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03-022a
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Rule Analysis for Legislative Review

Proposed rules relating to the child support guidelines

DWD 40

CR 03-022

Need for rules

The proposed rules amend the standards that courts use in determining a child support obligation under s. 767.25, Stats. New special circumstance provisions are added for high- and low-income payers, and the special circumstance provision for shared-placement parents is revised.

Public hearing response

Public hearings were held in Madison, Milwaukee, and Stevens Point on March 17, 25, and 27, 2003. A summary of the hearing comments and the department's responses is attached.

Response to Legislative Council staff recommendations

The department's response to comments not accepted is attached.

Final regulatory flexibility analysis

The proposed rule changes do not affect small business.

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State of Wisconsin
Department of Workforce Development
Chapter DWD 40
CHILD SUPPORT GUIDELINES

The Wisconsin Department of Workforce Development proposes an order to repeal ss. DWD 40.02(4), 40.02(20), 40.02(25), 40.02(28), 40.02(30), and 40.05; to renumber ss. DWD 40.02(5), 40.02(6), 40.02(7), 40.02(8), 40.02(10), 40.02(16), 40.02(18), 40.02(19), 40.02(22), 40.02(23), 40.02(24), 40.02(31), 40.03(4), 40.03(6), and 40.03(7); to renumber and amend ss. DWD 40.02(9), 40.02(14), 40.02(17), 40.02(26), and 40.02(27); to amend ss. DWD 40.02(2), 40.02(15), 40.04(1)(b)1., 40.04(1)(b)3.a., 40.04(1)(b)3.b., 40.04(1)(b)4., 40.04(1)(b)5.a., 40.04(1)(b)5.b., 40.04(1)(b)6., 40.04(1)(b)8., (40.04(1)(note)), and DWD 40 Appendix A (column headings); to repeal and recreate ss. DWD 40.02(3), 40.02(13), 40.02(21), 40.02(29), 40.03(1)(intro), 40.03(2), 40.03(3), 40.03(5), 40.04(2), 40.04(3), 40.04(3)(note), and Appendix B; and to create ss. DWD 40.01(3), 40.02(10), 40.02(14), 40.02(19), 40.02(26), 40.03(4), 40.03(6), 40.03(7), 40.03(9), 40.03(10), 40.04(4), and 40.04(5), relating to the child support guidelines.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 49.22 (9) and 227.11, Stats.

Statutes interpreted: Sections 49.22 and 767.25, Stats.

Section 49.22 (9), Stats., requires the department to adopt standards for courts to use in determining a child support obligation under s. 767.25, Stats. Chapter DWD 40 establishes these standards based on a percentage of income of either or both parents. Chapter DWD 40 also contains special provisions that a court may use in determining the child support obligations for a serial payer, a split-custody payer, and shared-placement parents. The percentage standards and special circumstance provisions are based on the principle that a child's standard of living should not be adversely affected because his or her parents are not living together.

In spring 2001, with input from members of the legislature, the DWD Secretary appointed an advisory committee to provide guidance to the department on revisions to chapter DWD 40. The advisory committee included members of the courts, state bar, community-based organizations, county child support agencies, citizens, and the department. The committee recommended changes to the provision affecting shared-placement parents and new special provisions for low-income payers and high-income payers.

Shared-placement parents. The concept behind the special provision for shared-placement parents is that the shared-placement order is smaller than a full percentage order because the parent has significant placement and is covering the child's basic support expenses while with that parent. The current threshold for application of the shared-

placement provision is placement of at least 30%. If a parent's placement falls between 30% and 40%, that parent pays the other parent a child support amount that is less than the full percentage standards but there is no determination or offset of any obligation of the other parent. If the period of placement with the parent with less time is above 40%, the current rule reduces the child support obligation of the parent with less time and requires the determination and offset of the obligation of the parent with more time. Because the current formula does not proportionately reduce the paying parent's share of support at the same rate as the increase in placement, it creates a cliff effect that encourages litigation between the parties.

The proposed shared-placement provision is based on the premise that when both parents have significant periods of placement the formula should take into account the duplicated costs of child rearing in both households and both parents' incomes as a more realistic and equitable basis to set child support. The court may apply the proposed formula when both parents have a court-ordered period of placement of at least 25% overnights or the equivalent and each parent is ordered to assume the child's basic support costs in proportion to the time that the parent has placement of the child. Basic support costs are defined as food, shelter, clothing, transportation, personal care, and incidental recreational costs.

The first step in calculating the child support obligations of shared-placement parents is determining each parent's obligation under the percentage standards. In determining whether to impute income based on earning capacity for an unemployed parent or a parent employed less than full time, the court shall consider the benefit to the child of having a parent remain in the home during periods of placement and the additional variable day care costs that would be incurred if the parent worked more. The next steps are multiplying the obligation under the percentage standards for each parent by 150% to account for household maintenance expenditures duplicated by both parents, such as a bedroom, clothes, and personal items; multiplying that amount for each parent by the proportion of time that the child spends with the other parent; and offsetting resulting amounts against each other. The court shall also assign responsibility for payment of the child's variable costs in proportion to each parent's share of physical placement, with due consideration to a disparity in the parents' incomes. The court shall direct the manner of payment to be either between the parents or from a parent to a third-party service provider and not to the department or the department's designee, except as incorporated in the fixed sum or percentage expressed child support order. Variable costs are reasonable costs above basic support costs, including child care, tuition, a child's special needs, and other activities that involve substantial cost.

Low-income payers. The proposed special provision for low-income payers is based on the premise that many low-income payers have insufficient income to pay current ordered amounts. Lower support levels for low-income payers may enable them to pay current support and accrue fewer arrears. Lower support levels may also increase their emotional and financial investment in their children.

The proposed rule applies to situations where the income of a parent is less than the parent's earning capacity. The general rule on earning capacity allows the court to impute income to the parent at an amount that represents the parent's ability to earn, based on the parent's education, training and work experience, earnings during previous periods, physical

and mental health, and the availability of work in or near the parent's community. The proposed low-income provision allows the court to impute the income that a person would earn by working 30 hours per week for the federal minimum hourly wage if evidence is presented that the parent's ability to earn is limited due to less than a high school education, less than 6 months employment in the past 12 months, and limited availability for work in or near the parent's community. Under the current rule, income is generally imputed at 40 times the federal minimum hourly wage in these circumstances.

High-income payers. The proposed special provision for high-income payers is based on the premise that above certain income levels, parents share a smaller percentage of their income with their children. The payer's full monthly income is considered in determining the child support obligation. The standard percentages of 17% for 1 child, 25% for 2 children, 29% for 3 children, 31% for 4 children, and 34% for 5 or more children apply to a payer's income less than \$102,000 per year. The court may apply approximately 80% of the full percentage standards to the portion of a payer's annual income that is greater than or equal to \$102,000 and less than or equal to \$150,000. These percentages are 14% for 1 child, 20% for 2 children, 23% for 3 children, 25% for 4 children, and 27% for 5 or more children. The court may apply approximately 60% of the full percentage standards to the portion of the payer's annual income that is above \$150,000. These percentages are 10% for 1 child, 15% for 2 children, 17% for 3 children, 19% for 4 children, 20% for 5 or more children.

Miscellaneous. The department proposes the following additional changes:

- Income imputed based on earning capacity. In determining a parent's ability to earn, the court shall consider a parent's earnings during previous periods and physical and mental health, in addition to the current factors of education, training and work experience, and availability of work in or near the parent's community. A requirement is added that evidence must be 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 before the court may impute income at 40 times the federal minimum hourly wage.
- Income imputed from assets. The proposed rule allows income to be imputed from assets if a parent's assets are underproductive *and* at least one of the following applies: the parent has diverted income into assets to avoid paying child support or income from the parent's assets is necessary to maintain the child or children at the standard of living they would have had if they were living with both parents. The current rule allows income to be imputed from assets if they are underproductive, *or* the parent has diverted income into assets to avoid paying child support, *or* income from the parent's assets is necessary to maintain the child or children at the standard of living they would have had if they were living with both parents.
- Shared-placement order with serial families. The concept behind the special provision for shared-placement parents is that the order is smaller than a full percentage order because the parent has significant placement and is covering the child's basic support expenses while with that parent. A shared-placement parent with one child is spending approximately 17% of his or her income on the child even though the child support order may be substantially less than that amount if the parents' placement

periods and incomes are similar. The concept behind the special provision for serial families is to give credit for the amount spent on the first family before determining the order for children in the next family. The current serial family provision only gives credit for the amount of the order and does not consider the special situation of shared-placement parents with serial families. The proposed provision on shared-placement orders in serial families gives credit for the full percentage standard.

- Child's Social Security insurance. The court may include social security benefits received by a child based on a parent's entitlement to federal disability or old-age insurance in the parent's gross income and adjust the parent's child support obligation by subtracting the amount of the child's social security benefit. In no case may this adjustment require the payee to reimburse the payer for any portion of the child's benefit.
- Maintenance. If a payer will have obligations for both child support and maintenance to the same payee, the court shall determine the payer's child support obligation before the maintenance obligation.
- Effect of rule change. A modification of any provision of chapter DWD 40 shall not be considered a substantial change in circumstances sufficient to justify a revision of a judgment or order under s. 767.32, Stats.
- Undistributed income of a closely held corporation. Further detail is proposed to clarify when to include undistributed corporate income in gross income. The rule currently provides that undistributed income is included if the payer has ownership interest sufficient to individually exercise control or access the business earnings. The proposed rule defines undistributed income as federal taxable income of the closely held corporation, partnership, or other entity plus depreciation claimed on the entity's federal income tax return less a reasonable allowance for economic depreciation using the straight line method. The court may adjust gross income to include undistributed income not determined reasonably necessary for the growth of the business.
- Terminology.
 - "Monthly income available for child support" is the proposed term to refer to the monthly income at which the child support obligation is determined. It includes gross income, or if applicable, income modified for business expenses; income imputed based on earning capacity; and income imputed from assets. "Monthly income available for child support" is similar to the current term "base," except "base" does not include income imputed based on earning capacity. A support obligation based on earning capacity is a separate calculation under the current rule.
 - The proposed rule uses the term "split-placement" in place of "split-custody," which is incorrectly used in the current rule.
 - The split-placement subsection is rewritten because the current rule refers to the payer and payee at the beginning of the calculation before it can be accurately known who will be the payer or payee.

SECTION 1. DWD 40.01 (3) is created to read:

DWD 40.01 (3) EFFECT OF RULE CHANGE. A modification of any provision in this chapter shall not in and of itself be considered a substantial change in circumstances sufficient to justify a revision of a judgment or order under s. 767.32, Stats.

SECTION 2. DWD 40.02 (2) is amended to read:

DWD 40.02 (2) “Adjusted base monthly income available for child support” means the monthly income at which the child support obligation is determined for serial family payers, which is the payer’s base monthly income available for child support less the amount of any existing legal obligation for child support.

SECTION 3. DWD 40.02 (3) is repealed and recreated to read:

DWD 40.02 (3) “Basic support costs” means food, shelter, clothing, transportation, personal care, and incidental recreational costs.

SECTION 4. DWD 40.02 (4) is repealed.

SECTION 5. ~~DWD 40.02 (5), (6), (7), (8), (9), and (10) are renumbered DWD 40.02 (4), (5), (6), (7), (8), and (9) and, as renumbered, DWD 40.02 (8) is amended to read:~~

DWD 40.02 (8) “Department” means the Wisconsin department of ~~health and social services~~ workforce development.

SECTION 6. DWD 40.02 (10) is created to read:

DWD 40.02 (10) “Equivalent care” means a period of time during which the parent cares for the child that is not overnight, but is determined by the court to require the parent to assume the basic support costs that are substantially equivalent to what the parent would spend to care for the child overnight.

SECTION 7. DWD 40.02 (13) is repealed and recreated to read:

DWD 40.02 (13) “Gross income.” (a) “Gross income” means all of the following:

1. Salary and wages.
2. Interest and investment income.
3. Social Security disability and old-age insurance benefits under 42 USC 401 to 433.

4. Net proceeds resulting from worker's compensation or other personal injury awards intended to replace income.

5. Unemployment insurance.

6. Income continuation benefits.

7. Voluntary deferred compensation, employee contributions to any employee benefit plan or profit-sharing, and voluntary employee contributions to any pension or retirement account whether or not the account provides for tax deferral or avoidance.

8. Military allowances and veterans benefits.

9. Undistributed income of a corporation, including a closely-held corporation, or any partnership, including a limited or limited liability partnership, in which the parent has an ownership interest sufficient to individually exercise control or to access the earnings of the business, unless the income included is an asset under s. DWD 40.03 (4). In this paragraph:

a. "Undistributed income" means federal taxable income of the closely held corporation, partnership, or other entity plus depreciation claimed on the entity's federal income tax return less a reasonable allowance for economic depreciation.

b. A "reasonable allowance for economic depreciation" means the amount of depreciation on assets computed using the straight line method and useful lives as determined under federal income tax laws and regulations.

Note: Income considered under this subsection is subject to the adjustments under s. DWD 40.03 (2).

10. All other income, whether taxable or not, except that gross income does not include any of the following:

a. Child support.

b. Foster care payments under s. 48.62, Stats.

c. Kinship care payments under s. 48.57 (3m) or (3n), Stats.

d. Public assistance benefits under ch. 49, Stats., except that child care subsidy payments under s. 49.155, Stats., shall be considered income to a child care provider.

e. Food stamps under 7 USC 2011 to 2036.

f. Cash benefits paid by counties under s. 59.53 (21), Stats.

g. Supplemental Security Income under 42 USC 1381 to 1383f and state supplemental payments under s. 49.77, Stats.

h. Payments made for social services or any other public assistance benefits.

(b) This subsection defines gross income used in establishing a child support order under this chapter and may not be used to limit income withholding under s. 767.265, Stats., or the assignment of worker's compensation benefits for child support under s. 102.27 (2), Stats.

Note: This paragraph clarifies that although the portion of worker's compensation awards not intended to replace income are excluded from gross income in *establishing* a child support order, the full worker's compensation benefit is assignable for the *collection* of child support.

SECTION 8. DWD 40.02 (20) is repealed.

SECTION 9. DWD 40.02 (14), (16), (17), and (18) are renumbered DWD 40.02 (16), (17), (18), and (20) and, as renumbered, DWD 40.02 (16) and (18) are amended to read:

DWD 40.02 (16) "~~Gross income available for child support~~ Income modified for business expenses" means the amount of gross income after adding wages paid to dependent household members, adding undistributed income that the court determines is not reasonably necessary for the growth of the business, and subtracting business ~~expenses which that the court determines are reasonably necessary for the production of~~ that income or operation of the business and ~~which that~~ that may differ from the determination of allowable business expenses for tax purposes.

DWD 40.02 (18) "Legal obligation for child support" has the meaning prescribed for "child support" or "child support obligation" in sub. (6) (5).

SECTION 10. DWD 40.02 (14) is created to read:

DWD 40.02 (14) "Income imputed based on earning capacity" means the amount of income that exceeds the parent's actual income and represents the parent's ability to earn, based on the parent's education, training and work experience, earnings during previous periods, physical and mental health, and the availability of work in or near the parent's community.

SECTION 11. DWD 40.02 (15) is amended to read:

DWD 40.02 (15) "~~Imputed income for child support~~ Income imputed from assets" means the amount of income ascribed to assets ~~which that~~ that are unproductive ~~or~~ and to

which income has been diverted to avoid paying child support or from which income is necessary to maintain the child or children at the ~~economic level~~ standard of living they would ~~enjoy~~ have if they were living with both parents, and ~~which~~ that exceeds the actual ~~earnings of income from~~ the assets.

SECTION 12. DWD 40.02 (25) and (25)(note) are repealed.

SECTION 13. DWD 40.02 (19), (22), (23), and (24) are renumbered DWD 40.02 (22), (23), (24), and (25).

SECTION 14. DWD 40.02 (19) is created to read:

DWD 40.02 (19) "Low-income payer" means a payer to whom income has been imputed at 30 hours per week at the federal minimum hourly wage because the payer's earning capacity is limited due to less than a high school education, less than 6 months employment in the past 12 months, and limited availability for work in or near the parent's community.

SECTION 15. DWD 40.02 (21) is repealed and recreated to read:

DWD 40.02 (21) "Monthly income available for child support" means the monthly income at which the child support obligation is determined, which is calculated by adding the parent's annual gross income or, if applicable, the parent's annual income modified for business expenses; the parent's annual income imputed based on earning capacity; and the parent's annual income imputed from assets, and dividing that total by 12.

SECTION 16. DWD 40.02 (28) is repealed.

SECTION 17. DWD 40.02 (26) and (27) are renumbered DWD 40.02 (27) and (28) and, as renumbered, are amended to read:

DWD 40.02 (27) "~~Split custody~~ Split-placement payer" means a payer who has 2 or more children and who has physical placement of one or more but not all of the children.

DWD 40.02 (28) "Standard" or "percentage standard" means the percentage of income standard under s. DWD 40.03 (1) which, when multiplied by the payer's ~~base or adjusted base~~ monthly income available for child support or adjusted monthly income available for child support, results in the payer's child support obligation.

SECTION 18. DWD 40.02 (26) is created to read:

DWD 40.02 (26) “Shared-placement payer” means a parent who has a court-ordered period of placement of at least 25%, is ordered by the court to assume the child’s basic support costs in proportion to the time that the parent has placement of the child, and is determined to owe a greater support amount than the other parent under the calculation in s. DWD 40.04 (2)(b).

SECTION 19. DWD 40.02 (29) is repealed and recreated to read:

DWD 40.02 (29) “Variable costs” means the reasonable costs above basic support costs incurred by or on behalf of a child, including but not limited to, the cost of child care, tuition, a child’s special needs, and other activities that involve substantial cost.

SECTION 20. DWD 40.02 (30) is repealed.

SECTION 21. DWD 40.02 (31) is renumbered DWD 40.02 (30).

SECTION 22. DWD 40.03 (1)(intro.) is repealed and recreated to read:

DWD 40.03 (1)(intro.) DETERMINING CHILD SUPPORT USING THE PERCENTAGE STANDARD. The court shall determine a parent’s monthly income available for child support by adding together the parent’s annual gross income or, if applicable, the parent’s annual income modified for business expenses; the parent’s annual income imputed based on earning capacity; and the parent’s annual income imputed from assets, and dividing that total by 12. This may be done by completing the worksheet in Appendix B, although use of the worksheet for this purpose is not required. Except as provided in s. DWD 40.04 (5), the percentage of the parent’s monthly income available for child support or adjusted monthly income available for child support that constitutes the child support obligation shall be:

SECTION 23. DWD 40.03 (2) and (3) are repealed and recreated to read:

DWD 40.03 (2) DETERMINING INCOME MODIFIED FOR BUSINESS EXPENSES. In determining a parent’s monthly income available for child support under sub. (1), the court may adjust a parent’s gross income as follows:

- (a) Adding wages paid to dependent household members.

(b) Adding undistributed income that meets the criteria in s. DWD 40.02 (13)(a)9. and that the court determines is not reasonably necessary for the growth of the business. The parent shall have the burden of proof to show that any undistributed income is reasonably necessary for the growth of the business.

(c) Reducing gross income by the business expenses that the court determines are reasonably necessary for the production of that income or operation of the business and that may differ from the determination of allowable business expenses for tax purposes.

DWD 40.03 (3) DETERMINING INCOME IMPUTED BASED ON EARNING CAPACITY. In situations where the income of a parent is less than the parent's earning capacity or is unknown, the court may impute income to the parent at an amount that represents the parent's ability to earn, based on the parent's education, training and work experience, earnings during previous periods, physical and mental health, and the availability of work in or near the parent's community. If evidence is 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, the court may impute to the parent the income that a person would earn by working 40 hours per week for the federal minimum hourly wage under 29 USC 206 (a)(1). If a parent has gross income or income modified for business expenses below his or her earning capacity, the income imputed based on earning capacity shall be the difference between the parent's earning capacity and the parent's gross income or income modified for business expenses.

SECTION 24. DWD 40.03 (4), (6), and (7) are renumbered DWD 40.03 (7), (10), and (11).

SECTION 25. DWD 40.03 (4) is created to read:

DWD 40.03 (4) DETERMINING INCOME IMPUTED FROM ASSETS. (a) The court may impute a reasonable earning potential to a parent's assets if the court finds both of the following:

1. The parent has ownership and control over any real or personal property, including but not limited to, life insurance, cash and deposit accounts, stocks and bonds, business interests, net proceeds resulting from worker's compensation or other personal injury awards not intended to replace income, and cash and corporate income in a corporation in

which the parent has an ownership interest sufficient to individually exercise control and the cash or corporate income is not included as gross income under s. DWD 40.02 (13).

2. The parent's assets are underproductive and at least one of the following applies:

a. The parent has diverted income into assets to avoid paying child support.

b. Income from the parent's assets is necessary to maintain the child or children at the standard of living they would have had if they were living with both parents.

(b) The court shall impute income to assets by multiplying the total net value of the assets by the current 6-month treasury bill rate or any other rate that the court determines is reasonable and subtracting the actual income from the assets that was included as gross income under s. DWD 40.02 (13).

SECTION 26. DWD 40.03 (5) is repealed and recreated to read:

DWD 40.03 (5) ADJUSTMENT FOR CHILD'S SOCIAL SECURITY. The court may include benefits received by a child under 42 USC 402 (d) based on a parent's entitlement to federal disability or old-age insurance benefits under 42 USC 401 to 433 in the parent's gross income and adjust a parent's child support obligation by subtracting the amount of the child's social security benefit. In no case may this adjustment require the payee to reimburse the payer for any portion of the child's benefit.

SECTION 27. DWD 40.03 (6), (8), and (9) are created to read:

(6) DETERMINE CHILD SUPPORT BEFORE MAINTENANCE. If a payer will have obligations for both child support and maintenance to the same payee, the court shall determine the payer's child support obligation under this chapter before determining the payer's maintenance obligation under s. 767.26, Stats.

(8) EXPRESSION OF ORDERED SUPPORT. The support amount shall be expressed as a fixed sum unless the parties have stipulated to expressing the amount as a percentage of the payer's income and the requirements under s. 767.10 (2)(am)1. to 3., Stats., are satisfied.

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

SECTION 28. DWD 40.04 (1)(b)1., 40.04 (1)(b)3.a., 40.04 (1)(b)3.b., 40.04 (1)(b)4., 40.04 (1)(b)5.a., 40.04 (1)(b)5.b., 40.04 (1)(b)6., 40.04 (1)(b)8., and DWD 40.04(1)(note) are amended to read:

DWD 40.04 (1)(b)1. Determine the payer's base monthly income available for child support under s. DWD 40.03 (1)(intro.);

3.a. If the payer is subject to an existing support order for that legal obligation, except a shared-placement order under s. DWD 40.04 (2), the support for that obligation is the monthly amount of that order;

3.b. If the payer is ~~not subject to an existing order for that legal obligation~~, in an intact family or is subject to a shared-placement order under s. DWD 40.04 (2), the support is determined by multiplying the appropriate percentage under s. DWD 40.03 (1) for that number of children by the payer's base monthly income available for child support;

4. Adjust the base monthly income available for child support by subtracting the support for the first legal obligation under subd. 3. from the payer's base monthly income available for child support under subd. 1;

5.a. If the payer is subject to an existing support order for that legal obligation, except a shared-placement order under s. DWD 40.04 (2), the support for that obligation is the monthly amount of that order;

5.b. If the payer is ~~not subject to an existing order for that legal obligation~~, in an intact family or is subject to a shared-placement order under s. DWD 40.04 (2), the support is determined by multiplying the appropriate percentage under s. DWD 40.03 (1) for that number of children by the payer's base monthly income available for child support;

6. Adjust the base monthly income available for child support a second time by subtracting the support for the second legal obligation determined under subd. 5. from the first adjusted base monthly income available for child support determined under subd. 4;

8. Multiply the appropriate percentage under s. DWD 40.03 (1) for the number of children subject to the new order by the final adjusted base monthly income available for child support determined in either subd. 6. or 7. to determine the new child support obligation.

Note: The following example shows how the child support obligation is determined for a serial-family payer whose additional child support obligation has been incurred for a subsequent family.

Assumptions:

Parent A's current base monthly income available for child support is \$3000.
 Parent A and Parent B were married, had a child in 1990 and divorced in 1991. Parent A is subject to an existing support order of \$450 per month.
 Parent A remarries and has two children, one born in 1996 and the other in 1997, and remains an intact family.
 Parent A was adjudicated the father in 1998 for a child born in 1995. Child support needs to be established for this child.
 Order of parent A's legal obligation for child support.

First legal obligation: one child (~~1980~~-(1990) (divorce)
 Second legal obligation: 2 children (1991 and 1992) (1996 and 1997) (intact family)
 Third legal obligation: one child (1993) (1998) (paternity)

Calculation:

Parent A's current base <u>monthly income available for child support</u>	\$3000
The first legal obligation is subject to an existing monthly support order (divorce)	\$ 450
Adjust the base <u>monthly income available for child support</u>	\$3000
	<u>- 450</u>
First adjusted base <u>monthly income available for child support</u>	\$2550
Determine support for the second legal obligation (intact family)	\$2550
	<u>x .25</u>
	\$637.50
Adjust the first adjusted base <u>monthly income available for child support</u>	\$2550
	<u>- 637.50</u>
Second adjusted base <u>monthly income available for child support</u>	\$1912.50
Determine support for the third legal obligation (paternity)	\$1912.50
	<u>x .17</u>
	\$ 325.12

SECTION 29. DWD 40.04 (2) is repealed and recreated to read:

DWD 40.04 (2) DETERMINING THE CHILD SUPPORT OBLIGATIONS OF SHARED-PLACEMENT PARENTS. (a) The shared-placement formula may be applied when both of the following conditions are met:

1. Both parents have court-ordered periods of placement of at least 25% or 92 days a year. The period of placement for each parent shall be determined by calculating the number of overnights or equivalent care ordered to be provided by the parent and dividing that number by 365. The combined periods of placement for both parents shall equal 100%.

2. Each parent is ordered by the court to assume the child's basic support costs in proportion to the time that the parent has placement of the child.

(b) The child support obligations for parents who meet the requirements of par. (a) may be determined as follows:

1. Determine each parent's monthly income available for child support under s. DWD 40.03 (1). In determining whether to impute income based on earning capacity for an unemployed parent or a parent employed less than full time under s. DWD 40.03 (3), the court shall consider benefits to the child of having a parent remain in the home during periods of placement and the additional variable day care costs that would be incurred if the parent worked more.

2. Multiply each parent's monthly income available for child support by the appropriate percentage standard under s. DWD 40.03 (1).

3. Multiply each amount determined under subd. 2. by 150%.

Note: The 150% accounts for household maintenance expenditures duplicated by both parents, such as a bedroom, clothes, and personal items.

4. Multiply the amount determined for each parent under subd. 3. by the proportion of the time that the child spends with the other parent to determine each parent's child support obligation.

5. Offset resulting amounts under subd. 4. against each other. The parent with a greater child support obligation is the shared-placement payer. The shared-placement payer shall pay the lesser of the amount determined under this subd. or the amount determined using the appropriate percentage standard under s. DWD 40.03 (1). If the shared-placement payer is also a low-income payer, the child support obligation may be the lesser of the amount determined under this subd. or under sub. (4).

6. In addition to the child support obligation determined under subd. (b)5, the court shall assign responsibility for payment of the child's variable costs in proportion to each parent's share of physical placement, with due consideration to a disparity in the parents' incomes. The court shall direct the manner of payment of a variable cost order to be either between the parents or from a parent to a third-party service provider. The court shall not direct payment of variable costs to be made to the department or the department's designee, except as incorporated in the fixed sum or percentage expressed child support order.

Note: The following example shows how to calculate the child support obligations of shared-placement parents.

Number of children: Two

Parent A: \$2,000 monthly income available for child support
Court-ordered placement of the child for 219 days a year or 60%.

Parent B: \$3,000 monthly income available for child support
Court-ordered placement of the child for 146 days a year or 40%.

	<u>Parent A</u>	<u>Parent B</u>
1. Monthly income available for child support	\$2,000	\$3,000
2. Monthly income available for child support X percentage standard for two children	$\$2,000 \times 25\% = \500	$\$3,000 \times 25\% = \750
3. Amount in 2. X 150%.	$\$500 \times 150\% = \750	$\$750 \times 150\% = \1125
4. Amount in 3. X the proportion of time that the child spends with the other parent	$\$750 \times 40\% = \300	$\$1125 \times 60\% = \675
5. Offset	$\$675 - \$300 = \$375$.	
6. Court also assigns responsibility for payment of the child's variable costs.	Manner of payment is between the parents or from a parent to a third-party service provider, except as incorporated in the fixed sum or percentage expressed child support order.	

SECTION 30. DWD 40.04 (3) and DWD 40.04 (3)(note) are repealed and recreated to read:

DWD 40.04 (3) DETERMINING THE CHILD SUPPORT OBLIGATIONS OF SPLIT-PLACEMENT PARENTS. For parents who have 2 or more children and each parent has placement of one or more but not all of the children, the child support obligations may be determined as follows:

(a) Determine each parent's monthly income available for child support under s. DWD 40.03 (1).

(b) Multiply each parent's monthly income available for child support by the appropriate percentage under s. DWD 40.03 (1) for the number of children placed with the other parent to determine each parent's child support obligation.

(c) Offset resulting amounts under par. (b) against each other. The parent with a greater child support obligation is the split-placement payer.

Note: The following example shows how to calculate the amount of child support for split-placement parents:

Assumptions:

Parent A and B have 3 children.

Parent A has placement of one child and Parent B has placement of 2 children.

Parent A's monthly income available for child support is \$3,000.

Parent B's monthly income available for child support is \$1,500.

Calculation:

Parent A's child support obligation is $\$3,000 \times 25\% = 750$

Parent B's child support obligation is $\$1,500 \times 17\% = 255$

Parent A owes Parent B $750 - 255 = \$495$

SECTION 31. DWD 40.04 (4) is created to read:

DWD 40.04 (4) DETERMINING THE CHILD SUPPORT OBLIGATION OF A LOW-INCOME PAYER. When determining income imputed based on earning capacity under s. DWD 40.03 (3), the court may impute the income that a person would earn by working 30 hours per week for the federal minimum hourly wage under 29 USC 206 (a)(1) if evidence is presented that the parent's ability to earn is limited due to all of the following factors:

- (a) The parent has less than a high school education.
- (b) The parent has been employed less than 6 months in the past 12 months.
- (c) There is limited availability for work in or near the parent's community.

SECTION 32. DWD 40.04 (5) is created to read:

DWD 40.04 (5) DETERMINING THE CHILD SUPPORT OBLIGATION OF A HIGH-INCOME PAYER. (a) The payer's full monthly income available for child support shall be considered in determining the payer's child support obligation. The court may apply the reduced percentages under pars. (c) and (d) to income at the indicated levels.

(b) The court shall apply the percentages in s. DWD 40.03 (1) to a payer's monthly income available for child support that is less than \$8,500.

Note: A monthly income of \$8,500 is an annual income of \$102,000.

(c) The court may apply the following percentages to the portion of a payer's monthly income available for child support that is greater than or equal to \$8,500 and less than or equal to \$12,500:

1. 14% for one child.
2. 20% for 2 children.
3. 23% for 3 children.
4. 25% for 4 children.
5. 27% for 5 or more children.

Note: A monthly income of \$8,500 is an annual income of \$102,000 and a monthly income of \$12,500 is an annual income of \$150,000. The percentages that apply to income between \$102,000 and \$150,000 are approximately 80% of the full percentage standards.

(d) The court may apply the following percentages to the portion of a payer's monthly income available for child support that is greater than \$12,500:

1. 10% for one child.
2. 15% for 2 children.
3. 17% for 3 children.
4. 19% for 4 children.
5. 20% for 5 or more children.

Note: A monthly income of \$12,500 is an annual income of \$150,000. The standards that apply to income over \$150,000 are approximately 60% of the full percentage standards.

SECTION 33. DWD 40.05 is repealed.

SECTION 34. DWD 40 Appendix A (column headings) are amended to read:

Base Monthly Income Available for Child Support	One Child 0.17	Two Children 0.25	Three Children 0.29	Four Children 0.31	Five or More Children 0.34
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SECTION 35. DWD 40 Appendix B is repealed and recreated to read as attached in Appendix B.

SECTION 36. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Check one ~ Temporary ~ Final
Judge
Branch

Chapter DWD 40

APPENDIX B

Child Support Percentage Worksheet

This form may be used to calculate a child support obligation in accordance with Chapter DWD 40, Wisconsin Administrative Code. Use of this form is optional.

Case name	~ Mother	Case number
	~ Father	

SECTION I – Determination of Child Support Using the Percentage Standard

A. Calculation of Gross Income or, If Applicable, Income Modified for Business Expenses

Instructions: Use the total annual income disclosed to the court on the standard financial disclosure form and the most recently filed federal and state tax returns. Business expenses allowed for tax purposes may differ from expenses allowed for the determination of income modified for business expenses.

Gross Income:

1. Enter annual income from all sources. _____
2. Enter the amount of public assistance received. _____
3. Enter the amount of child support received. _____
4. Add lines 2 and 3. _____
5. Subtract line 4 from line 1. This is the parent's **gross income**. _____

Income Modified for Business Expenses:

6. Enter annual wages paid to dependent household members. _____
7. Enter any undistributed income that the court determines is not reasonably necessary for the growth of the business. _____
8. Add lines 5, 6, and 7. _____
9. Enter business expenses that the court determines are reasonably necessary for the production of income or operation of the business. _____
10. Subtract line 9 from line 8. This is the parent's **income modified for business expenses**. _____

B. Calculation of Income Imputed Based on Earning Capacity

Instructions: If the parent's income is less than the parent's earning capacity or is unknown, the court may impute income at an amount that represents the parent's ability to earn, based on the parent's education, training and work experience, earnings during previous periods, physical and mental health, and the availability of work in or near the parent's community. If evidence is 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, the court may impute income of 40 hours per week at the federal minimum hourly wage. If evidence is presented that the parent's ability to earn is limited due to less than a high school education, less than 6 months employment in the past 12 months, and limited availability for work in or near the parent's community, the court may impute the income that a person would earn working 30 hours per week at the federal minimum hourly wage.

$$\frac{\text{(earning capacity)}}{\text{(gross income or income modified for business expenses)}} = \text{(income imputed based on earning capacity)}$$

C. Calculation of Income Imputed from Assets

Instructions: Income may be imputed from assets that are underproductive **and** to which income has been diverted to avoid paying child support or from which income is necessary to maintain the child or children at the standard of living they would have if were living with both parents. Indicate the net value and actual income from each applicable asset, multiply the total net value by the current 6-month treasury bill rate or any other rate that the court determines is reasonable, and subtract actual income from the assets that was included in gross income under Part A.

<u>Property description</u>	<u>Net Value</u>	<u>Income from asset</u> <small>(included in gross income in Part A)</small>
1.	\$ _____	\$ _____
2.	\$ _____	\$ _____
3.	\$ _____	\$ _____
4.	\$ _____	\$ _____
5.	\$ _____	\$ _____
6.	\$ _____	\$ _____
7.	\$ _____	\$ _____
8.	\$ _____	\$ _____
9.	\$ _____	\$ _____
10. Totals	(a) \$ _____	(b) \$ _____
11. Enter the total net value of the assets (line 10a).		\$ _____
12. Multiply line 11 by the current 6-month treasury bill rate or any other reasonable rate.		\$ _____
13. Enter income from assets that was included in gross income in Part A (line 10b).		\$ _____
14. Subtract line 13 from line 12. This is the parent's income imputed from assets .		\$ _____

D. Calculation of the Child Support Obligation Using the Percentage Standard:

1. Enter gross income from Part A, line 5 or, if applicable, income modified for business expenses from Part A, line 10. _____
2. Enter income imputed based on earning capacity from Part B. _____
3. Enter income imputed from assets from Part C, line 13. _____
4. Add lines 1, 2, and 3. _____
5. Divide the amount in line 4 by 12. This is the monthly income available for child support. _____
6. Enter the appropriate percentage from the following table: _____

One child.....	17%
Two children.....	25%
Three children.....	29%
Four children.....	31%
Five or more children.....	34%
7. Multiply line 5 by line 6. **This is the monthly child support obligation.** _____

SECTION II - Computation of the Monthly Child Support Obligation for Serial-Family Payers

1. Enter the monthly income available for child support from Section I, part D, line 5. _____
2. Determine the order of the payer's legal obligations for child support by listing them according to the date each obligation is incurred. For marital child(ren), the legal obligation for child support is incurred on the child's date of birth. For nonmarital child(ren), the legal obligation for child support is incurred on the date of the court order. For nonmarital child(ren) in an intact family, it is incurred on the date of adoption or the date of the filing of an acknowledgment of paternity. For a nonmarital maternal child(ren) in an intact family, it is incurred on the child's date of birth.

Date of the first legal obligation	_____
Date of the second legal obligation	_____
Date of the third legal obligation	_____
Date of the fourth legal obligation	_____
3. Determine the monthly child support for the first legal obligation:
 - a) If the payer is subject to an existing support order for that legal obligation, the support is the monthly amount of that order, except a shared-placement order.
Enter that amount here. _____
 - b) If the payer is in an intact family or is subject to a shared-placement order, the support is determined by multiplying the monthly income available for child support (line 1) by the percentage for the appropriate number of children. (table at Section I, part D, line 6).
Enter that amount here. _____
4. Subtract either line 3(a) or 3(b) from the monthly income available for child support in line 1.
This is the first adjusted monthly income available for child support. _____

5. Determine the monthly child support for the second legal obligation:

a) If the payer is subject to an existing support order for that legal obligation, the support is the monthly amount of that order, except a shared-placement order.
Enter that amount here. _____

b) If the payer is in an intact family or is subject to a shared-placement order, the support is determined by multiplying the first adjusted monthly income available for child support (line 4) by the percentage for the appropriate family size. (table in Section I, part D, line 6).
Enter that amount here. _____

6. Subtract either line 5(a) or 5(b) from the first adjusted monthly income for child support in line 4.

This is the second adjusted monthly income available for child support. _____

7. Determine the monthly child support for the third legal obligation:

a) If the payer is subject to an existing support order for that legal obligation, the support is the monthly amount of that order, except a shared-placement order.
Enter that amount here. _____

b) If the payer is in an intact family or is subject to a shared-placement order, the support is determined by multiplying the second adjusted monthly income available for child support (line 6) by the percentage for the appropriate family size. (table in Section I, part D, line 6).
Enter that amount here. _____

8. Subtract either line 7(a) or 7(b) from line 6 (second adjusted monthly income available for child support).

This is the third adjusted monthly income available for child support. _____

9. Continue this process for each additional legal obligation for child support that the serial-family payer has incurred. Multiply the appropriate percentage for the number of children subject to the new order by the final adjusted monthly income available for child support to determine the child support obligation. _____

Note: In cases where a court order needs to be determined for marital children and the date of an adjudicated paternity falls between the birth dates of the first and last child in the family with marital children, the legal obligation for child support to this family is determined as follows:

10. Determine the support for the number of children in this family whose birth dates are *before* the date of the paternity adjudication.
(Follow Section II, paragraphs 1 to 3) _____

11. Determine the support for the number of children in this family whose birth dates fall *after* the date of the paternity adjudication by doing the following:

a) Enter the appropriate percentage from the table at Section 1, part D, line 6, for the number of *all* the children in the marital family. _____

b) Enter the percentage used for the number of children in line 10. _____

c) Subtract line 11(b) from line 11(a). _____

d) Use the percentage in line 11(c) to determine the support for the remaining children in the marital family (Follow Section II, paragraphs 4 to 7).
Enter that amount here. _____

12. Determine the appropriate support order for the marital family by adding the amounts in lines 10 and 11(d). _____

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For civil rights questions call (608) 264-9820 or (866) 275-1165 TTY (Toll Free).

Hearing Summary

Proposed rules relating to the child support guidelines Chapter DWD 40 CR03-022

Public hearings were held in Madison on March 17, Milwaukee on March 25, and Stevens Point on March 27. The hearing record remained open until March 31 for the receipt of written comments.

Comments were received from the following:

1. Committee of Chief Judges and District Court Administrators by James Evenson, Chief Judge Sixth Judicial District
2. Lee Wells
Circuit Court Judge, Family Division Head
Milwaukee
3. Attorney Margaret Wrenn Hickey
Family Law Section Representative
State Bar of Wisconsin
Milwaukee
4. Attorney David P. Kaiser
Family Law Section Representative
State Bar of Wisconsin
Burlington
5. Attorney John Short
Family Law Section Representative
State Bar of Wisconsin
Fort Atkinson
6. Attorney Kathleen A. Thiemann
Milwaukee
7. Attorney Cathy Kendrigan
Milwaukee
8. Attorney Peter A. Bartelt
Lawton and Cates
Madison
9. Elaine Richmond, Director
Jefferson County Child Support Agency (CSA)
10. John Hayes, Director, and Janet Nelson, Chief
Legal Counsel
Milwaukee County CSA
11. Jeffrey S. Kuglitsch, Corporation Counsel
Shawano County
12. Nancy Cramer-Sparks, Administrator
Shawano County CSA
13. Beverly Patterson, Administrator
Ashland County CSA
14. Donna J. Gregory, Administrator
Burnett County CSA
15. Linda Check, Director, and Cindy Mews, Lead
Child Support Specialist
Portage County CSA
16. Jan Steiner, Director
Eau Claire County CSA
17. Merrily Burch, Director
Dane County CSA
18. Sara M. Brion, Child Support Enforcement
Specialist
Sheboygan County CSA
19. Kathleen Pluskat, Office Supervisor
Sheboygan County CSA
20. Child Support Policy Advisory Committee

Commenters (cont.)

21. Maria Cancia, Associate Professor of Public Affairs; Daniel Meyer, Professor of Social Work; Ingrid Rothe, Researcher; Thomas Kaplan, Associate Director and Senior Scientist
Institute for Research on Poverty
UW-Madison
22. Sarah M. Hoth, custodial parent
Germantown
23. Kimberly A. Semler, custodial parent
Waukesha
24. Polly Koss, mother of custodial parent
Shawano
25. Patti Seeger, Policy Coordinator
Wisconsin Coalition Against Domestic Violence
Madison
26. Attorney Robert Andersen
Legal Action of Wisconsin
Madison
27. Attorney Roberta Rieck
Legal Action of Wisconsin
Milwaukee
28. Attorney David Pifer
Legal Action of Wisconsin
Milwaukee
29. Sarah Polster, Intern
Wisconsin Council for Children and Families
Milwaukee
30. Attorney Carol Medaris
Wisconsin Council for Children and Families
Madison
31. David Pate
Center for Father, Families, and Public Policy
Madison
32. Tauvaris Moore, Case manager
Urban League
Madison
33. Donnie McNeary, low income obligor
Madison
34. N. J. Zimdars, low income obligor
Madison
35. Angela Demetropoulos, custodial parent
Madison
36. Anthony Dawson, low income obligor
Madison
37. Willie Wilder, low income obligor
Madison
38. Amos Mietz
Milwaukee
39. Charles Richardson
Vincent Family Resource Center
Milwaukee
40. Jan Raz, President
Wisconsin Fathers for Children and Families
Hales Corners
41. Marc B. Kotz
Wisconsin Fathers for Children and Families
Whitewater
42. Bryan Holland, Director
Legislation for Kids and Dads
Monroe
43. Scott Wysocki
Sun Prairie
44. Malcolm Hatfield, M.D.
Franksville
45. Thomas G. Pfeiffer
Madison
46. Paul Lofthus
New Auburn
47. Richard R. Onderko
Milwaukee
48. Ronald J. Reimer
Boscobel

Commenters (cont.)

- | | |
|--|--|
| 49. Daniel and Andrea Laack
Waukesha | 50. Stacey Wilde
Racine |
| 51. Michelle Doehler Schaeffer, wife of payer
Missouri | 52. Tom Hauser
Milwaukee |
| 53. Gary T. Scheider
Green Bay | 54. Tamara Grigsby, Program Manager
Wisconsin Council on Children and Families
Milwaukee |
| 55. Delores Parr, Contract Manager
Private Industry Council-Workforce
Development Board
Milwaukee | 56. Keith Ford
Spooner |
| 57. Ryan Ford
Spooner | 58. Andrew Graham
Evansville |
| 59. Geoff Wilde
Racine | 60. Rev. Theodore V. Anderson
Wisconsin Community Service
Milwaukee |
| 61. Paul E. Barkhaus
Whitefish Bay | 62. Berry Birts
Milwaukee |
| 63. Wendy Fluegge, representing self and husband
Madison | 64. Janice S. Brakken
Wales |
| 65. Terri Watzke
Oregon | |

The following observed for information only:

Charisse Kendricks
Cottage Grove

Marguerite Roulet
Center for Fathers, Families, and Public Policy
Madison

Attorney Leslie Parker Cohan
Ho-Chunk Nation
Black River Falls

Carla Weber
Green Bay

Lynn Wimer
UW Institute for Research on Poverty
Madison

Ryan Ihrke
UW Institute for Research on Poverty
Madison

Peter Barwis
Madison

Brenda Bell-White
Milwaukee

Frank Owens
United Migrant Opportunity Services
Milwaukee

LaShonda Johnson
Milwaukee

Observers (cont.)

Danny Tinnon
Parents Assuming Responsibility
Milwaukee

Virgil McNeil
New Concept Self Development
Milwaukee

Victoria Mayer
UW Institute for Research on Poverty
Madison

Alphonso Pettis
Milwaukee

Vernon Singleton
Milwaukee

John Mayer
Milwaukee

William Rivera
United Migrant Opportunity Services
Milwaukee

David Rizoff
Waukegan, IL

Donald Kozlovsky
Glendale

Comments	Department response	Organization or individual commenting (# from list)
General comments		8, 57, 59, 60, 63, 65, 66, 67
Support proposed rules.		61, 62
Opposed to proposed rules.		18, 56
Support proposed rules, except low income provision, no further comment.		58
Support proposed rules, except still unfairly burdensome to high income payer.		50
Flaw in underlying theory. Can't divide into two households and maintain same standard of living in both. Currently, home with child remains unchanged while payer suffers extreme financial loss. Payer's child support so high that payee doesn't really have to share any of her own income with child.	The rule is based on the principle that a child's standard of living should, <i>to the degree possible</i> , not be adversely affected because his or her parents are not living together. Research by the Department of Agriculture and the Institute for Research on Poverty does not support the assertion that the payee does not have to share any of his or her own income with the child. In fact, studies show that income is shared at levels that exceed the percentage standards.	50
If changes to the special circumstance provisions will result in less child support due, they should be mandatory not discretionary because parent with primary placement will say can't afford receiving less support.	Disagree. All of the special circumstance provisions in s. DWD 40.04 are intended to be permissive guidelines. This allows the court discretion to craft an order that best suits the family before the court. Circumstances vary from case to case. The department does expect that the special provision will be used in the majority of cases.	50

Comments	Department response	Organization or individual commenting (# from list)
<p>General comments (cont.) Child support should be based on a finite number that is actual cost to raise a child and not on percentage of income. State has incentive to collect as much child support as possible to get more money from the federal government.</p>	<p>There is no finite number that is the actual cost to raise a child. The amount spent on children increases with the parents' income.</p>	<p>48</p>
<p>DWD 40.01 (3) Effect of rule change Opposed. Should be considered change in circumstances so can address unfairness of current rule.</p>	<p>Disagree. Courts have consistently held that a change in circumstances sufficient to justify a revision of an order under s. 767.32, Stats., must be a change in the circumstances of the parties, not a change in the law. There is a presumption of a change in circumstances if 33 months has passed since the entry of the last child support order. As a practical matter, this allows courts to implement a change in the law in a staggered manner rather than being flooded with requests following a law change.</p>	<p>40, 46, 52, 63</p>
<p>DWD 40.02 (13) Definition of gross income Should not exclude public assistance benefits. Could lead to unfair result for low-income, shared-placement parents.</p>	<p>Under s. 49.96, Stats., public assistance grants are exempt from execution. There is no purpose to including public assistance in the definition of gross income if it is not possible to collect from it.</p>	<p>40, 46</p>
<p>DWD 40.02(13)(g) should include contribution to retirement plan on behalf of employee when employer makes both employer and employee contribution, e.g. state government.</p>	<p>The percentage standards are based on gross income not third party contributions to retirement accounts over which the recipient has no access or control.</p>	<p>45</p>
<p>DWD 40.02 (19) Definition of low-income payer Definition should be payer who is unable to earn full-time minimum wage earnings for extended period of time.</p>	<p>The definition of low-income payer has been changed to "a payer to whom income has been imputed at 30 hours per week at the federal minimum hourly wage because the payer's earning capacity is limited due to less than a high school education, less than 6 months employment in the past 12 months, and limited availability for work in or near the parent's community."</p>	<p>13</p>
<p>Payment of variable costs Supports this change but recommends following phrase be added to end of sentence: "except as incorporated in the fixed sum or percentage expressed child support order."</p>	<p>Department agrees.</p>	<p>3, 4, 5</p>

Comments	Department response	Organization or individual commenting (# from list)
<p>Payment of variable costs (cont.) Direct payments don't work. Who determines who paid whom, what, and when?</p>	<p>As indicated above, the rule has been changed to allow variable costs and child support to be incorporated into one order. Only one order may be processed through the trust fund. If the variable cost order is separate from the child support order, disputes about payment could ultimately be resolved in small claims court.</p>	<p>12, 64</p>
<p>Opposed. Items included in proposed variable costs should be considered as factors for deviation.</p>	<p>The rule has been rewritten to limit the variable cost provision to shared-placement parents, as suggested by the Child Support Guidelines Advisory Committee. Deviation under s. 767.25(1m), Stats., is insufficient because federal regulations require that deviations from the guidelines be limited, and child care and other variable costs are a common issue.</p>	<p>16</p>
<p>DWD 40.03 (3) Earning capacity Burden should be on payer to present evidence that he or she is unable to work full-time not on payee, child support counsel, or court to prove payer can. Information about a person's education, training, health, and work experience is owned by and known to that person.</p>	<p>The department believes that the underlying concern of this comment is the very low payments in the low-income section of the hearing version of the proposed rule. The low-income payment table has been removed from the proposed rule, alleviating the concern that the table would become the de facto presumptive payment amount with the burden on the payee and child support counsel to prove information about the payer that is best known to the payer. The revised low income provision provides that the court may impute income at 30 times the minimum wage if evidence is presented that the parent's ability to earn is limited due to less than a high school education, less than 6 months employment in the past 12 months, and limited availability for work in or near the parent's community.</p>	<p>2, 13, 14, 15</p>
<p>A realistic assessment of earning capacity rather than an automatic order of 40 times the minimum wage will result in higher orders for some payers, where appropriate.</p>	<p>Department agrees.</p>	<p>26</p>
<p>Orders based on imputed rather than actual earnings make it less likely that the parent will pay much or any support.</p>	<p>The rule allows orders based on earning capacity because some parents may need encouragement to take on the responsibility to support their children to the best their ability.</p>	<p>9, 41</p>

Comments	Department response	Organization or individual commenting (# from list)
<p>DWD 40.03 (3) Earning capacity (cont.) Support greater precision in determining earning capacity. Imputed income is one of the main reasons orders are currently set unrealistically high.</p>	<p>The revised low-income section does provide criteria for judges to consider in imputing income at less than 40 times the minimum wage, which has been the norm. The earning capacity section also adds the factors of earnings during previous periods and physical and mental health to be considered in determining earning capacity.</p>	30
<p>The current imputed income rule did not work well in my case. My ex-wife has education and ability equal to me but is not making a reasonable effort to work so I'm paying an unfair amount.</p>	<p>The section on earning capacity has been rewritten to make it clearer that judges should consider earning capacity as well as actual income. If there is shared-placement, both parents' earning capacities will be considered.</p>	53
<p>DWD 40.03 (4) Income imputed from assets Should only impute income from unproductive assets if deliberately made unproductive to avoid child support.</p>	<p>The rule has been rewritten to allow for income to be imputed from unproductive assets only if the assets are underproductive <i>and</i> either the payer has diverted income into assets to avoid paying child support or income from the payer's assets is necessary to maintain the child or children at the standard of living they would have had if they were living with both parents.</p>	40
<p>DWD 40.03 (5) Child's Social Security Should subtract child's benefit from payer's obligation but not include it as payer's income.</p>	<p>The only way to consider a child's benefit to be paid by the payer is if it is considered income to the payer which the payer then pays to the child.</p>	16
<p>Should subtract Social Security retirement in addition to disability.</p>	<p>Department agrees.</p>	16
<p>DWD 40.03 (6) Determine child support before maintenance Support, but recommend the phrase "to the same payer" be substituted for "in a particular case."</p>	<p>Department agrees.</p>	3, 4, 5
<p>Opposed. Maintenance should be considered first. Maintenance should be income to the recipient and not the payer, just as under tax law.</p>	<p>Department did redraft the rule so maintenance paid to previous families will be subtracted before child support for subsequent families is determined. Within a particular case, it is in the best interest of the children that child support come first.</p>	40
<p>DWD 40.03 (9) Trust Support this provision.</p>	<p>Department agrees.</p>	3, 4, 5
<p>DWD 40.04 (1) Serial families Support provision on shared-placement in serial families.</p>	<p>Department agrees.</p>	3, 4, 5

Comments	Department response	Organization or individual commenting (# from list)
<p>DWD 40.04 (1) Serial families (cont.) Should be changed. Children should be treated the same regardless of birth order. And noncustodial parent pays much higher percentage of income for children from serial families than multiple children in same family.</p>	<p>Disagree. In intact families, both parents agree to have more children with the awareness that there may be less financial support for each child. In serial families, the payee from the first family has no control over the payer's decision to have more children. It would not be fair to go back and reduce a previously determined support order because the payer chose to have more children with someone else. Subsequent payees have the opportunity to know that the payer already has children to support before beginning a family with that payer.</p> <p>It does cost more to raise children in multiple families than in the same family.</p>	<p>40, 45, 51</p>
<p>DWD 40.04 (2) Shared-placement parents Support fairness of offsetting obligation when both parents have at least 25% overnight or equivalent. Support removing cliff effects of current formula because they just encourage litigation.</p>	<p>Department agrees.</p>	<p>3, 4, 5, 9, 17, 43, 45, 46, 51, 52</p>
<p>Assumes parent with less placement shares expenses proportionately. That's often not true. Parent with larger placement is likely to bear nearly all, if not all, of the expenses for items such as school expenses, extracurricular activities, and clothing.</p>	<p>The shared-placement provision applies only if each parent is ordered by the court to assume the child's basic support costs in proportion to the time that the parent has placement of the child. Basic support costs are defined as food, shelter, clothing, transportation, personal care, and incidental recreational costs. The rule also provides that the court shall assign responsibility for payment of variable costs in proportion to each parent's share of physical placement, with due consideration to a disparity in the parents' incomes. Variable costs are defined as reasonable costs above basic support costs including child care, tuition, a child's special needs, and other activities that involve substantial cost.</p>	<p>47, 64</p>

Comments	Department response	Organization or individual commenting (# from list)
<p>DWD 40.04 (2) Shared-placement parents (cont.) Multiplication factor of 150% is completely arbitrary and is a progressive penalty to the higher income earner as the disparity in incomes between the two parties increases. Parties may not be able to afford multiplication factor even though there are duplicated costs.</p>	<p>The percentage standards are based on the cost of raising a child with one parent having primary placement and the other parent having visitation. There are increased costs when there is shared placement. This requires a higher child support obligation for both parents. The 150% multiplication factor is the estimated duplicated costs of child-rearing in two households and was recommended to the guidelines advisory committee by a consultant who is renowned as an expert on child support guidelines. Nineteen other states currently use the 150% multiplication factor in their shared-placement calculation. The 150% multiplication factor does result in a higher order but it is not a progressive penalty to the higher income earner. It affects both parties proportionately the same.</p>	47
<p>Giving credit for part-time or unemployed parent to remain in the home rather than work during periods of placement is unfair to parent who is working full-time. In an intact family, decision would be joint but this allows one party discretion while other is expected to continue to work full-time.</p>	<p>Similar statutory provisions already exist at s. 767.25(1m)(d) and (e), Stats. They do not allow a parent unfettered discretion to remain in the home rather than working. The judge determines the order looking at the full situation and considering the earning capacity of the parent, the cost of day care, and the desirability of the parent remaining in the home.</p>	47
<p>In calculating time between parents, currently only overnights are counted. Parent who provides majority of care, regardless if the child leaves at night, should get credit for that day.</p>	<p>The current rule does include a note following the definition of shared-time payer that allows a party to request that an arrangement other than overnight care be considered the equivalent of overnight care. Some judges have given this less effect because it is in a note rather than the rule language. The proposed rule has been rewritten and clearly states that placement is determined by calculating the number of overnights or equivalent care ordered to be provided by the parent. Equivalent care means assuming the same food, shelter, clothing, transportation, personal care, and incidental recreational costs as overnight care.</p>	50

Comments	Department response	Organization or individual commenting (# from list)
<p>DWD 40.04 (2) Shared-placement parents Any overnight time should be credited, not just above 25%.</p>	<p>An Institute for Research on Poverty study on the cost of raising children showed percentages of income spent higher than the percentage standards in the rule. The cost of raising one child was found to be over 20% of income. The percentages in the rule were reduced to account for expenses of visitation. Giving credit for any overnight time in the shared-placement formula would result in a double credit.</p>	<p>49, 51</p>
<p>Shared-placement provision should be presumptive.</p>	<p>Disagree. All of the special circumstance provisions in s. DWD 40.04 are intended to be permissive guidelines. This allows the court discretion to craft an order that best suits the family before the court. Circumstances vary from case to case. The department does expect that the special provision will be used in the majority of cases.</p>	<p>40, 42, 46</p>
<p>Support shared-placement provision being permissive.</p>	<p>Department agrees.</p>	<p>3</p>
<p>Eliminate sentence that mandates lower of shared-placement or low-income amount if both apply.</p>	<p>The sentence has been changed from mandatory to permissive, which will give courts guidance on which provision to use if both apply but also allows discretion where appropriate.</p>	<p>13</p>
<p>DWD 40.04 (4) Low income payers Opposed. Rule should encourage adherence to current percentages while allowing judicial discretion to deviate where appropriate. Abandon chart and clarify that judges can and should deviate when low-income payer cannot contribute more to the child's support.</p>	<p>In response to considerable opposition to the low-income provision as originally proposed and considerable support for some kind of special circumstance provision for low-income payers, the department is proposing a different low-income provision. It allows a court to impute income based on earning capacity at 30 times the minimum wage when the parent's ability to earn is limited due to less than a high school education, less than 6 months employment in the past 12 months, and limited availability for work in or near the parent's community.</p>	<p>1, 13, 14, 16, 19</p>
<p>If chart must be used, suggest \$100 per month for first child (11.85%) as substantial break from 17% yet high enough to be meaningful to custodial parent.</p>	<p>The above response applies to all remaining comments on the low-income provision.</p>	<p>1</p>

Comments	Department response	Organization or individual commenting (# from list)
<p>DWD 40.04 (4) Low income payers (cont.) Opposed. Should only be used when payer has documented inability to earn minimum wage, such as medical condition. Court should be required to enter specific language on reason for deviation and conditions in setting amount.</p>		15
<p>Opposed. Favors payer over child and custodial parent. CP must find way to get by, often working multiple jobs, paying child care, and bearing responsibility of raising the children. Mothers generally have same education and background but they manage to find employment. W-2 program presumes mother can work. Why is the father able to avoid that presumption?</p>		1, 2, 6, 12, 13, 14, 17, 18, 22, 23, 24
<p>Opposed. Payments as low as 4% of income do virtually nothing to support the child and send a poor message to all parties.</p>		1, 2, 6, 11, 22, 23
<p>Opposed. No encouragement for payer to develop to higher-paying employment through education or training</p>		2, 6, 18
<p>Opposed. Fails to recognize availability of employment and reasons for loss of employment or underemployment.</p>		2, 12, 14
<p>Opposed. No incentive to establish paternity and possibly share placement when support is so low.</p>		2
<p>Opposed. Payers do find jobs and pay child support now when found in contempt or placed on probation for non-support.</p>		2, 12
<p>Opposed. Sends message to serial fathers that supporting many children is not expensive.</p>		2, 12, 19
<p>Opposed. Presents equal protection problem between children whose noncustodial parent is low-income and children of all other noncustodial parents. Value of percentage guidelines is same percentage of income, whatever that income may be. Under low-income table, full-time job at minimum wage results in an order at 12.91% or \$115 compared to \$152 under standard percentages.</p>		6
<p>Opposed. Many of the low-income fathers have serial families so their income available for support will be reduced by the amount of the previous orders. The extremely low support orders will be even further reduced.</p>		6

Comments	Department response	Organization or individual commenting (# from list)
<p>DWD 40.04 (4) Low income payers (cont.) Opposed. Cost prohibitive to bring an action to enforce and the payer would pay his or her employer fees of \$15/month for withholding for a \$21 per month order.</p>		11, 13, 14, 16
<p>Opposed. Encourages cash income to avoid paying child support.</p>		16, 19
<p>Opposed. More acceptable change would be lowering or eliminating interest on arrears.</p>		12
<p>Opposed. Lower support levels do not increase likelihood of involvement with their family; they encourage feelings of entitlement, shame, and lack of responsibility. Paying more would increase investment in children.</p>		19, 22, 23
<p>Opposed. Research does not support the premise that low-income parents who have lower child support orders pay more. On average, the reverse is true. Also, since income tends to rise, need to set aside additional funding to ensure CSAs can review and adjust support orders. Primary beneficiary of proposed changes are noncustodial parents not best interest of children.</p>		21
<p>Opposed. Better to require noncustodial parent to shoulder as much financial responsibility as minimum expected of custodial parent, while providing both parents with assistance in finding and maintaining employment.</p>		21
<p>Opposed. Review of proposed minimum order every 4 years would mean support was \$1008 to raise a child for 4 years. It's not possible.</p>		22
<p>Opposed. Sufficient to allow deviation based on earning capacity if person does not have ability to earn at least minimum wage.</p>		20
<p>Opposed. No economic data would support the feasibility of this provision. Better to base support on actual rather than imputed income.</p>		42
<p>Opposed. DWD has not looked closely at economic data on cost of raising children in Wisconsin.</p>		46
<p>Opposed. Based on questionable assumptions. Noncustodial parent refusing to pay child support has little concern for the child's welfare and will not pay regardless of the amount. People in underground economy underrepresent their income and by giving such a person a further break, it just compounds the deception.</p>		6

Comments	Department response	Organization or individual commenting (# from list)
<p>DWD 40.04 (4) Low income payers (cont.) Support. Many payers have insufficient income to pay currently-ordered amounts. Better to have the paying parent actually pay the lower amount than nothing at all, which is the situation in many low-income cases currently.</p>		3, 4, 5, 25
<p>Support. When parents don't pay support because they are unable, they have less contact with their children.</p>		3, 4, 5, 9, 25, 26
<p>Support. Courts will still be free to impute income if they find that the payer is shirking.</p>		3, 4, 5
<p>Support. Not collecting much now from payers with income of \$500 per month. Current enforcement hasn't resulted in payment in many cases. Must make it achievable, don't set up to fail. Order must be reasonable for payer's income. (Milwaukee caseload 100,000-collecting regularly from 40%)</p>		7, 9, 10, 27
<p>Support. Unrealistic orders result in less money being paid because payers do not make payments unless the payments will bring them close to compliance with the law.</p>		26, 27, 29, 30
<p>Support. Order that is higher percentage of income is less likely to be paid (OIG Report and IRP report).</p>		30
<p>Support graduated payment scale. It will result in more uniformity in how counties handle low-income payers.</p>		26, 27
<p>Support graduated payment scale. Reinforces current law that requires courts to consider needs of parties to support themselves at poverty level.</p>		30
<p>Can't support myself when they take 17% of my paycheck. In favor of any change that results in more realistic orders.</p>		34, 37
<p>Support. Unrealistic orders are currently resulting in never ending cycle of joblessness, incarceration for nonpayment, lost jobs due to arrests on child support warrants, and impossibly high arrearages.</p>		26, 27, 29, 31, 32, 33, 35, 36, 41
<p>Reasons noncustodial parents may have trouble obtaining even minimum wage job include functional illiteracy, lack of driver's license, mental health and drug dependency issues, and criminal arrests or convictions.</p>		27

Comments	Department response	Organization or individual commenting (# from list)
<p>DWD 40.04 (4) Low income payers (cont.) Support. Custodial parents are not served by an order that the other parent has no ability to pay. They want regular payments that they can count on.</p>		31
<p>Support. Low income noncustodial parents may gain a sense that there is fairness in the court system.</p>		27, 28
<p>Support. Low income noncustodial parents will be encouraged to participate in the workforce and avoid the underground economy.</p>		27, 28
<p>Support low income changes (no further comments)</p>		38
<p>State looks at fathers as pocketbooks. Children need time with father, and father should be able to buy children things when they are in his care.</p>		39
<p>Low income standards should be presumptive. (That is what the Child Support Guidelines Review Advisory Committee recommended.)</p>	<p>Disagree. All of the special circumstance provisions in s. DWD 40.04 are intended to be permissive guidelines. This allows the court discretion to craft an order that best suits the family before the court. Circumstances vary from case to case. The department does expect that the special provision will be used in the majority of cases.</p>	30, 41
<p>Support low income standards as permissive so judges and court commissioners can make best order for family before them.</p>	<p>Department agrees.</p>	3, 4, 5
<p>DWD 40.04 (5) High-income payers Support. Under the current standards, there is a significant amount of litigation among high-income parents. A child support formula that recognizes the reduced proportion of income spent on children by families above a given high-income amount may reduce this litigation.</p>	<p>The department acknowledges that the application of the straight percentage standards to high income payers creates a perception of unfairness for some payers, resulting in significant litigation.</p>	3, 4, 5
<p>Support. Acknowledges likelihood that above certain income levels, children receive a smaller percentage of their parents income.</p>	<p>Evidence of this premise is unclear. Some research does indicate that a smaller percentage of income at high income levels is spent on current expenditures, but this does not account for investments and savings for the children. The department agrees that there is a perception of unfairness among some people that necessitates a compromise.</p>	9

Comments	Department response	Organization or individual commenting (# from list)
<p>DWD 40.04 (5) High-income payers (cont.) Opposed. Evidence supporting premise that high-income parents share lower percentage of income with children is weak. Wealthy parents provide children with opportunities for growth, especially savings for future education. Lack of consensus on what income level distinguishes wealthy from nonwealthy raises equity problems. Primary beneficiaries of proposed changes are noncustodial parents not best interest of children.</p>	<p>The department agrees that evidence on this issue is weak. This seems to be in part due to lack of consensus on what should be considered an expenditure for the children, particularly regarding family homes, durable goods, and traditional savings, all of which influence the well-being of children. Studies also suffer from lack of data with sufficient expenditure information and enough high-income households to draw conclusions on whether their expenditures for their children differ from other households with children.</p> <p>The department acknowledges that the selection of the thresholds of \$102,000 and \$150,000 are estimates. In Wisconsin, income above \$100,000 is generally considered high income. Under the proposed rule, payers will still pay child support on their income above \$102,000; it will just be at a reduced percentage.</p> <p>It is hoped that these changes will result in an increase in perceived fairness in the child support system for high-income payers. The parents' belief that the system is fair will have some benefit for the children.</p>	<p>21</p>
<p>Opposed. Unnecessary because the statute allows for deviation from the guidelines. Special provisions clutter and complicate the rule.</p>	<p>The special circumstance provisions are written as guidance to judges for fairly common scenarios that sometimes produce unfair results under the straight percentage standards. The department does expect that the guideline will be used in the majority of cases. Deviation is still an option where appropriate but federal regulations prescribe that deviations from the guidelines should be limited.</p>	<p>16</p>

Comments	Department response	Organization or individual commenting (# from list)
<p>DWD 40.04 (5) High-income payers (cont.) Opposed. Thresholds are so high that change is insignificant. Recommends thresholds of \$48,000 and \$140,000.</p>	<p>The department acknowledges that the thresholds of \$150,000 and \$200,000 would affect few payers. The thresholds will be reduced to \$102,000 and \$150,000 to increase the perceived fairness of the standards affecting high income payers. Income above \$100,000 is generally considered high income in Wisconsin. Income of \$48,000 is not generally considered high income. The 2002 Department of Housing and Urban Development median family income in Wisconsin 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 quite often. The straight percentage standards should still be used in the majority of cases.</p>	<p>40</p>
<p>Opposed. High income should be defined as combined household income of over \$50,000. The application of the current rule to combined household incomes over \$50,000 allows the custodial parent to receive a windfall profit and forgo his or her obligation to provide for half of the children's needs. The custodial parent also gets significant tax advantages, including head of household status, child exemptions, child care credits, and earned income credits.</p>	<p>Two households with an income of \$25,000 each is not high income. The purpose of child support under the percentage standards is to maintain the child's standard of living as close as possible to what it would be if the parents were living together. Child support is not a subsidy that does not need to be paid if the support of the child meets certain minimal levels. Parents are expected to share their income with their children. The custodial parent shares income with the child directly and the other parent shares income through child support. A study by the UW Institute on Poverty concludes that the proportion of gross income that households spend for children significantly exceeds the percentages established in the rule at all measurable levels of household income.</p>	<p>42, 49</p>
<p>Income shares formula would be more effective.</p>	<p>The guidelines advisory committee examined the income shares formula and research by the UW Institute for Research on Poverty that showed that Wisconsin's percentage of income standard accomplishes the same result and is simpler to use. Plus we have a significant history of case law based on the percentage of income standard. As indicated above, the custodial parent is contributing to the child's expenses directly.</p>	<p>41, 42, 46, 49</p>

Dan Rosmiller

Roessler

Family Law Section - Support
Perle, had lot of input,
Satisfied

Margaret Healey - will
speak in favor of

3 real Problems

- low income whole set of
consequences

- high income

- shared X. 30% level payor

gets deduction non

at 30% non get ded for
for sp child w/ them
more 40%

look at both parents

income. then offset
sum men. Crif

effect at 30-40

typically if imputed

Chair: Ron Hunt
Deputy Division Administrator
Division of Workforce Solutions

Honorable Ann C. Krummel
Columbia County Family Court Commissioner

Hon. Philip M. Kirk
Chair, Chief Judges Subcommittee on Child Support

Elaine Richmond, Director
Jefferson County Child Support Agency

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Wisconsin Legislation for Kids and Dads

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Wisconsin Coalition Against Domestic Violence

Jacqueline Boggess
Center on Fathers, Families and Public Policy

Sally Phelps
Wisconsin Woman's Network

Connie M. Chesnik
Legal Counsel
Department of Workforce Development

Rep. Carol Owens
Wisconsin State Assembly

Connie Chusnik - attorney

17% period
DWD 40

THE PERCENTAGE OF INCOME STANDARD

- ◆ Rule unique in that it is implemented by Courts
- ◆ Federal law requires states to review their guidelines every four years
- ◆ Pressure to amend Wisconsin rule coming from various sectors:

State Bar
 Courts
 Noncustodial Parents Organizations
 Legislature

- ◆ Problems identified with existing rule:

Does not address high income case
 Does not address low income cases
 Shared time formula creates incentive for litigation

- ◆ DWD Child Support Guidelines Advisory Committee created 2001

State Bar
 Judiciary
 Family Court Commissioners Association
 Wisconsin Women's Network
 Wisconsin Women's Council
 Wisconsin Coalition Against Domestic Violence
 Legal Action of Wisconsin
 Center for Fathers, Families and Public Policy
 Wisconsin Fathers for Children and Families
 Wisconsin Legislation for Kids and Dads
 Wisconsin Council on Children and Families
 Wisconsin Child Support Enforcement Association

- ◆ Committee focused on three areas:

Shared Time
 High Income
 Low Income

- ◆ Committee also recommended three statutory changes:

Overrule courts decision in Randall to make use of shared time formula permissive
 Overrule courts decision in Luciani to permit court to consider disparities in incomes of parties when setting support

minimum wage = permitted = compromise

2 dissenting votes = non custodial parents.

consensus shared X

not high income beyond 100,000 gross income

Jan

Primary objection - higher income standards.

- other states have looked at what families who receive spousal support had not gotten divorced. maintaining had stopped to get her in WI looks at income of only 1 parent 2/3 40% considering income of both WI = gross income of payer only

non custodial - make 50,000 support custodial 100,000 net into use.

(Standard after change would be)

takes 40% level that at 2500 provide children same standard as parents

deep lowered level at X state start to 102,000 from standard

comparable to 15% in rule the removal 4000 per mo

afford 40 hrs as min wage not able to get jobs 40 hr wk always based on 30 hr mo 113.00 mo per below

113.00 mo per below

Use of discretion vs presumptive

opt out app in cases

para lower than Payer 39,000 = his hers 149,000 mother be a. Clear of discretionary: as committee recommend

③ Require parties to notify court of serial family status

notify
ct. wld.
- have discretion } ct det. total mistakes

- ◆ Rule submitted to legislature week of June 23rd
- ◆ Retains use of percentage standard and case law that has developed over last 20 years

◆ Shared Time:

Reduces threshold for eligibility to 25%
Considers the incomes of both parents
Requires Court to assess variable costs

◆ High Income:

Establishes ceiling on application of percentage standard
Ceilings proposed by guidelines committee: \$150,000 and \$200,000. Lowered in response to public hearings to \$100,000 and \$150,000.

◆ Low Income:

- Low floor on orders (\$21 month) recommended by guidelines committee
- Opposed by various groups:
- Results in inadequate orders for children
- Affords a 'break' to noncustodial parents that custodial parents don't receive
- Is likely to be used across the board rather than limited to cases involving shirking or inability to pay
- formula changed by DWD in response to hearing testimony. Court may impute income based on 30 hour work week at minimum wage.

Luciani drafts want do about cross wld

Sue P. S. S. S.

ONE OF TOP 10

★ NOW in TOP 5 in collections
Send copy release.

Jim Doyle
Governor

Roberta Gassman
Secretary



State of Wisconsin

Department of Workforce Development

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Rule Analysis for Legislative Review

Proposed rules relating to the child support guidelines
DWD 40
CR 03-022

1995
1999-minor
changes

Need for rules

The proposed rules amend the standards that courts use in determining a child support obligation under s. 767.25, Stats. New special circumstance provisions are added for high- and low-income payers, and the special circumstance provision for shared-placement parents is revised.

Revised
Rules

Public hearing response

Public hearings were held in Madison, Milwaukee, and Stevens Point on March 17, 25, and 27, 2003. A summary of the hearing comments and the department's responses is attached.

Response to Legislative Council staff recommendations

The department's response to comments not accepted is attached.

Final regulatory flexibility analysis

The proposed rule changes do not affect small business.

Department contacts

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State of Wisconsin
Department of Workforce Development
Chapter DWD 40
CHILD SUPPORT GUIDELINES

The Wisconsin Department of Workforce Development proposes an order to repeal ss. DWD 40.02(4), 40.02(20), 40.02(25), 40.02(28), 40.02(30), and 40.05; to renumber ss. DWD 40.02(5), 40.02(6), 40.02(7), 40.02(8), 40.02(10), 40.02(16), 40.02(18), 40.02(19), 40.02(22), 40.02(23), 40.02(24), 40.02(31), 40.03(4), 40.03(6), and 40.03(7); to renumber and amend ss. DWD 40.02(9), 40.02(14), 40.02(17), 40.02(26), and 40.02(27); to amend ss. DWD 40.02(2), 40.02(15), 40.04(1)(b)1., 40.04(1)(b)3.a., 40.04(1)(b)3.b., 40.04(1)(b)4., 40.04(1)(b)5.a., 40.04(1)(b)5.b., 40.04(1)(b)6., 40.04(1)(b)8., (40.04(1)(note)), and DWD 40 Appendix A (column headings); to repeal and recreate ss. DWD 40.02(3), 40.02(13), 40.02(21), 40.02(29), 40.03(1)(intro), 40.03(2), 40.03(3), 40.03(5), 40.04(2), 40.04(3), 40.04(3)(note), and Appendix B; and to create ss. DWD 40.01(3), 40.02(10), 40.02(14), 40.02(19), 40.02(26), 40.03(4), 40.03(6), 40.03(7), 40.03(9), 40.03(10), 40.04(4), and 40.04(5), relating to the child support guidelines.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 49.22 (9) and 227.11, Stats.

Statutes interpreted: Sections 49.22 and 767.25, Stats.

Section 49.22 (9), Stats., requires the department to adopt standards for courts to use in determining a child support obligation under s. 767.25, Stats. Chapter DWD 40 establishes these standards based on a percentage of income of either or both parents. Chapter DWD 40 also contains special provisions that a court may use in determining the child support obligations for a serial payer, a split-custody payer, and shared-placement parents. The percentage standards and special circumstance provisions are based on the principle that a child's standard of living should not be adversely affected because his or her parents are not living together.

In spring 2001, with input from members of the legislature, the DWD Secretary appointed an advisory committee to provide guidance to the department on revisions to chapter DWD 40. The advisory committee included members of the courts, state bar, community-based organizations, county child support agencies, citizens, and the department. The committee recommended changes to the provision affecting shared-placement parents and new special provisions for low-income payers and high-income payers.

Shared-placement parents. The concept behind the special provision for shared-placement parents is that the shared-placement order is smaller than a full percentage order because the parent has significant placement and is covering the child's basic support expenses while with that parent. The current threshold for application of the shared-

placement provision is placement of at least 30%. If a parent's placement falls between 30% and 40%, that parent pays the other parent a child support amount that is less than the full percentage standards but there is no determination or offset of any obligation of the other parent. If the period of placement with the parent with less time is above 40%, the current rule reduces the child support obligation of the parent with less time and requires the determination and offset of the obligation of the parent with more time. Because the current formula does not proportionately reduce the paying parent's share of support at the same rate as the increase in placement, it creates a cliff effect that encourages litigation between the parties.

The proposed shared-placement provision is based on the premise that when both parents have significant periods of placement the formula should take into account the duplicated costs of child rearing in both households and both parents' incomes as a more realistic and equitable basis to set child support. The court may apply the proposed formula when both parents have a court-ordered period of placement of at least 25% overnights or the equivalent and each parent is ordered to assume the child's basic support costs in proportion to the time that the parent has placement of the child. Basic support costs are defined as food, shelter, clothing, transportation, personal care, and incidental recreational costs.

The first step in calculating the child support obligations of shared-placement parents is determining each parent's obligation under the percentage standards. In determining whether to impute income based on earning capacity for an unemployed parent or a parent employed less than full time, the court shall consider the benefit to the child of having a parent remain in the home during periods of placement and the additional variable day care costs that would be incurred if the parent worked more. The next steps are multiplying the obligation under the percentage standards for each parent by 150% to account for household maintenance expenditures duplicated by both parents, such as a bedroom, clothes, and personal items; multiplying that amount for each parent by the proportion of time that the child spends with the other parent; and offsetting resulting amounts against each other. The court shall also assign responsibility for payment of the child's variable costs in proportion to each parent's share of physical placement, with due consideration to a disparity in the parents' incomes. The court shall direct the manner of payment to be either between the parents or from a parent to a third-party service provider and not to the department or the department's designee, except as incorporated in the fixed sum or percentage expressed child support order. Variable costs are reasonable costs above basic support costs, including child care, tuition, a child's special needs, and other activities that involve substantial cost.

Low-income payers. The proposed special provision for low-income payers is based on the premise that many low-income payers have insufficient income to pay current ordered amounts. Lower support levels for low-income payers may enable them to pay current support and accrue fewer arrears. Lower support levels may also increase their emotional and financial investment in their children.

The proposed rule applies to situations where the income of a parent is less than the parent's earning capacity. The general rule on earning capacity allows the court to impute income to the parent at an amount that represents the parent's ability to earn, based on the parent's education, training and work experience, earnings during previous periods, physical

and mental health, and the availability of work in or near the parent's community. The proposed low-income provision allows the court to impute the income that a person would earn by working 30 hours per week for the federal minimum hourly wage if evidence is presented that the parent's ability to earn is limited due to less than a high school education, less than 6 months employment in the past 12 months, and limited availability for work in or near the parent's community. Under the current rule, income is generally imputed at 40 times the federal minimum hourly wage in these circumstances.

High-income payers. The proposed special provision for high-income payers is based on the premise that above certain income levels, parents share a smaller percentage of their income with their children. The payer's full monthly income is considered in determining the child support obligation. The standard percentages of 17% for 1 child, 25% for 2 children, 29% for 3 children, 31% for 4 children, and 34% for 5 or more children apply to a payer's income less than \$102,000 per year. The court may apply approximately 80% of the full percentage standards to the portion of a payer's annual income that is greater than or equal to \$102,000 and less than or equal to \$150,000. These percentages are 14% for 1 child, 20% for 2 children, 23% for 3 children, 25% for 4 children, and 27% for 5 or more children. The court may apply approximately 60% of the full percentage standards to the portion of the payer's annual income that is above \$150,000. These percentages are 10% for 1 child, 15% for 2 children, 17% for 3 children, 19% for 4 children, 20% for 5 or more children.

Miscellaneous. The department proposes the following additional changes:

- Income imputed based on earning capacity. In determining a parent's ability to earn, the court shall consider a parent's earnings during previous periods and physical and mental health, in addition to the current factors of education, training and work experience, and availability of work in or near the parent's community. A requirement is added that evidence must be 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 before the court may impute income at 40 times the federal minimum hourly wage.
- Income imputed from assets. The proposed rule allows income to be imputed from assets if a parent's assets are underproductive *and* at least one of the following applies: the parent has diverted income into assets to avoid paying child support or income from the parent's assets is necessary to maintain the child or children at the standard of living they would have had if they were living with both parents. The current rule allows income to be imputed from assets if they are underproductive, *or* the parent has diverted income into assets to avoid paying child support, *or* income from the parent's assets is necessary to maintain the child or children at the standard of living they would have had if they were living with both parents.
- Shared-placement order with serial families. The concept behind the special provision for shared-placement parents is that the order is smaller than a full percentage order because the parent has significant placement and is covering the child's basic support expenses while with that parent. A shared-placement parent with one child is spending approximately 17% of his or her income on the child even though the child support order may be substantially less than that amount if the parents' placement

periods and incomes are similar. The concept behind the special provision for serial families is to give credit for the amount spent on the first family before determining the order for children in the next family. The current serial family provision only gives credit for the amount of the order and does not consider the special situation of shared-placement parents with serial families. The proposed provision on shared-placement orders in serial families gives credit for the full percentage standard.

- Child's Social Security insurance. The court may include social security benefits received by a child based on a parent's entitlement to federal disability or old-age insurance in the parent's gross income and adjust the parent's child support obligation by subtracting the amount of the child's social security benefit. In no case may this adjustment require the payee to reimburse the payer for any portion of the child's benefit.
- Maintenance. If a payer will have obligations for both child support and maintenance to the same payee, the court shall determine the payer's child support obligation before the maintenance obligation.
- Effect of rule change. A modification of any provision of chapter DWD 40 shall not be considered a substantial change in circumstances sufficient to justify a revision of a judgment or order under s. 767.32, Stats.
- Undistributed income of a closely held corporation. Further detail is proposed to clarify when to include undistributed corporate income in gross income. The rule currently provides that undistributed income is included if the payer has ownership interest sufficient to individually exercise control or access the business earnings. The proposed rule defines undistributed income as federal taxable income of the closely held corporation, partnership, or other entity plus depreciation claimed on the entity's federal income tax return less a reasonable allowance for economic depreciation using the straight line method. The court may adjust gross income to include undistributed income not determined reasonably necessary for the growth of the business.
- Terminology.
 - "Monthly income available for child support" is the proposed term to refer to the monthly income at which the child support obligation is determined. It includes gross income, or if applicable, income modified for business expenses; income imputed based on earning capacity; and income imputed from assets. "Monthly income available for child support" is similar to the current term "base," except "base" does not include income imputed based on earning capacity. A support obligation based on earning capacity is a separate calculation under the current rule.
 - The proposed rule uses the term "split-placement" in place of "split-custody," which is incorrectly used in the current rule.
 - The split-placement subsection is rewritten because the current rule refers to the payer and payee at the beginning of the calculation before it can be accurately known who will be the payer or payee.

SECTION 1. DWD 40.01 (3) is created to read:

DWD 40.01 (3) EFFECT OF RULE CHANGE. A modification of any provision in this chapter shall not in and of itself be considered a substantial change in circumstances sufficient to justify a revision of a judgment or order under s. 767.32, Stats.

SECTION 2. DWD 40.02 (2) is amended to read:

DWD 40.02 (2) “Adjusted base monthly income available for child support” means the monthly income at which the child support obligation is determined for serial family payers, which is the payer’s base monthly income available for child support less the amount of any existing legal obligation for child support.

SECTION 3. DWD 40.02 (3) is repealed and recreated to read:

DWD 40.02 (3) “Basic support costs” means food, shelter, clothing, transportation, personal care, and incidental recreational costs.

SECTION 4. DWD 40.02 (4) is repealed.

SECTION 5. DWD 40.02 (5), (6), (7), (8), (9), and (10) are renumbered DWD 40.02 (4), (5), (6), (7), (8), and (9) and, as renumbered, DWD 40.02 (8) is amended to read:

DWD 40.02 (8) “Department” means the Wisconsin department of health and social services workforce development.

SECTION 6. DWD 40.02 (10) is created to read:

DWD 40.02 (10) “Equivalent care” means a period of time during which the parent cares for the child that is not overnight, but is determined by the court to require the parent to assume the basic support costs that are substantially equivalent to what the parent would spend to care for the child overnight.

SECTION 7. DWD 40.02 (13) is repealed and recreated to read:

DWD 40.02 (13) “Gross income.” (a) “Gross income” means all of the following:

1. Salary and wages.
2. Interest and investment income.
3. Social Security disability and old-age insurance benefits under 42 USC 401 to 433.

4. Net proceeds resulting from worker's compensation or other personal injury awards intended to replace income.

5. Unemployment insurance.

6. Income continuation benefits.

7. Voluntary deferred compensation, employee contributions to any employee benefit plan or profit-sharing, and voluntary employee contributions to any pension or retirement account whether or not the account provides for tax deferral or avoidance.

8. Military allowances and veterans benefits.

9. Undistributed income of a corporation, including a closely-held corporation, or any partnership, including a limited or limited liability partnership, in which the parent has an ownership interest sufficient to individually exercise control or to access the earnings of the business, unless the income included is an asset under s. DWD 40.03 (4). In this paragraph:

a. "Undistributed income" means federal taxable income of the closely held corporation, partnership, or other entity plus depreciation claimed on the entity's federal income tax return less a reasonable allowance for economic depreciation.

b. A "reasonable allowance for economic depreciation" means the amount of depreciation on assets computed using the straight line method and useful lives as determined under federal income tax laws and regulations.

Note: Income considered under this subsection is subject to the adjustments under s. DWD 40.03 (2).

10. All other income, whether taxable or not, except that gross income does not include any of the following:

a. Child support.

b. Foster care payments under s. 48.62, Stats.

c. Kinship care payments under s. 48.57 (3m) or (3n), Stats.

d. Public assistance benefits under ch. 49, Stats., except that child care subsidy payments under s. 49.155, Stats., shall be considered income to a child care provider.

e. Food stamps under 7 USC 2011 to 2036.

f. Cash benefits paid by counties under s. 59.53 (21), Stats.

g. Supplemental Security Income under 42 USC 1381 to 1383f and state supplemental payments under s. 49.77, Stats.