consider payors' need to sustain him or herself at poverty levels, currently $748 a month for one person, but courts often ignore this when faced with the needs of the children in the family.

Finally, the Committee was in general agreement that there should always be <u>some</u> minimal amount ordered in all cases. That minimal amount was purposely set low, applying as it does even to those non-custodial parents without any income at all.

The schedule was devised to bring about a gradual rise in the percentage of income ordered as income increased, avoiding any "cliffs" in the schedule,

and resulting in payments at the full, current amount once income reached 150% of poverty. The intent was also that this was to apply to cases where there was a legitimate inability to pay the full amount, not to payers for whom current percentages would not be a hardship – perhaps because some of their living expenses were being taken care of by others. A copy of the schedule is attached.

Beginning with payers with incomes of 70% of poverty or less, the schedule sets $21 for one child, $31 for two, $36 for 3, and $39 for four, and $43 for five children or more. (This amounts to ¼ of the current percentage standard.)

At 100% of poverty ($748 per month), the schedule calls for $74 for 1 child, $108 for two, $125 for three, $134 for 4, and $147 for five or more.

At minimum wage times 40 hours per week ($885 monthly), orders would reach $113 for one child, $166 for two, $193 for three, $206 for four, and $227 for five or more.

And at $1,000 per month, almost at 150% of poverty when the regular 17% standard would apply, the schedule would be $154 for one child, $226 for two, $262 for three, $280 for 4, and $307 for five or more children.

Are these amounts enough for children? Mostly no, especially at the lower income levels. But if payers are unable to pay, custodial parents will not get the money anyway. Impossible orders lead to payers dropping out of the system, lead to greater arrearages, and in the worst cases lead to incarceration for non-payment of support. None of these results help children. As an advocate for children, this seemed to me the best compromise.

During the administrative hearing process, objections were raised which resulted in the Department abandoning the low-income schedule. Many child support agencies opposed the schedule, although Milwaukee County, where many low-income parents reside, supported the schedule, as did the child support agency represented on our Committee.

A letter was submitted on behalf of the Chief Judges and District Court Administrators in opposition to the low-income schedule, but the representative of the Chief Judges Subcommittee on Child Support on our Committee supported it as did the representative of Family Court Commissioners.

A few mothers testified in opposition to the schedule, but representatives of low-income and middle-income mothers on the committee supported it.

The proposal is not uncontroversial, but controversy existed on the Committee, as well, and after many discussions and presentations a schedule was decided upon – one which represents a compromise of all the interests gathered together to serve on the Committee.

A very recent report by the Institute for Research on Poverty – too recent for presentation to the Committee – finds that even at incomes below $10,000 per year (covering most payers included in the low-income chart), higher orders resulted in slightly higher payments. However, this still does not answer the question of whether lower orders mean more fathers will pay something – that question was never asked. The OIG report (and common sense) seems to say that lower orders will increase participation in the child support system. Also, even the IRP report says that higher payments do not occur with orders of 20% of income or more, for this group of payers. So the IRP results would not apply to standard orders for two children (25%) or more or to payers for children in serial families.

Nevertheless, as an advocate for children the Council is very concerned about any scheme that would reduce orders for fathers who can pay. We have suggested language to the proposed rule that would narrow the use of the low-income schedule to avoid orders which might result in reduced payments. (See second proposed amendment, attached, suggesting an alternative to DWD 40.04(4).

The Department proposes new language for low-income payers in DWD 40.04(4), but that is likely to create more harm to low-income payers than is currently the case. Courts would be even more likely than now to impute income to low-income payers, rather than determining a payer's actual ability to pay. Many studies show that cases with imputed income are among the most troublesome of all – resulting in the least compliance by payers and the greatest growth in arrearages.

In addition, the Department's proposed language in DWD 40.04(4) is confusing when read with another subsection dealing with imputed income, DWD 40.03(3). This latter section is also attached because we are suggesting another proposed amendment to the Department's rule – one that would lessen some of the disadvantages of imputed income, consistent with the definition of full-time work in the Unemployment Compensation system which is also under the Department's jurisdiction. After a diligent effort to obtain information on a parent's actual income was

unsuccessful, courts would be authorized to impute income based upon a 35 hour week rather than the 40 hours in the current rule.

In conclusion, the Council believes that the low-income rule should promote orders at levels within payers' ability to pay without reducing orders for those who can actually pay closer to current percentage levels.

(Since the hearing on this rule in the corresponding Senate Committee, the Council along with some other members of the Advisory Committee have been meeting with the Department to see if we can reach agreement on a compromise directed at low-income payers. We are still working on it.)


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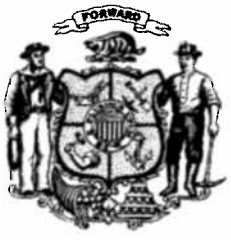
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MEMORANDUM

TO: Members, Assembly Committee on Children and Families
Aging and Long-Term Care

FROM: John Short, Family Law Section of the State Bar

RE: **Support for Clearinghouse Rule 03-022 , revisions to DWD 40, Wis. Administrative Code (Child Support Guidelines)**

DATE: August 7, 2003

I am the current Chair of the Family Law Section and have served on the Family Law Section Board since 1995 in a variety of capacities. I am an attorney in private practice. I have been a solo practitioner and small firm practitioner since 1970 and have always been in Fort Atkinson (Jefferson County). My practice has always emphasized family law, and I have representing both men and woman, payers and payees. I have been a frequent lecturer on family law-related topics and have taught at the Judicial College for the past four years on family law topics.

In addition, I have closely followed the work of the Child Support Advisory Committee formed by the Department of Workforce Development to recommend changes to the child support law. The proposed rule before you today (CR 03-022) is a product of that committee.

The DWD Advisory Committee worked for a year and spent close to 100 hours in meetings discussing and studying child support issues in Wisconsin, not to count the many hours that Committee members spent on their own time reading the many reports and analyses put forth to the Committee by DWD and by other experts. The DWD Committee was a well-rounded group with members of the judiciary, Family Court Commissioners, fathers', grandparents' and children's rights advocates, advocates for those who have been victims of domestic violence, and those who represent clients with low, middle and high incomes. The Committee did not start with a predetermined agenda and the well-rounded recommendations from the Committee ultimately surprised many of us on it.

The Family Law Section **supports** the DWD proposal before you. Clearinghouse Rule 03-022 corrects many of the problems with the current child support formula and it balances the interests of the payer and payee without losing sight of the children.

State Bar of Wisconsin
5302 Eastpark Blvd. ◆ P.O. Box 7158 ◆ Madison, WI 53708-7158
(800)728-7788 ◆ (608)257-3838 ◆ Fax (608)257-5502 ◆ Internet: www.wisbar.org ◆ Email: service@wisbar.org

The proposed rule would, in the opinion of the Board of Directors of the Family Law Section, reduce litigation over children in divorce both on child support and on placement issues. It should also lead to more equitable results in situations where families have shared placement.

The proposed rule lowers the threshold for shared time placement to a 25% threshold. All payer parents with over 25% time would then receive a reduction in child support based upon significant time with their children. Because many cases involve placement time over 25% for the payer parent, more parents would get this reduction than under the current rule. This should also reduce fighting over children in divorce.

The proposed rule eliminates the two thresholds for comparing income in a shared placement situation that occur first at 30% and then again at 40% overnight time. This should reduce the litigation over children in divorce that occurs in some cases to reduce the child support obligation of the parent with less time. A parent who receives time with the children over either the 30% or 40% threshold receives a reduction in child support, with a much greater reduction occurring at 40% time because the two parent's incomes are compared once 40% time is reached.

In addition, the proposed rule addresses the need to allocate expenses for such things as childcare, clothing and extra-curricular activities in situations where a child spends a significant proportion of overnight time with each parent. The revisions to the shared-time formula expressly require the court to order parents to assume these "variable costs" in addition to the child support amount under the shared time formula. The proposed revisions to the definition of "variable costs" should also reduce litigation over payment for these items, which is not uncommon.

CR 03-022 also adds new special circumstance provisions for high- and low-income payers that should address many of the problems identified with the current guidelines.

The proposed rule clarifies that child support may be ordered into a trust for a child's education when the amount of child support ordered exceeds the child's needs for current support.

It is my understanding that you have received a letter from Mr. Jan Raz, the President of the Wisconsin Fathers for Children and Families, asking that you request the Department to make a number of modifications to the proposed rule.

On behalf of the Family Law Section I would like to respond to each of those requests.

A. Section 1: Effect of Rule Change.

This proposal was considered by the Child Support Guidelines Advisory Committee and was rejected. Under current statute, the passage of 33 months (since the date the last child support order is entered) creates a rebuttable presumption of a substantial change in circumstances sufficient to justify the revision of a child support order. (See s. 767.32(1) b.2., Wis. Stats.)

This proposed change would actually impose a new requirement on those seeking a modification to a child support order. Not only would 33 months have to pass from the effective date of the last child support order, but an order calculated under the new formula would also have to differ from the last order by at least 20% of the amount of the last order of by at least $60 per month in order to constitute a substantial change of circumstances sufficient to justify the revision of a child support order under s. 767.32, Stats.

Courts have consistently held that a change in circumstances sufficient to justify a revision of a child support order under s. 767.32, Stats., must be a change in the financial circumstances of the parties, **not** a change in the law. As a practical matter, courts will be able to implement this change in the law in a gradual, staggered manner rather than being flooded with requests for modifications following a rule change.

B. Section 7: Item 10: Definition of Income.

The definition of income available for child support is well-settled; therefore, retaining the definition in the rule would **not** lead to increased litigation. The current child support guidelines (in DWD 40.02 (13) i., Wis. Admin. Code) contain essentially the same language this request seeks to alter. Ironically, the language in the proposed rule actually tightens up the definition and excludes more from the definition of gross income than the existing rule does.

This requested change could fundamentally increase the likelihood that some child support payers will manipulate their income in order to manipulate the amount of support. It could prevent a court from considering a significant portion of a payers cash flow without regard to the best interest of the child.

This request is not centered on meeting the needs of children; instead, it places the interest of the payer ahead of the child. It imposes blanket restriction on what the court can consider as income in fashioning a child support order without any justification.

C. Section 27: Item (6): Determine Child Support Before Maintenance.

The Advisory Committee made no specific recommendation on this issue.

D. Sections 29, 30, 31 32: Special Circumstance Provisions.

This proposal was considered by the Child Support Guidelines Advisory Committee and was rejected. It is argued that Circumstances vary from case to case. The Family Law Section believes each case should be looked at on its merits and the court should be guided by the best interest of the child in fashioning child support orders. Uniformity is not necessarily desirable. Requiring the court to follow a rigid formula in these cases will tie the hands of the court in cases where flexibility is needed to fashion an order that best meets the needs and best interests of the child. The court should have the discretion to craft an order that best suits the family before the court in each particular case.

E. Section 32: Provision for High-Income Payers

This proposal was considered by the Child Support Guidelines Advisory Committee and was rejected. The requested change would treat families where the combined annual income of both parents exceeds $48,000 as high income. The Family Law Section does not believe combined income of $48,000 should be considered high income or given special treatment. According to the federal Department of Housing and Urban Development, median annual family income in Wisconsin in 2002 was $59,200. Setting the initial thresholds as low as $48,000 would result in the special circumstance provision for high income payers being used more often than is appropriate, and for families who are not, in fact, high income.

Child support should meet more than just the basic needs of the child. The basic premise of the child support formula is that a child's standard of living should, to the degree possible, not be adversely affected because his or her parents are not living together. The child support formula attempts to provide children with what is as close as possible to the same state standard of living the child enjoyed when the parents were living together, or if they never did, then the standard of living they would have enjoyed together, taking into account the fact that it is more expensive to maintain two households than one.

The Family Law Section strongly opposes Senate Bill 156 and Assembly Bill 250 to which the request refers. Those companion bills would treat combined annual incomes of $48,000 as high income cases and would impose an entirely new method of calculating child support in all such cases. Within the past year county child support agencies have had to recalculate tens of thousands of cases from percentage-expressed orders to fixed dollar orders. To force them to adopt a new formula for calculating child support for more than half of all families would create an additional and unnecessary workload on child support agencies without a valid public policy basis to do so.

The Family Law Section believes the straight percentage standards should still be used in the majority of cases not involving shared placement.

F. "Serial Family Payer" Provision.

Serial Family provisions are discretionary. While these provisions might be found unconstitutional if they were presumptive, they are not presumptive but are permissive. This permissive element recognizes that it costs more to raise children in separate households than in a single household.

Serial family situations pose difficult questions. In these situations, the payer, by definition, has a child support order for a child or children from a previous marriage or relationship and now faces a support order for later born children from a different marriage or relationship.

If one follows the percentage standard in each successive case, there is a possibility the payer will simply run out of money and be unable to afford to pay the amount indicated under the

percentage in each case. The rule attempts to balance the needs of the children and the obligations of the payer so that each is treated fairly.


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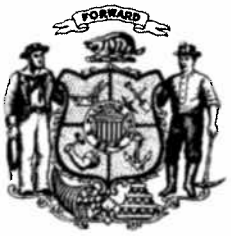

FORWARD

STATE REPRESENTATIVE

STEVE KESTELL

27TH ASSEMBLY DISTRICT

TO: Members of the Children and Families Committee

Representative Ladwig 6-9171
Representative Albers 6-8531
Representative Jeskewitz 6-3796
Representative Vukmir 6-9180
Representative Miller 6-5342
Representative Sinicki 6-8588
Representative Krug 6-5813

FROM: Representative Steve Kestell, Chair

DATE: August 20, 2003

RE: Child Support: Clearinghouse Rule 03-022 and Assembly Bill 250

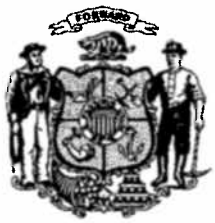
On August 7, 2003 the Assembly Committee on Children and Families held a public hearing on DWD Clearinghouse Rule 03-022 and Assembly Bill 250 relating to child support guidelines in Wisconsin. The Senate Committee on Health, Children, Families, Aging and Long-Term Care held a public hearing and executive session on Clearinghouse Rule 03-022 on July 22, 2003. The Senate Committee voted 9-0 to request further modifications to CR 03-022 regarding "low income payers," "imputed income," and "high income payers."

The Department of Workforce Development has indicated that they are close to completing modifications on "low income payers" and "imputed income." The Department revisited the "high income payer" language, however it is unclear whether modifications will be made. Once the Department submits their modifications to the Senate Committee, both Committees will have 10 working days to review the modifications and take any desired action(s).

I am asking for committee member input on issues surrounding CR 03-022 and Assembly Bill 250. I am interested in knowing if members have specific concerns or suggestions on these proposals, and what desired actions you may wish to take. Since the Department has not yet submitted their modifications, the Committee is not bound by a specific timeline. However, it is important that we are prepared to make a decision when the time comes.

Please forward your comments to my office before 1:00 pm on August 27th.

Steve Kestell
Chairman



STATE REPRESENTATIVE

STEVE KESTELL

27TH ASSEMBLY DISTRICT

TO: Members of the Children and Families Committee

Representative Ladwig
Representative Albers
Representative Jeskewitz
Representative Vukmir
Representative Miller
Representative Sinicki
Representative Krug

----AMENDED----

FROM: Representative Steve Kestell, Chair

DATE: September 4, 2003

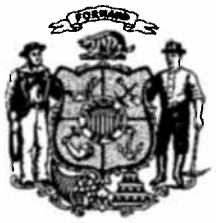
RE: Committee Review Period of Clearinghouse Rule 03-022

On August 7, 2003 the Assembly Committee on Children and Families held a public hearing on DWD Clearinghouse Rule 03-022 relating to child support guidelines in Wisconsin. The Senate Committee on Health, Children, Families, Aging and Long-Term Care held a public hearing and executive session on Clearinghouse Rule 03-022 on July 22, 2003. The Senate Committee voted 9-0 to request further modifications to Clearinghouse Rule 03-022 regarding "low income payers," "imputed income," and "high income payers."

The Department of Workforce Development submitted their modifications to Clearinghouse Rule 03-022 to both Committees on August 28, 2003. This action began the 10-working day review period, which began on August 29th and ends on September 12. During this 10-day review period, the committee(s) may take any of the following actions: do nothing, in which case the committee review period terminates on the 30th day after the date the meeting was originally requested; waive its jurisdiction over the rule, ending the committee review period; recommend modification of the rule; or object to the rule, in whole or in part.

The Assembly Committee on Children and Families will be holding an executive session on September 10, 2003 at 11:30 a.m. in Room 300 NE to consider CR 03-022 ~~and [illegible]~~.

Steve Kestell
Chairman



STATE REPRESENTATIVE

STEVE KESTELL

27TH ASSEMBLY DISTRICT

TO: Members of the Children and Families Committee

Representative Ladwig
Representative Albers
Representative Jeskewitz
Representative Vukmir
Representative Miller
Representative Sinicki
Representative Krug

FROM: Representative Steve Kestell, Chair

DATE: September 4, 2003

RE: Committee Review Period of Clearinghouse Rule 03-022

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The Assembly Committee on Children and Families will be holding an executive session on September 10, 2003 at 11:30 a.m. in Room 300 NE to consider CR 03-022 and AB 250.

Steve Kestell
Chairman

STATE REPRESENTATIVE

STEVE KESTELL

27TH ASSEMBLY DISTRICT

September 10, 2003

Secretary Roberta Gassman
Department of Workforce Development
201 East Washington Avenue, Rm 400 X
Madison, WI 53707

Dear Secretary Gassman,

I am writing to inform you of the recent action taken by the Assembly Committee on Children and Families regarding Clearinghouse Rule 03-022, relating to child support guidelines.

As you know, the Committee held a public hearing on Clearinghouse Rule 03-022 on August 7, 2003. During the executive session held today, the Committee voted 5-2 to request the Department of Workforce Development to consider modifications to Clearinghouse Rule 03-022.

The modifications requested by the Committee for the Department to consider are as follows:

- To lower the income threshold at which a payer may be subject to the high-income payer percentage standard.
- To require courts use the percentage standard for high-income payers when a parent is found to be a high-income payer.
- To address concerns that, when current child support obligations are modified using the standards created in the proposed rule, payers who have substantially equal periods of physical placement with the payee will be ordered to pay a significantly increased amount of child support.
- To require courts to consider a parent's recent education, training and work experience, and earnings; the parent's current physical and mental health; the parent's history of child care responsibilities as the parent with primary placement or during the marriage, if applicable; and the availability of work in or near the parent's community when imputing income.

The Committee requests the Department to respond to these considerations by October 23, 2003.

Sincerely,

Steve Kestell

Steve Kestell, Chair
Assembly Committee on Children and Families

Capitol Office: Post Office Box 8952 • Madison, Wisconsin 53708-8952
(608) 266-8530 • Toll-Free: (888) 529-0027 • Fax: (608) 282-3627 • Rep.Kestell@legis.state.wi.us
27th Assembly District: (920) 565-2044

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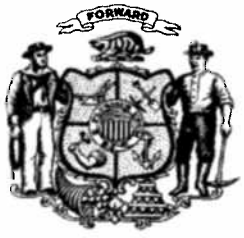

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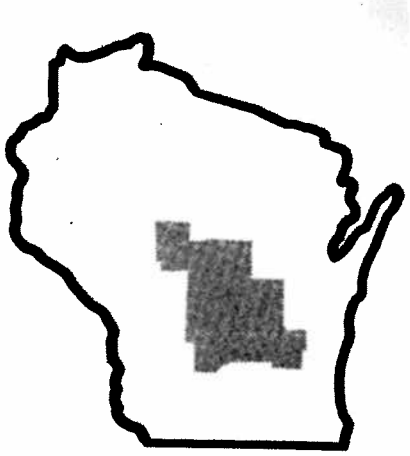
TTY Users: Call WI TRS at 1-800-947-3529



August 26, 2003

Senator David Zien
Committee on Judiciary, Corrections, and Privacy
Box 7882
Madison, WI 53707

RE: SB 156, AB 250, DWD Rule 40 (CRule 03-022)

Dear Sen. Zien:

I am writing to you on behalf of the Committee of Chief Judges regarding SB 156 and AB 250, relating to calculation of child support, and DWD Rule 40, the related administrative rule.

We do not believe that the administrative rule should be repealed in favor of an entirely new method of child support calculation. The proposed DWD rule has undergone extensive public review and revision, and appears to be a balanced approach to the many kinds of cases that present themselves. We believe this rule should be allowed to go into effect and given a chance to work. We find the proposed rule much preferable to SB 156, which creates unnecessary distinctions between case types and reduces the level of support available to children in middle and upper income families.

With respect to low-income families, we believe that the minimum payment needs to be set at a level high enough to make a realistic contribution to the child's support. Low support orders favor the noncustodial parent over the child and the custodial parent. A low-income custodial parent with children to support must find a way to do it somehow, often by working two or three jobs, in addition to paying child care costs and bearing the responsibility of raising the children. If the low-income standard must be lowered, the amounts chosen should reflect these considerations. We are not opposed to a reasonable compromise figure if the rule stays generally intact.

We believe that whatever standards are adopted should encourage adherence to the current percentage standards while leaving room for judicial discretion to deviate in appropriate circumstances. Judges should be able to deviate after taking into account local economic circumstances and the individual characteristics of the payer, such as physical and mental health and employability.

We hope that the Legislature will approve standards that reflect a meaningful contribution to the child's welfare, balance the burden of support fairly between the custodial and noncustodial parents, and give the judge flexibility to respond to unusual circumstances

Sincerely,

James Evenson mv

James Evenson
Chief Judge, Sixth Judicial District
Chair, Chief Judges Subcommittee on Child Support

JE/jl
cc: Senator Carol Roessler
Representative Steve Kestell


FORWARD
E PLURIBUS UNUM

WISCONSIN LAWYERS
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MEMORANDUM

TO: Members, Assembly Committee on Children and Families

FROM: Family Law Section of the State Bar of Wisconsin

RE: **Family Law Section Positions on Child Support Measures**

DATE: August 26, 2003

BACKGROUND

It is our understanding that Rep. Kestell has asked committee members to provide him with input on issues surrounding CR 03-022 and Assembly Bill 250, both of which related to child support.

We would like to take this opportunity to make clear make the position of the Family Law Section of the State Bar concerning these proposals.

1. The Family Law Section of the State Bar of Wisconsin **strongly opposes** Assembly Bill 250.

2. The Family Law Section **greatly prefers and strongly supports** the approach taken in Clearinghouse Rule 03-022.

Reasons Why the Family Law Section Supports the Rule

1. The proposed rule will, in the opinion of the Board of Directors of the Family Law Section, reduce litigation over children in divorce both on child support and on placement issues.

2. The proposed rule will, in the opinion of the Board of Directors of the Family Law Section, also lead to more equitable results in situations where families have shared placement.

These are things that Assembly Bill 250 attempts to do. The proposed rule simply does these things better ... and in a fairer and more balanced way than Assembly Bill 250 does. To summarize:

- Clearinghouse Rule 03-022 represents a consensus with all stakeholders participating, while Assembly Bill 250 can be seen as an attempt to nullify the consensus process.

- Clearinghouse Rule 03-022 corrects many of the problems with the current child support formula and it balances the interests of the payer and payee without losing sight of the children.

- The charts provided by the Family Law Section at the hearing clearly illustrate that Clearinghouse Rule 03-022 would not drastically reduce child supporting a broad range of cases the way that Assembly Bill 250 would.

- The proposed rule will reduce child support payments in high income cases above the thresholds in the rule. It will also reduce child support payments in shared time placements situations (i.e. where the placement time of the parent with the lesser amount of placement exceeds 25%).

3. Proponents of Assembly Bill 250 have suggested that Wisconsin child support orders for high income parents are higher than in surrounding states. This may be comparing apples to oranges. Surrounding states, such as Illinois, require high- income payers to provide (i.e., make payments) for their children's higher education. All the states surrounding Wisconsin promote assistance from high income payers for college expenses in some form or another. To look simply at dollar amounts awarded can be misleading.

Reasons Why the Family Law Section Opposes Assembly Bill 250.

1. Assembly Bill 250 would immediately and dramatically reduce child support for all families where the parents have combined incomes of $48,000 per year-- the vast majority of Wisconsin families. The child support formula changes in AB 250 would harm children by making less money available for their care and support. The changes in Clearinghouse Rule 03-022 will also tend to lower child support in most cases; however, the reductions are much more modest than under Assembly Bill 250

2. Assembly Bill 250 would dramatically change the child support formula used to calculate child support for all families where the combined annual income of both parents exceeds $48,000.

- For these families the bill would substitute a completely new and far more complex way of calculating child support. The text of the bill acknowledges how much more complex the new formula would be. It requires DWD to prepare and make available to judges and other court personnel computer software, as well as tables and instruction manuals, to help with calculating child support under the new method provided in the bill.

- In many counties 70 to 75 % of family court cases are *pro se* cases in which the parties represent themselves without an attorney. Adopting a new and more complicated formula will place burdens on these families and on court personnel who will be called upon to inform unrepresented parties of the new formula. (They may also have to explain the old formula, depending on the circumstances.)

- Making such a dramatic change in the way child support is calculated is likely to have the unintended consequence of **increasing** litigation because it will negate decades of appellate case law decided under the existing formula. Parties and the courts would be starting from scratch in trying to interpret the new formula.

- Just last year, thousands of Wisconsin parents, as well as courts and county child support agencies had to wrestle with the impact of changing child support orders from percentage-expressed orders to fixed-dollar orders in response to federal pressure. Senate Bill 156 would force a whole new set of changes in the way child support is calculated on a system that in some ways is still recovering from last year's changeover.

4. Assembly Bill 250 would inappropriately regard all families where the combined annual income of both parents exceeds $48,000 as "high income."

The $48,000 figure used in Assembly Bill 250 is far too low a combined income figure at which to be making reductions in child support. The proponents of AB 250 try to argue that a $48,000 annual combined family income reflects a high-income level above which child support payments should be reduced. The truth is that in many parts of the state a $48,000 family income is actually regarded as low-income by the federal government.

The federal Department of Housing and Urban Development (HUD) sets standards to determine eligibility for low-income housing assistance. The HUD "low income" standard is set at an income level less than or equal to 80% of county median income (CMI). County median family income is the income level at which half the families are above and have the families are below. Obviously, 80% of that income level is a lower figure.

According to HUD, a $48,000 combined family income would be below the 80% of county median income (CMI) low-income standard for a household of **three** in Dane County ($50,850), Milwaukee-Waukesha ($48,400), and Minneapolis-Saint Paul (which includes the Hudson area) ($50,850); and would be at the margin in Iowa County ($47,990).

Similarly, $48,000 is low income for a household of **four** in the Fox Valley (Appleton-Oshkosh-Neenah area) ($49,500) and in Green Bay ($49,500), Kenosha ($50,250), **Racine** ($52,000), Sheboygan ($50,150). (In **Dodge** County, an income of $46,400 is considered low-income for a family of **four**, while in **Jefferson** County $47,750 is considered low-income for a family of four, neither of which is far from the $48,000 figure used in the bill.)

It should be noted that these figures reflect the income needed for families living in a single household not two households.

According to the federal Department of Housing and Urban Development, median annual family income in Wisconsin in 2002 was $59,200. Especially, in urban and suburban areas where median income tends to be higher, $48,000 is "low income" under HUD standards.

A family with a combined annual income of $48,000, an amount considerably below the state median income, could easily be two parents earning $24,000 per year or $2,000 a month. Each of these parents would have less than $1800 of monthly disposable income after taxes. This should hardly be considered high income.

Setting the initial threshold as low as $48,000 (as AB 250 does) will cause the special circumstance provision for high income payers to be used far more often than is appropriate, and for families who are not, in fact, high income.

5. It is not necessary to dramatically change the way child support is calculated in order to take into consideration the income of both parents.

Current law (i.e., the existing DWD 40) already considers both parties' incomes in setting child support once the amount of time the parent with less placement has with the child reaches 40% of overall placement. The proposed rule before the committee, which revises DWD 40, calls for considering both parties' incomes once the amount of time the parent with less placement has with the child reaches **25%** placement) Most cases will fall under this threshold. Therefore, if the proposed rule is adopted there is little need to make a dramatic change in the formula that AB 250 proposes.

6. Wisconsin law has consistently reflected that child support should meet more than just the basic needs of the child.

Proponents of the bill argue that the only thing that should be considered is the basic economic needs of the child. However, the basic premise of Wisconsin's child support formula has always been that a child's standard of living should, to the degree possible, not be adversely affected because his or her parents are not living together. The child support formula attempts to provide children with what is as close as possible to the same state standard of living the child enjoyed when the parents were living together, or if they never did, then the standard of living they would have enjoyed together, taking into account the fact that it is more expensive to maintain two households than one. Assembly Bill 250 focuses too much on the interests of the child support payer and loses sight of the best interest of the children.

Clearinghouse Rule 03-022 is the consensus approach for a reason. It is a better proposal.

If you have any questions or if you would like additional information, please feel free to contact Dan Rossmiller, State Bar Public Affairs Director, by phone at (608) 250-6140 or by email at drossmiller@wisbar.org.


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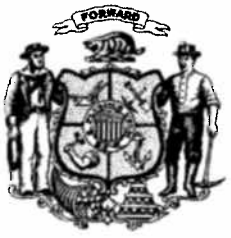
FORWARD

Wisconsin
State
Assembly

CRuk 03-022

Christine Sinicki
State Representative

August 27, 2003

Chairman Steve Kestell
Assembly Committee on Children and Families
Room 17 West Capitol Building
Madison, Wisconsin Legislature

Dear Chairman Kestell,

Please find attached a memo e-mailed to me by Professor Judi Bartfeld, of UW-Madison. She prepared the memo for me in response to my request that she review the proposed administrative rules on child support from the Department of Workforce Development. Professor Bartfeld is an expert on the subject of Wisconsin's child support laws.

You will note questions she asks regarding the rules at the end of her memo. I in turn ask you to forward these to the department for their review as well. I would like to make sure these questions are answered before the committee signs off on the rules. In fact, I would like to see answers to these questions in writing from the department.

My greatest concern is the last she mentions, regarding the potential hardship created for low-income consumers who may benefit dramatically from an immediate review of their existing orders after the new rules are put into place.

Thank you.

Sincerely,

Christine Sinicki
State Representative
20th Assembly District

CS: mbg

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August 6, 2003

Christine Sinicki
412 North
State Capitol
P.O. Box 8953
Madison, WI 53708

Dear Representative Sinicki:

Thank you for the opportunity to review and comment on the proposed revision of DWD 40, the Administrative Rules on child support guidelines.

The proposed changes fall primarily in the following areas:

- Changes in the formula for low-income payers;
- Changes in the formula for high-income payers;
- Changes in the definition of shared-placement cases, and in the formula for orders in such cases.

The proposed changes generally address problems with the current rules that are well documented by existing research. The following comments point out some of the implications of the changes, their justification in child support research, and some possible questions the committee may wish to explore.

Changes in formula for low-income payers:

The proposed changes would lower the presumptive order used in low-income cases, where low-income cases are considered to be those in which the non-resident parent has income below 150% of the poverty line. For parents with incomes below 70% of the poverty line, a minimal order would be set. The order would increase gradually until, at 150% of poverty, the order would correspond to the regular percentage standard. In addition, the proposed changes specify that prior to imputing income based on earnings capacity, the courts must exercise due diligence in finding out about actual income and ability to earn.

The proposed changes are grounded in a strong body of research, originating in Wisconsin and elsewhere, documenting substantial problems with child support orders for low-income payers. Of particular relevance, compliance rates with orders are significantly lower in low-income cases, leading to accrual of large arrearages that parents, realistically, may never be able to pay. Furthermore, some research suggests that high arrears themselves may lead to lower compliance, perhaps because low income

fathers with high arrears perceive that they will never be able to fulfill their obligation and thus seek to avoid both the formal child support system and the formal labor market. Finally, research has also found that imputed income for low-income payers is frequently higher than actual income, leading to orders that are higher than warranted.

There are several important implications of these proposed changes:

- First, orders would be lower for most low income payers;
- Second, the research referenced above suggests that compliance with orders among low-income payers would be greater, and arrearages lower, under the proposed rules;
- Although the proposed changes are warranted, they nonetheless may create problems for some parents and children. In short, the likely outcome is that low income obligors would pay a larger share of what they owe, but not necessarily a larger total amount. The reduction in child support orders would in some cases lead to a reduction in resources available to low income custodial parents and children. This reflects the inherent problems in trying to support two households on very limited resources.

Changes in formula for high-income payers:

The proposed changes would lower the order used in high-income cases, where high income cases are considered to be those in which the nonresident parent has income of over $150,000. Specifically, the changes would allow orders at 80% of the standard for income in the $150,000-$198,000 range, and 60% of the standard for incomes above $198,000.

The logic underlying these changes is that research suggests that high income parents, on average, devote a smaller share of their income to their children than do middle and lower income parents. As a result, many argue that higher income parents should pay a smaller share of income in support. Although the research on child expenditures generally does suggest that the percent of income spent on children goes down as income goes up, there is little concensus among studies as to the income level at which this occurs, or the magnitude of the decline. Thus, one could certainly argue for starting the high-income adjustment at a different threshold, either higher or lower. Expenditure studies simply do not provide a firm answer. The existing research does not appear to provide a compelling case for reducing orders at a substantially lower high-income threshold such as some advocate. A recent IRP analysis provides a good look at this issue.[1]

Changes for shared-placement cases:

The proposed shared custody guidelines make several important changes:

- First, the new guidelines would reduce the threshold at which a parent is considered to have shared placement, and thus subject to an alternate formula for calculating orders—from 30% to 25% of nights (or night equivalents).

[1] Rothe, Cassetty, and Boehnen. 2001. Estimates of Family Expenditures for Children: A Review of the Literature.

- In addition, the new guidelines would also reduce the threshold at which shared-placement orders would be calculated by determining child support orders for both parents and offsetting these against each other. This is important because, when offsetting is used, order amounts generally go down rapidly as placement time with the lesser-time parent increases. Under current guidelines this approach is not used until the 41% threshold, whereas under the new guidelines offsetting would begin at the 25% time threshold.
- Furthermore, when such offsetting is used, the new guidelines would determine each parent's order at 150% of the standard order, to account for the greater overall costs when placement is shared.
- Finally, the new guidelines would require that shared-placement parents share the variable costs (child care, etc) of children proportional to their placement time.

There are several important implications of these changes.

- First, many more cases would be considered to be shared-placement cases. The 25% threshold is low enough to encompass many typical post-divorce arrangements, as compared to the 30% threshold of the existing guidelines.
- Second, the 25% threshold in combination with the proposed offsetting-orders approach would change the implicit tradeoff between time and support obligations. Under current policy, increases in placement time up to 30% have no impact on support orders; increases from 30-40% have relatively modest impacts on support orders (the order is reduced but is not offset by an order against the greater-time parent); and all increases over 40% time have substantially larger impacts on support orders (because at that point orders are offset by orders against the greater-time parent). In contrast, under the new policy, orders would begin to decline as placement exceeds 25%, and the rate of decline would be constant thereafter. Thus, the shared-placement adjustment is smoother under the new guidelines.
- In most cases that would be considered shared placement, the net impact of the new shared-placement guideline would be a decline in the support obligation – sometimes a large decline. This could be problematic for custodial parents in general and low income custodial parents in particular.
- A 'cliff effect', or a disproportionate drop in orders, occurs at the 25% threshold. This occurs because the shared-custody formula kicks in at that level. As a result, there is a strong economic incentive for the lesser-time parent to cross the 25% threshold. This cliff effect is noteworthy because the elimination of cliff effects is one of the purported advantages of the new versus old guideline. The new guideline appears to change rather than eliminate the cliff effect. (Under the current guidelines, the primary cliff effect occurrs at 41%, at which point the offsetting of orders occurs.)
- The reduction in orders would potentially be offset by the formal sharing of variable costs under the new guidelines. Basic orders would decline as placement time increased, but as placement time increased parents would be expected to pay a larger share of variable costs (child care, etc.).

Some potential questions to explore include:

- *Approximately what share of child support cases would likely meet the 25% threshold and thus be affected by these new guidelines? This is important because, as

noted, the most common result will be a decline in the support order. If a large share of cases can be expected to have lower orders, this should perhaps be given more prominent attention in discussions.

- *Has DWD considered a formula that *phases in* the shared-placement formula starting at the 25% threshold, to avoid the cliff effect?
- *How would the proposed division of childcare costs affect eligibility for childcare subsidies?
- *The proposed rule suggests that variable costs would be shared in proportion to placement time. If the lesser-time parent incurs childcare costs, does the proposed rule imply that those costs would be paid primarily by the greater-time parent?

Other issues:

The proposed rule appears to prevent existing cases from seeking order changes on the basis of these new rules. As a result, existing cases would presumably need to wait until a regularly scheduled review – up to 3 years – before these changes would be relevant. This would prevent a major influx of revision requests, however, it does seem unfair that existing cases will be subject to what in some cases are dramatic differences in orders as compared to new cases.

- *Has DWD considered a priority system by which cases that would experience large changes under the new rules would be eligible for faster review?

Please feel contact me if I can be of further assistance.

Sincerely,

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