

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 DWD 40.02 (20) is repealed.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 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~~ 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 <u>base monthly income available for child support</u>	\$3000
The first legal obligation is subject to an existing monthly support order (divorce)	\$ 450
Adjust the <u>base monthly income available for child support</u>	\$3000
	<u>- 450</u>
First adjusted <u>base 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 <u>base monthly income available for child support</u>	\$2550
	<u>- 637.50</u>
Second adjusted <u>base 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:

<u>Base Monthly Income Available for Child Support</u>	One Child 0.17	Two Children 0.25	Three Children 0.29	Four Children 0.31	Five or More Children 0.34
--	-------------------	----------------------	------------------------	-----------------------	----------------------------------

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).

DWD is an equal opportunity employer and service provider. If you have a disability and need to access this information in an alternate format, or need it translated to another language, please contact (608) 264-9820 or (866) 275-1165 TTY (Toll Free).

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 Loftus
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		
Support proposed rules.		8, 57, 59, 60, 63, 65, 66, 67
Opposed to proposed rules.		61, 62
Support proposed rules, except low income provision, no further comment.		18, 56
Support proposed rules, except still unfairly burdensome to high income payer.		58
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>	<p>30</p>
<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>	<p>53</p>
<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>	<p>40</p>
<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>	<p>16</p>
<p>Should subtract Social Security retirement in addition to disability.</p>	<p>Department agrees.</p>	<p>16</p>
<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>	<p>3, 4, 5</p>
<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>	<p>40</p>
<p>DWD 40.03 (9) Trust Support this provision.</p>	<p>Department agrees.</p>	<p>3, 4, 5</p>
<p>DWD 40.04 (1) Serial families Support provision on shared-placement in serial families.</p>	<p>Department agrees.</p>	<p>3, 4, 5</p>

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>

Marygold Shire Melli

JUL 22 2003

University of Wisconsin Law School, Madison, WI 53706

(608) 262-1610

Fax (608) 262-1231

July 18, 2003

Senator Carol Roessler
Chair, Committee on Health, Children,
Families, Aging & Long-Term Care
Room 8 South
State Capitol
Madison, WI 53703

Re: Proposed Revision of Child Support Guidelines, Chap. DWD 40

Dear Senator Roessler:

I write to call your attention to a serious problem with the "shared-placement" provision in the proposed Child Support Guidelines, Chapter DWD 40 of the Administrative Code, set by your committee for hearing on Tuesday, July 22, at 10:30 a.m.

The analysis prepared by the Department of Workforce Development seems to indicate that the reason for changing the present shared-placement rule was because there was a "cliff effect" i.e. a sharp decline in the amount of support from just below or just above the amount of time at which the child support guideline begins to reduce child support.

Under the present Child Support Guideline in DWD 40, the point at which child support is reduced is 31 percent and, then, 41 percent. The proposed rule would lower the point for reduction of support to 25 percent time and take into account the income of the "greater time" parent. However, contrary to the suggestion in the Department's analysis, it does NOT eliminate the "cliff effect" – in fact the amount of decrease in child support at 25 percent time is even greater in many cases than it is under the present guideline.

The proposed rule has another effect which I think may have been unintended. Setting the reduction in support for shared time at 25 percent time has the effect of including the majority of all child support cases because "standard visitation" (every other weekend, a day in between, two weeks in the summer and some extra holiday time) amounts to 25 percent time or more. Therefore, under the proposed Guideline the amount of child support available in the usual case becomes the amount under "shared placement". The result is to reduce the amount of child support in the vast majority of cases.

For your information, I am including four tables of computations done by a colleague of mine that illustrate the amounts of child support payable under the present and the proposed guideline at different parental incomes.

I hope that it is possible to return the rule to the Department of Workforce Development to consider this issue in light of its effect on the great majority of cases.

If you have questions, I would be happy to try to answer them. My phone is 262-1610. My email is msmelli@wisc.edu.

Sincerely,



Marygold S. Melli
Voss-Bascom Professor of Law Emerita

Enclosures

CASE 1

Greater-time Parent	Lesser-time Parent	Lesser-time Parent	Current Formula		Proposed Formula		
			at 30% Threshold		at 25% Threshold		
			Income	Income	PCT Time	annual CS	drop in CS
\$30,000	\$30,000	24	\$5,100.00		\$5,100.00		
\$30,000	\$30,000	25	\$5,100.00	\$0.00	\$3,825.00	\$1,275.00	
\$30,000	\$30,000	26	\$5,100.00	\$0.00	\$3,672.00	\$153.00	
\$30,000	\$30,000	27	\$5,100.00	\$0.00	\$3,519.00	\$153.00	
\$30,000	\$30,000	28	\$5,100.00	\$0.00	\$3,366.00	\$153.00	
\$30,000	\$30,000	29	\$5,100.00	\$0.00	\$3,213.00	\$153.00	
\$30,000	\$30,000	30	\$5,100.00	\$0.00	\$3,060.00	\$153.00	
\$30,000	\$30,000	31	\$4,930.17	\$169.83	\$2,907.00	\$153.00	
\$30,000	\$30,000	32	\$4,760.34	\$169.83	\$2,754.00	\$153.00	
\$30,000	\$30,000	33	\$4,590.51	\$169.83	\$2,601.00	\$153.00	
\$30,000	\$30,000	34	\$4,420.68	\$169.83	\$2,448.00	\$153.00	
\$30,000	\$30,000	35	\$4,250.85	\$169.83	\$2,295.00	\$153.00	
\$30,000	\$30,000	36	\$4,081.02	\$169.83	\$2,142.00	\$153.00	
\$30,000	\$30,000	37	\$3,911.19	\$169.83	\$1,989.00	\$153.00	
\$30,000	\$30,000	38	\$3,741.36	\$169.83	\$1,836.00	\$153.00	
\$30,000	\$30,000	39	\$3,571.53	\$169.83	\$1,683.00	\$153.00	
\$30,000	\$30,000	40	\$3,401.70	\$169.83	\$1,530.00	\$153.00	
\$30,000	\$30,000	41	\$3,056.94	\$344.76	\$1,377.00	\$153.00	
\$30,000	\$30,000	42	\$2,717.28	\$339.66	\$1,224.00	\$153.00	
\$30,000	\$30,000	43	\$2,377.62	\$339.66	\$1,071.00	\$153.00	
\$30,000	\$30,000	44	\$2,037.96	\$339.66	\$918.00	\$153.00	
\$30,000	\$30,000	45	\$1,698.30	\$339.66	\$765.00	\$153.00	
\$30,000	\$30,000	46	\$1,358.64	\$339.66	\$612.00	\$153.00	
\$30,000	\$30,000	47	\$1,018.98	\$339.66	\$459.00	\$153.00	
\$30,000	\$30,000	48	\$679.32	\$339.66	\$306.00	\$153.00	
\$30,000	\$30,000	49	\$339.66	\$339.66	\$153.00	\$153.00	
\$30,000	\$30,000	50	\$0.00	\$339.66	\$0.00	\$153.00	

Note: "Cliff effects" are shown as Bold dollar amounts.

CASE 2

Greater-time Parent	Lesser-time Parent	Lesser-time Parent	Current Formula		Proposed Formula	
			at 30% Threshold		at 25% Threshold	
Income	Income	PCT Time	annual CS	drop in CS	annual CS	drop in CS
\$30,000	\$60,000	24	\$10,200.00		\$10,200.00	
\$30,000	\$60,000	25	\$10,200.00	\$0.00	\$9,562.50	\$637.50
\$30,000	\$60,000	26	\$10,200.00	\$0.00	\$9,333.00	\$229.50
\$30,000	\$60,000	27	\$10,200.00	\$0.00	\$9,103.50	\$229.50
\$30,000	\$60,000	28	\$10,200.00	\$0.00	\$8,874.00	\$229.50
\$30,000	\$60,000	29	\$10,200.00	\$0.00	\$8,644.50	\$229.50
\$30,000	\$60,000	30	\$10,200.00	\$0.00	\$8,415.00	\$229.50
\$30,000	\$60,000	31	\$9,860.34	\$339.66	\$8,185.50	\$229.50
\$30,000	\$60,000	32	\$9,520.68	\$339.66	\$7,956.00	\$229.50
\$30,000	\$60,000	33	\$9,181.02	\$339.66	\$7,726.50	\$229.50
\$30,000	\$60,000	34	\$8,841.36	\$339.66	\$7,497.00	\$229.50
\$30,000	\$60,000	35	\$8,501.70	\$339.66	\$7,267.50	\$229.50
\$30,000	\$60,000	36	\$8,162.04	\$339.66	\$7,038.00	\$229.50
\$30,000	\$60,000	37	\$7,822.38	\$339.66	\$6,808.50	\$229.50
\$30,000	\$60,000	38	\$7,482.72	\$339.66	\$6,579.00	\$229.50
\$30,000	\$60,000	39	\$7,143.06	\$339.66	\$6,349.50	\$229.50
\$30,000	\$60,000	40	\$6,803.40	\$339.66	\$6,120.00	\$229.50
\$30,000	\$60,000	41	\$6,288.81	\$514.59	\$5,890.50	\$229.50
\$30,000	\$60,000	42	\$5,779.32	\$509.49	\$5,661.00	\$229.50
\$30,000	\$60,000	43	\$5,269.83	\$509.49	\$5,431.50	\$229.50
\$30,000	\$60,000	44	\$4,760.34	\$509.49	\$5,202.00	\$229.50
\$30,000	\$60,000	45	\$4,250.85	\$509.49	\$4,972.50	\$229.50
\$30,000	\$60,000	46	\$3,741.36	\$509.49	\$4,743.00	\$229.50
\$30,000	\$60,000	47	\$3,231.87	\$509.49	\$4,513.50	\$229.50
\$30,000	\$60,000	48	\$2,722.38	\$509.49	\$4,284.00	\$229.50
\$30,000	\$60,000	49	\$2,212.89	\$509.49	\$4,054.50	\$229.50
\$30,000	\$60,000	50	\$1,703.40	\$509.49	\$3,825.00	\$229.50

Note: "Cliff effects" are shown as Bold dollar amounts.

CASE 3

Greater-time Parent	Lesser-time Parent	Lesser-time Parent	Current Formula		Proposed Formula	
			at 30% Threshold		at 25% Threshold	
Income	Income	PCT Time	annual CS	drop in CS	annual CS	drop in CS
\$60,000	\$30,000	24	\$5,100.00		\$5,100.00	
\$60,000	\$30,000	25	\$5,100.00	\$0.00	\$1,912.50	\$3,187.50
\$60,000	\$30,000	26	\$5,100.00	\$0.00	\$1,683.00	\$229.50
\$60,000	\$30,000	27	\$5,100.00	\$0.00	\$1,453.50	\$229.50
\$60,000	\$30,000	28	\$5,100.00	\$0.00	\$1,224.00	\$229.50
\$60,000	\$30,000	29	\$5,100.00	\$0.00	\$994.50	\$229.50
\$60,000	\$30,000	30	\$5,100.00	\$0.00	\$765.00	\$229.50
\$60,000	\$30,000	31	\$4,930.17	\$169.83	\$535.50	\$229.50
\$60,000	\$30,000	32	\$4,760.34	\$169.83	\$306.00	\$229.50
\$60,000	\$30,000	33	\$4,590.51	\$169.83	\$76.50	\$229.50
\$60,000	\$30,000	34	\$4,420.68	\$169.83	-\$153.00	\$229.50
\$60,000	\$30,000	35	\$4,250.85	\$169.83	-\$382.50	\$229.50
\$60,000	\$30,000	36	\$4,081.02	\$169.83	-\$612.00	\$229.50
\$60,000	\$30,000	37	\$3,911.19	\$169.83	-\$841.50	\$229.50
\$60,000	\$30,000	38	\$3,741.36	\$169.83	-\$1,071.00	\$229.50
\$60,000	\$30,000	39	\$3,571.53	\$169.83	-\$1,300.50	\$229.50
\$60,000	\$30,000	40	\$3,401.70	\$169.83	-\$1,530.00	\$229.50
\$60,000	\$30,000	41	\$2,882.01	\$519.69	-\$1,759.50	\$229.50
\$60,000	\$30,000	42	\$2,372.52	\$509.49	-\$1,989.00	\$229.50
\$60,000	\$30,000	43	\$1,863.03	\$509.49	-\$2,218.50	\$229.50
\$60,000	\$30,000	44	\$1,353.54	\$509.49	-\$2,448.00	\$229.50
\$60,000	\$30,000	45	\$844.05	\$509.49	-\$2,677.50	\$229.50
\$60,000	\$30,000	46	\$334.56	\$509.49	-\$2,907.00	\$229.50
\$60,000	\$30,000	47	-\$174.93	\$509.49	-\$3,136.50	\$229.50
\$60,000	\$30,000	48	-\$684.42	\$509.49	-\$3,366.00	\$229.50
\$60,000	\$30,000	49	-\$1,193.91	\$509.49	-\$3,595.50	\$229.50
\$60,000	\$30,000	50	-\$1,703.40	\$509.49	-\$3,825.00	\$229.50

Notes: "Cliff effects" are shown in Bold dollar amounts.

Negative dollar amounts in the "annual CS" column indicate that the greater-time parent is the payor.

CASE 4

Greater-time Parent	Lesser-time Parent	Lesser-time Parent	Current Formula		Proposed Formula	
			at 30% Threshold		at 25% Threshold	
			Income	Income	PCT Time	annual CS
\$120,000	\$30,000	24	\$5,100.00		\$5,100.00	
\$120,000	\$30,000	25	\$5,100.00	\$0.00	-\$1,912.50	\$7,012.50
\$120,000	\$30,000	26	\$5,100.00	\$0.00	-\$2,295.00	\$382.50
\$120,000	\$30,000	27	\$5,100.00	\$0.00	-\$2,677.50	\$382.50
\$120,000	\$30,000	28	\$5,100.00	\$0.00	-\$3,060.00	\$382.50
\$120,000	\$30,000	29	\$5,100.00	\$0.00	-\$3,442.50	\$382.50
\$120,000	\$30,000	30	\$5,100.00	\$0.00	-\$3,825.00	\$382.50
\$120,000	\$30,000	31	\$4,930.17	\$169.83	-\$4,207.50	\$382.50
\$120,000	\$30,000	32	\$4,760.34	\$169.83	-\$4,590.00	\$382.50
\$120,000	\$30,000	33	\$4,590.51	\$169.83	-\$4,972.50	\$382.50
\$120,000	\$30,000	34	\$4,420.68	\$169.83	-\$5,355.00	\$382.50
\$120,000	\$30,000	35	\$4,250.85	\$169.83	-\$5,737.50	\$382.50
\$120,000	\$30,000	36	\$4,081.02	\$169.83	-\$6,120.00	\$382.50
\$120,000	\$30,000	37	\$3,911.19	\$169.83	-\$6,502.50	\$382.50
\$120,000	\$30,000	38	\$3,741.36	\$169.83	-\$6,885.00	\$382.50
\$120,000	\$30,000	39	\$3,571.53	\$169.83	-\$7,267.50	\$382.50
\$120,000	\$30,000	40	\$3,401.70	\$169.83	-\$7,650.00	\$382.50
\$120,000	\$30,000	41	\$2,532.15	\$869.55	-\$8,032.50	\$382.50
\$120,000	\$30,000	42	\$1,683.00	\$849.15	-\$8,415.00	\$382.50
\$120,000	\$30,000	43	\$833.85	\$849.15	-\$8,797.50	\$382.50
\$120,000	\$30,000	44	-\$15.30	\$849.15	-\$9,180.00	\$382.50
\$120,000	\$30,000	45	-\$864.45	\$849.15	-\$9,562.50	\$382.50
\$120,000	\$30,000	46	-\$1,713.60	\$849.15	-\$9,945.00	\$382.50
\$120,000	\$30,000	47	-\$2,562.75	\$849.15	-\$10,327.50	\$382.50
\$120,000	\$30,000	48	-\$3,411.90	\$849.15	-\$10,710.00	\$382.50
\$120,000	\$30,000	49	-\$4,261.05	\$849.15	-\$11,092.50	\$382.50
\$120,000	\$30,000	50	-\$5,110.20	\$849.15	-\$11,475.00	\$382.50

Notes: "Cliff effects" are shown in **Bold** dollar amounts.
 Negative dollar amounts in the "annual CS" column indicate that the greater-time parent is the payor.

Wisconsin for Children



Fathers and Families

608/ALL-DADS (255-3237) ♦ P.O. Box 1742, Madison, WI, 53701-1742 ♦ <http://www.wisconsinfathers.org>

July 7, 2003

To: Senator Carol Roessler
Chair of Committee on Health, Children,
Families, Aging and Long-Term Care
P.O. Box 7882
Madison 53707-7882

Representative Steve Kestell
Chair of Committee on
Children and Families
P.O. Box 8952
Madison 53708-7882

RE: CR03-022 - Proposed changes to DWD 40 Child Support Percentage of Income Standard

Dear Senator Roessler and Representative Kestell

I understand your committee has been asked to review and approve, the changes proposed by the Department of Workforce Development to the DWD 40 Administrative rule (Child Support Percentage of Income Standard).

I served on the Department's 2001 child support review committee, and have spent an extensive amount of time over the past six years, analyzing the problems of the current child support standard. As a result of this insight, I believe the changes proposed by the DWD include a substantially improved formula for defining child support orders in shared placement cases, however, there are numerous other problems that the Department has failed to address, or has addresses erroneously. Therefore, before approving these proposed changes, I ask your committee to request the Department to incorporate the attached list of modifications to the proposed rule.

I have previously brought these proposed changes to the Department's attention, but they appear to have chose to protect their bureaucratic self interests, rather than establishing a good standard for Wisconsin citizens. Since legislator have a greater responsibility to represent of the interests of Wisconsin citizens, I urge your committee to ask the Department to incorporate these changes.

I am not optimistic that the Department will address these concerns adequately, so I also ask you to consider expressing your support for AB250/SB156, which would eliminate the Department's responsibility for promulgating the DWD 40 administrative rule, and instead establish Wisconsin's child support standard in Statute Section 767.251. AB250/SB156 provide a much more comprehensive improvement to Wisconsin's child support standard and would bring greater fairness, uniformity and predictability to a much larger number of cases.

Sincerely

Jan Raz
President (Home Tel#: 414 425-4866, email: jraz@wi.rr.com)

CR03-022: DWD 40 Child Support Percentage of Income Standard

The following modifications to the proposed rule are requested:

A. SECTION 1: EFFECT OF RULE CHANGE: *In some shared placement cases, this standard corrects significant unfairness problems resulting from the use of the current standard, however this proposal does not allow a parent to easily correct an existing unfair order. This section should be modified to allow a phase in plan to easily correct these problems and should read:*

"After 33 months from the effective date of the last child support order, if the amount of child support under the revised order by using the method of calculating child support under this chapter will differ from the amount under the last order by at least 20% of the amount under the last order or by at least \$60 per month, shall constitute a substantial change of circumstances sufficient to justify a revision of a judgement or order under s. 767.32, Stats.

B. SECTION 7: item 10: "All other income, whether taxable or not": *This is a broad and vague definition which could result in unnecessary litigation in some cases. This section should be modified to read:*

"All other income considered income for income tax purposes"

C. SECTION 27 Item (6) DETERMINE CHILD SUPPORT BEFORE MAINTENANCE: *This provision is inconsistent with IRS definition of maintenance income. Maintenance is considered the income of the person who receives it, not the parson who is obligated to pay it to an ex-spouse. This will present significant unfairness issues in some cases. This section should be modified to read:*

(6) MAINTENANCE INCOME: The court shall subtract all court ordered maintenance payments from the income of the person ordered to pay them, and shall include this as income of the parent that receives these payments, before calculating the child support order.

D. SECTION 29, 30, 31, 32, *include provisions for special circumstances, however, these allow the court to use these provision, rather than requiring the courts to use them. Thus a court can arbitrarily use them or not, without giving any reason for doing so. This may result in significantly different orders in similar cases and fails to meet an important purpose of this standard, namely to have uniformity and predictability. This will lead to unnecessary litigation.*

The MAY in these provisions should be changed to SHALL.

E. SECTION 32; Provision for High Income Payers; *This provision is arbitrary, inadequate and irrational. It is intended to deceive the legislature and the courts into believing the Department has corrected the unfairness problems of applying the child support standard in higher income families, when in fact it is designed to provide a minimal adjustment in less than 1% of the cases.*

1. *The provision is not rationally based on economic data that suggests the application of the percentages defined by DWD 40. 03 in above average income families, exceeds the realistic economic needs of the children in these families. It fails to recognize that the disparity between the realistic needs of the children and the amount defined by the current DWD standard starts to diverge when the combined income of the family exceeds \$4,000 per month and continues to get greater as the family income increases. This disparity does not start when one parent's monthly gross income exceeds \$8,500. Above the \$8,500 income level, and the \$12,500 income level the disparity is much greater than the adjustment in this proposal.*

2. *The proposal fails to consider the incomes of both parents! When one parent has a monthly income of \$4000, the economic needs of the children are significantly different if the other parent has a monthly income of \$1,000 vs \$10,000. Thus a standard that does not consider the incomes of both parents can not correctly reflect the economic need of the children in many cases.*

SECTION 32 should be modified to require the incomes of both parents to be considered, and to provide appropriate reduction in these percentages to be consistent with the economic data used by most other states to define their child support orders.

F. The existing DWD 40.04(1) "serial family payer" provision *does not consider a payer's obligation to support later born children and continues to provide greater child support entitlement for first born children. This method has been ruled to be unconstitutional in Tennessee and yet this proposed change does not address this issue.*

DWD 40.04(1) should be modified to make sure all children of the same parent receive a similar child support amount.

7/7/03

Comparison of Wisconsin's child support standard to economic data which defines what percentage of a typical family's gross income is used to raise TWO children.

Combined gross annual family income (both parents)	IRP*/Jacques van der Gaag (WI Cost of raising children study) 1982?	US DHSS (Develop. of guide-lines/ Cost of raising children study) *** 1987	IRP*/ R. Douthitt (Cost of raising children study) 1990	IRP*/Pirog - Good (Study of mean awards by all states in 1991) 1993	US Dept of Agric. (Cost of raising children study) **** 1999	Arizona (Cost of raising children study)*** Typical for 30+states 1999	Indiana (Cost of raising children tables) *** Typical for 30+states	Wisconsin proposed SB 151/ AB250 (2003)	Wisconsin DWD 40 Standard 1987-2001
\$ 14,400		28.8%		28.1%		30.0%	39.6%	25%	25%
\$ 20,066	27%**	26.9%	46%			27.8%	30.3%	25%	25%
\$ 23,000		26.0%			52%	27.6%	28.5%	25%	25%
\$ 30,000		23.9%		26.8%		26.8%	26.5%	25%	25%
\$ 41,446		21.6%	29%			24.6%	23.7%	25%	25%
\$ 48,900		21.0%			34%	23.2%	23.2%	24.6%	25%
\$ 52,800		20.8%		23.3%		22.4%	22.7%	23.9%	25%
\$ 92,700		17.4%			26%	17.3%	20.5%	19.0%	25%
\$126,000		15.2%		18.0%		16.1%	17.7%	17.3%	25%
\$180,000						14.2%	13.7%	15.8%	25%
\$208,000							12.4%	15.4%	25%

* IRP = Institute of Research on Poverty - UW Madison

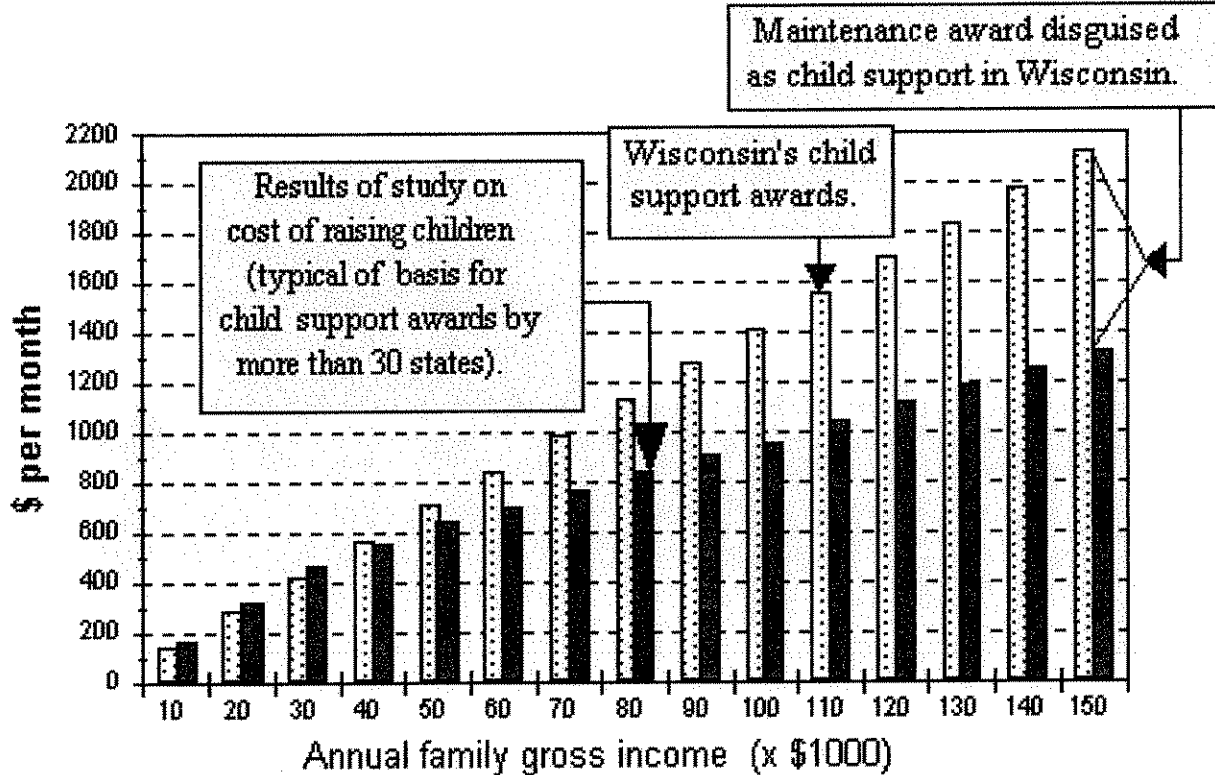
** The 1982 income of \$16,500.

*** Based on marginal expenditures for children, does not include health care and child care expenses.

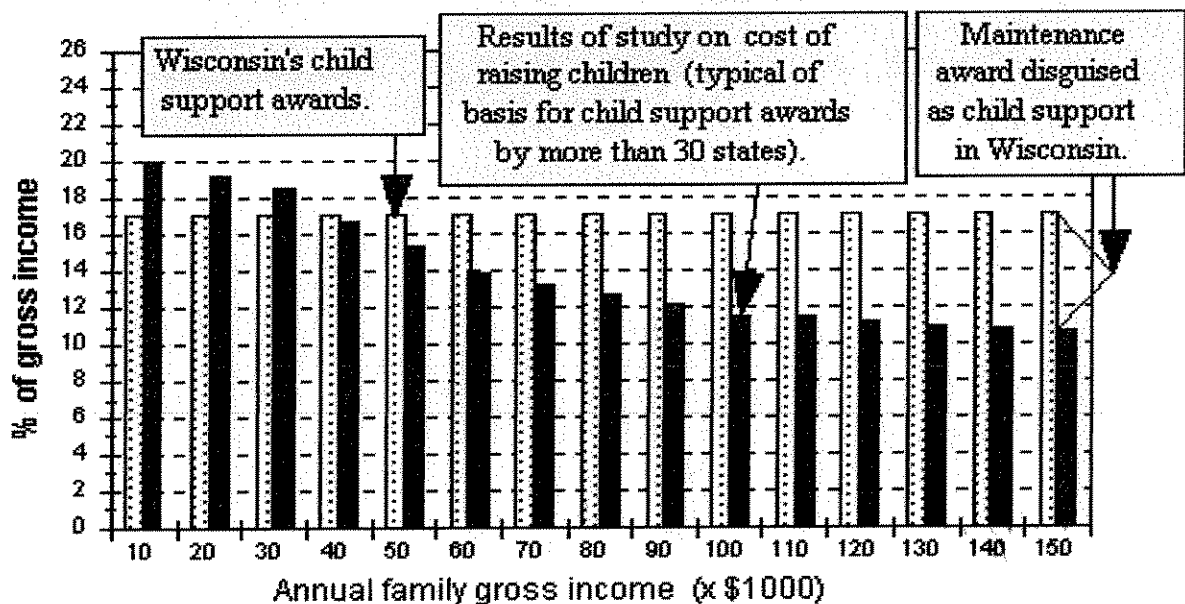
**** Based on per capita expenditures for children, includes health care and child care expenses.

PROVIDED TO DWD COMMITTEE
 5/17/01

Wisconsin's child support awards vs cost of raising children study results
in \$ for combined family gross incomes (both parents) - for 1 child.



Wisconsin's child support awards vs costs of raising children study results
as a % of combined family gross income (both parents) - for 1 child.



1

Wisconsin's child support awards vs costs of raising children study results
for different combined family gross incomes (both parents) - for 1 child.

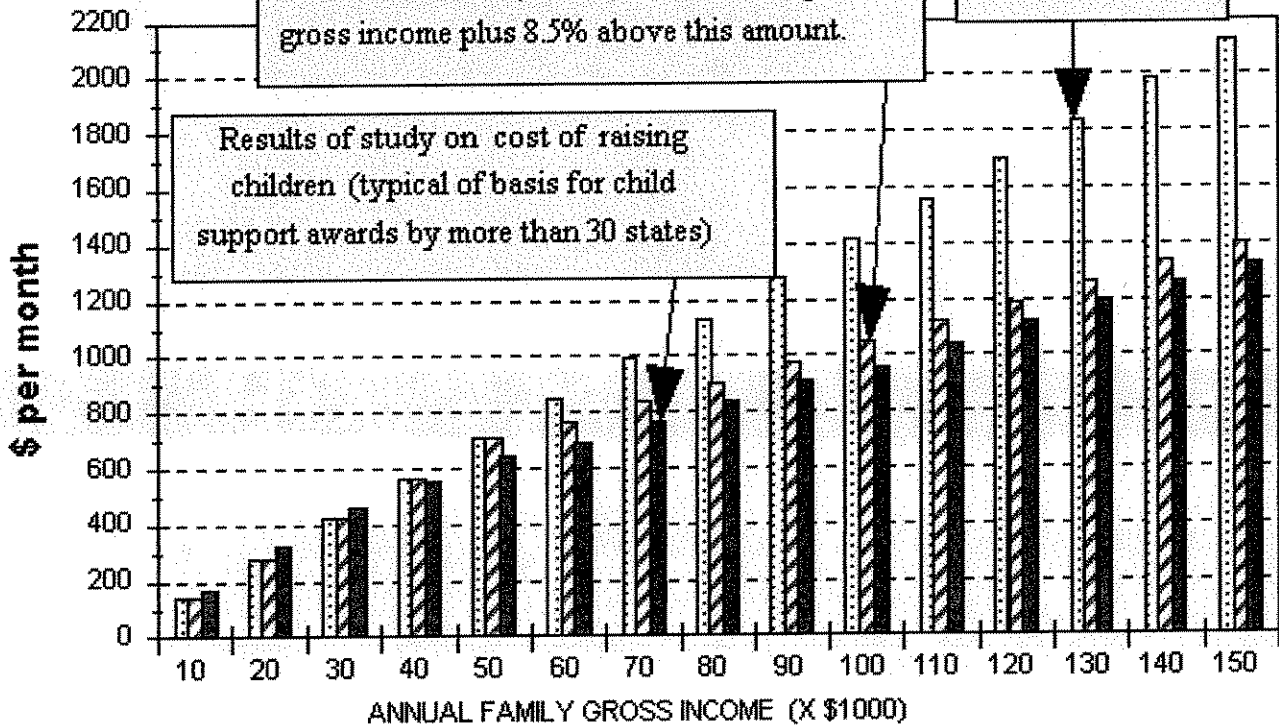
SB 156 / AB 250

DWD 40

Proposed - WI child support awards based on 17% of first \$4,000 combined monthly gross income plus 8.5% above this amount.

Present WI child support awards.

Results of study on cost of raising children (typical of basis for child support awards by more than 30 states)



Comparison of annual child support entitlement of TWO children, from both parents

Combined gross annual income of the 2 parents	A WI-Existing DWD 40	B WI- Proposed DWD 40	C WI-Proposed AB250/SB156	D Indiana CS standard	E Michigan CS standard
\$40,000	\$12,000	\$12,000	\$12,000	\$9,776	\$ 10,284
\$60,000	\$15,000	\$15,000	\$13,500	\$13,208	\$13,464
\$80,000	\$20,000	\$20,000	\$16,000	\$16,796	\$16,380
\$100,000	\$25,000	\$25,000	\$18,500	\$20,228	\$18,768
\$150,000	\$37,500	\$37,500	\$24,750	\$23,504	\$23,460
\$200,000	\$50,000	\$50,000	\$31,000	\$25,532	\$29,544
\$500,000	\$125,000	\$100,188	\$51,600	\$31,892	\$54,924
\$1,000,000	\$250,000	\$175,176	\$81,600	\$36,727	\$96,084

- A. Existing DWD 40 administrative rule
- B. Proposed DWD 40 administrative rule changes CR 03-022 , by DWD: (Comparison assumes both parent's incomes are equal)
- C. AB 250/SB156
- D. Indiana CS standard is based on Eco Data up to \$208,000 combined gross income, then has complex formula for higher incomes. (See http://www.in.gov/judiciary/rules/child_support/child_support.pdf)
- E. Michigan CS standard is based on Eco Data up to \$90,000 combined net income plus 15% of addition NET income. (See <http://courts.michigan.gov/scao/resources/publications/manuals/focb/formula01.pdf>)

Comments:

The current and proposed DWD 40 formula, when applied in above average income families, is not based on any economic data related to these families.

Indiana and Michigan formulas as well as those of the vast majority of other states are based on economic data used by vast majority of states up to \$200,000 combined gross income.

AB250 will make Wisconsin child support orders more consistent with established economic data on the cost of raising children, and awards in other states.

③

Improving Safety, Permanence and Well-being for Wisconsin Children at Risk of Abuse and Neglect

❖ Values:

- We care about the safety of our children, permanence and stability in their lives and their essential well being. We are committed to a statewide process of dialog, exchange and change on behalf of children.
- We must ask ourselves critical questions about why we are doing what we are doing in the way in which we are doing it, and this discussion should be ongoing.
- One important part of that process is the upcoming federal Children and Family Service Review (CFSR) of Wisconsin's child welfare system. It creates a baseline for future measurements of the safety, stability and permanence of families in Wisconsin. It is more than we have known before.

❖ Expectations:

- Improvements in Wisconsin's child welfare services have been important but there is much work to be done.
- In the immediate future, Wisconsin will join at least 32 states that have received their federally mandated CFSR. We know that, *like every state that has gone before us*, we too will be found to be lacking in most of the 7 outcomes and some of the 7 systemic factors on which we will be evaluated. We will submit a Program Enhancement Plan in December of 2003 that contains performance targets toward which we must make substantial progress within two years. To fail is to face financial penalties that range from one to three percent of our federal funding in child welfare for each area in which sufficient improvement is lacking.
- Our children need our unified commitment to success—in this and all efforts to improve child safety, permanence and well being.

❖ Process:

- Wisconsin's county-operated, state-supervised system makes counties and the state essential partners in improving child welfare. Strengthening relationships between key stakeholders will further successful implementation. Success depends upon inclusion of key stakeholders (such as counties, the courts, law enforcement, health care providers, faith leadership, treatment providers, community foundations, educators and others). Discussion and respectful debate, creative thinking, flexibility, and consensus building will result in decisions that most people can and want to support.
- In 2001, 71 counties conducted self-assessments to prepare and an Executive Steering Committee was formed
- In 2002, several counties participated in "mock reviews" in preparation for the federal review and the statewide self-assessment was compiled. Negotiated data sources and methods for use.
- In 2003:
 - Results of statewide self-assessment submitted to the Feds (June)
 - Meet with counties, legislators and media to brief on challenges in child welfare (July/Aug)
 - Host the federal review of cases in Milwaukee, Outagamie and Kenosha counties (August)
 - Feds issue their findings of Wisconsin's performance (September)
 - Wisconsin develops the Program Enhancement Plan for the federal review and enlists a multidisciplinary, statewide dialog on opportunities for improving responses to children and families and enhancing safety and well being (August – December)
- In 2004: Implement the federal Program Enhancement Plan and continue development of Wisconsin strategies for improvement

❖ Resources:

Effective approaches to program improvement may include any combination of:

- Clarification of philosophy and values
- Revised approaches to child welfare practices (best county practices and lessons from other states)
- Improvements in data collection and reporting
- Reprioritization of effort
- More effective county/state communication – and between all who work to keep children safe
- Financial investment (recognizing the current budget environment and as resources allow)
- Technical assistance and professional education
- Changes in statutes and administrative rules
- More effective public education about the status of children and their needs

Federal Children and Family Services Review Process in Wisconsin

The federal government is conducting comprehensive reviews of state child welfare programs for conformance with federal requirements under Titles IV-B (general child welfare program operation) and IV-E. (out-of-home care placement). Reviews are being conducted of all 50 states over a three-year period.

The review process examines 14 aspects of the state program, including 7 outcome measures relating to safety, permanency and well being and 7 systemic factors relating to the overall capacity of the state program to serve children and families. The review process includes a state assessment, analysis of state outcome data, on-site review of cases, and interview with stakeholders.

The review begins with the state completing a comprehensive assessment to analyze state program outcomes and the service capacity of the state program. The assessment process includes analyzing state performance for the outcome measures based on a state data profile and obtaining input from stakeholders on the systemic factors to assess state strengths and weaknesses in each of the 14 areas. The data profile is based on three years of state outcome data as reported to the federal NCANDS and AFCARS systems. Based on the state assessment, the review process can be tailored to explore specific issues during the on-site portion of the review.

The on-site portion of the review includes an on-site examination of individual cases and discussions with stakeholders at three locations in the state. One location must be Milwaukee County as the largest urban area in the state. The counties of Kenosha and Outagamie have agreed to be the other two locations, pending federal approval. The three counties must be suitable locations to examine the issues identified in the state assessment and have a child welfare caseload large enough to draw a sample of individual cases for the on-site review.

The on-site portion of the review will be conducted by team of federal and state reviewers at each of the three locations. The federal members of the review team will include peer reviewers from other states and the state can select persons from various disciplines to participate on the review team as state members. A random sample of approximately 50 cases will be reviewed in the three counties, including both in-home safety services and out-of-home care placement cases. The individual case reviews will involve analysis of case files and interviews with the family, social worker, service providers, out-of-home care provider, and legal advocates. Interviews will also be held with stakeholders at the state level and each of the three locations.

State conformance is determined for each of the 14 items based on the state assessment, state outcome data, case reviews and stakeholder interviews. For any items found to be in non-conformance, the state must develop a program improvement plan to address those items. The improvement plan must establish measurable goals for improving program outcomes and state is allowed a period of up to 2 years to show improvement.

The initial review in Wisconsin will occur in 2003, with the state assessment beginning in Fall 2002 and completed by spring 2003 and the on-site review taking place in August 2003 at the three locations. The federal report on the review will be completed by September 2003. The experience of states is that program improvement is typically needed for several of the 14 areas, so Wisconsin will need to develop a program improvement plan by December 2003. A follow-up federal review, concentrating on the items needing improvement, will take place after the two-year program improvement period is completed. Subsequent federal reviews will be on a 5-year cycle.

Fiscal penalties can be imposed against IV-B and IV-E funds received by the state for areas of non-conformance if program improvement goals are not met. Penalties start at 1% per item, which would be approximately \$150,000 per item for Wisconsin, and continue until state comes into conformance. Penalties are withheld during program improvement plan implementation if state is making progress on the improvement goals and goals can be renegotiated. The penalty increases to 2% and then 3% per item if non-conformance continues following subsequent federal reviews.

The outcome measures and systemic factors for the review include:

Outcome Measures:

- Safety Outcome 1** - Protection of children from abuse and neglect (*)
- Safety Outcome 2** - Maintain children safely in their homes where appropriate
- Permanency Outcome 1** - Permanence and stability of living situations (*)
- Permanency Outcome 2** - Preserving continuity of family relationships
- Well-Being Outcome 1** - Enhancing capacity of families to provide for children
- Well-Being Outcome 2** - Educational services to children
- Well-Being Outcome 3** - Physical and mental health services

(*) Federal government has established national standards for these measures.

Systemic Factors:

1. **Information System Capacity** (WiSACWIS system and use of data)
2. **Case Review System** (written case plans and regular permanency hearings)
3. **Quality Assurance** (state program standards and quality assurance activities)
4. **Staff and Provider Training** (training for local agency staff and foster parents)
5. **Service Array** (needs assessment and services to children and families)
6. **Responsiveness to Community** (sharing information and involving stakeholders)
7. **Foster and Adoptive Parent Licensing, Recruitment and Retention** (standards for licensing, criminal background checks and recruitment)

*Idea w/
charts
lots of
resistance
to this.*

July 16, 2003

Senator Carol Roessler, Chair
Committee on Health, Children, Families,
Aging and Long-Term Care
P.O. Box 7882
Madison, WI 53707-7882

Representative Steve Kestell, Chair
Committee on Children and Families
P.O. Box 8952
Madison, WI 53708-8952

RE: Clearinghouse Rule 03-022, relating to revising Wisconsin's Child Support Guidelines.


Dear Senator Roessler and Representative Kestell:

The Family Law Section of the State Bar **supports** Clearinghouse Rule 03-022, relating to revising Wisconsin's Child Support Guidelines, and urges your favorable consideration of Clearinghouse Rule 03-022.

The changes to the child support guidelines reflected in CR 03-022 are largely the product of a consensus among the members of the Child Support Guidelines Advisory Committee. (Provisions that differ from the committee's recommendations reflect the DWD's response to public comments voiced in public hearings held throughout the state on the proposed rule in March of 2003.)

The Advisory Committee was established by the Department of Workforce Development in the spring of 2001 and met 11 times. The Family Law Section participated in the advisory committee process and supports its recommendations.

The Family Law Section supports the proposed rule before you for the following reasons:

- 
- **CR 03-022 will make child support orders in Wisconsin fairer by addressing problems with the current guidelines with respect to low-income payers; high-income payers and shared-time parents.**
 - **CR 03-022 is the product of a broad public input and consensus.**
 - **The rulemaking process is an appropriate means for establishing and revising child support guidelines because it allows greater public input than is likely to occur through the legislative process.**

Here is a detailed rationale for the Family Law Section's support of CR 03-022:

Addressing Problems with Current Guidelines: CR 03-022 adds new special circumstance provisions for high- and low-income payers, and revises the special circumstance provision for shared-placement parents.

1. Provisions for Low-Income Payers

Many low-income payers have incomes that are insufficient to allow them to pay the amounts of child support they are ordered to pay. The Family Law Section contends that it is 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.

The low-income provision in CR 03-022 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. It is important to note that this provision is totally discretionary; it is not mandatory upon judges and court commissioners.

- Studies show that lowering the child support obligation is likely to result in higher compliance.
- Lower support levels for certain low-income payers may encourage or enable the payer to keep current on support and thus accrue fewer arrears.
- Courts will still be free to impute income if they find that the payer is shirking by lowering his or her income to avoid paying child support.
- Research shows that when parents don't pay support, because they are unable to do so, they have less contact with their children. Not only is their financial investment in their children reduced, but their emotional investment is also reduced.

2. Provisions for High-Income Payers

The Family Law Section believes it is important to revise the current formula to incorporate changes for high-income payers and supports the changes proposed in the rule.

- Economic data indicate that, as income rises above certain high-income levels, families spend a lower percentage of their gross income on their children. Under the current standards, there is a significant amount of litigation around the issues of shared-time placement and child support for high-income families.

Higher-income parents tend to have more resources available to engage in protracted legal battles than lower income parents, possibly exacerbating this situation. A child support formula

- Good*
- Costs for things such as day care, tuition, a child's special needs and other activities that involve substantial cost vary widely from family to family. The revisions to the shared-time formula include provisions that expressly require the court to order parents to assume these "variable costs" in addition to the child support amount under the shared time formula. The proposed revisions to the definition of "variable costs" should also reduce litigation over payment for items such as clothing.
 - All of the special circumstance provisions in s. DWD 40.04 of the proposed rule are set up as permissive guidelines so that the court has discretion to craft an order that best suits the family before the court in a particular case. The Family Law Section believes each case should be looked at on its merits and the court should be guided by the best interest of the child in fashioning child support orders.

[Handwritten mark]

Rulemaking is an appropriate way to establish and revise Child Support Guidelines

Child support guidelines have been set by administrative rules since the current child support formula was established in 1987. It has proven to be an effective and fair way to establish child support guidelines.

Once promulgated, rules have the force and effect of law, equal to statutory law. The rulemaking process is flexible, allows for a great deal of public input, and provides for legislative review and alteration. Should a situation arise that requires urgent modification to the guidelines, administrative rules may be altered quickly through the promulgation of an emergency rule.

Rulemaking allows a consensus approach for establish and revise Child Support

CR 03-022 is the Product of Public Input and Consensus: From the formation of the Advisory Committee to the submission of the rule to the legislature, the development of CR 03-022 has been a consensus process.

- The Advisory Committee, which included members of the courts, state bar, legislature, community-based organizations, county child support agencies, citizens, and the department (DWD), was drawn from a wide range of groups with various and competing interests in child support issues, including the Wisconsin Fathers for Children and Families.
- The Advisory Committee met eleven times over the course of nearly a year to develop the proposal that became CR 03-022. The committee was able to hear from nationally recognized experts including researchers from the UW-Madison's Institute for Research on Poverty before fashioning its recommendations. The recommendations were based on the informed judgment of committee members after thorough consideration of various options.

that recognizes the reduced proportion of income spent on children by families above a given high-income amount may reduce this litigation, which would benefit children.

3. Shared-Placement (Shared-Time) Changes

It is important to revise the existing shared time formula. The Family Law Section supports the changes proposed in the rule.

- The current shared-time formula does not reduce the paying parent's share of support in proportion to increases in placement. The changes in CR 03-022 will distribute the available income more equitably across both parents' households.
- When both parents are granted significant periods of placement the child is essentially raised in two households. The changes in CR 03-022 implement a formula that takes into account the fact that there will be duplicate costs and by taking into account both parents' income it will provide a more realistic and equitable basis for setting child support.
- The changes to the formula in CR 03-022 assume that parents will provide for their children in proportion to the level of placement they exercise. This may encourage more shared-time placement arrangements between parents, and may increase both parental involvement with children and compliance with the orders.
- Under the current guidelines, a parent who makes it over either the 30% or 40% threshold receives a reduction in child support. All too often, fights over the children in divorce cases result from attempts to reduce the child support obligation of the parent with less time at both threshold levels. The changes in CR 03-022 eliminate the two thresholds for comparing income in a shared placement situation which currently occur at 30% and 40% overnight time.
 - Eliminating the 40% threshold should reduce unnecessary litigation created by "day counting" to the 40% time share level at which payers see reductions in child support under the current guidelines.
 - The proposed rule lowers the threshold for shared time placement to a 25% level, and it would compare the parties' incomes for child support, starting at this 25% threshold. All payer parents with over 25% time would thus receive a reduction in child support based upon time with their children and the incomes of both parents will be considered. Because many cases involve placement time over 25% for the payer parent, more parents would get this reduction. We believe that a rule that compares income of the parents at a lower threshold level will also be perceived as more fair by payers, which should increase compliance. This should also reduce the amount of fighting over children in divorce cases, which can only be good for children, not to mention the court system.

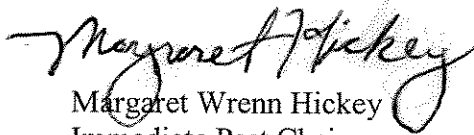
Wrenn
Past AS
Area of Wisconsin

who

- The original rule reflected the consensus that developed in the advisory committee. Following three public hearings held in Milwaukee, Madison and Stevens Point to allow additional public input on the bill, the Department made a number of changes in the rule in response to testimony it received from the public. Throughout the process, the Department has been responsive to public input, including input from the Family Law Section of the State Bar.

We look forward to testifying on the rule at the public hearings before the respective committees you chair. If you have any questions or if you would like additional information, please feel free to contact me or Dan Rossmiller, State Bar Public Affairs Director, by phone at (608) 250-6140 or by email at drossmiller@wisbar.org.

Sincerely,



Margaret Wrenn Hickey
Immediate Past Chair
Family Law Section Board
State Bar of Wisconsin

Cc: Members, Senate Committee on Health, Children, Families, Aging and Long-Term Care
Members, Assembly Committee on Committee on Children and Families