

03-022d

50

For Monthly Income Up To	One Child			Two Children			Three Children			Four Children			Five or More Children		
	Current %	Proposed %	Child Support Amount	Current %	Apply this Percentage	Child Support Amount	Current %	Apply this Percentage	Child Support Amount	Current %	Apply this Percentage	Child Support Amount	Current %	Apply this Percentage	Child Support Amount
840	17	11.801%	\$99	25	17.334%	\$146	29	20.102%	169	31	21.486%	\$180	34	23.596%	\$198
845	17	11.912%	\$101	25	17.497%	\$148	29	20.291%	171	31	21.688%	\$183	34	23.818%	\$201
850	17	12.023%	\$102	25	17.660%	\$150	29	20.480%	174	31	21.890%	\$186	34	24.040%	\$204
855	17	12.134%	\$104	25	17.823%	\$152	29	20.669%	177	31	22.092%	\$189	34	24.262%	\$207
860	17	12.245%	\$105	25	17.986%	\$155	29	20.858%	179	31	22.294%	\$192	34	24.484%	\$211
865	17	12.356%	\$107	25	18.149%	\$157	29	21.047%	182	31	22.496%	\$195	34	24.706%	\$214
870	17	12.467%	\$108	25	18.312%	\$159	29	21.236%	185	31	22.698%	\$197	34	24.928%	\$217
875	17	12.578%	\$110	25	18.475%	\$162	29	21.425%	187	31	22.900%	\$200	34	25.150%	\$220
880	17	12.689%	\$112	25	18.638%	\$164	29	21.614%	190	31	23.102%	\$203	34	25.372%	\$223
885	17	12.800%	\$113	25	18.801%	\$166	29	21.803%	193	31	23.304%	\$206	34	25.594%	\$227
890	17	12.911%	\$115	25	18.964%	\$169	29	21.992%	196	31	23.506%	\$209	34	25.816%	\$230
895	17	13.022%	\$117	25	19.127%	\$171	29	22.181%	199	31	23.708%	\$212	34	26.038%	\$233
900	17	13.133%	\$118	25	19.290%	\$174	29	22.370%	201	31	23.910%	\$215	34	26.260%	\$236
905	17	13.244%	\$120	25	19.453%	\$176	29	22.559%	204	31	24.112%	\$218	34	26.482%	\$240
910	17	13.355%	\$122	25	19.616%	\$179	29	22.748%	207	31	24.314%	\$221	34	26.704%	\$243
915	17	13.466%	\$123	25	19.779%	\$181	29	22.937%	210	31	24.516%	\$224	34	26.926%	\$246
920	17	13.577%	\$125	25	19.942%	\$183	29	23.126%	213	31	24.718%	\$227	34	27.148%	\$250
925	17	13.688%	\$127	25	20.105%	\$186	29	23.315%	216	31	24.920%	\$231	34	27.370%	\$253
930	17	13.799%	\$128	25	20.268%	\$188	29	23.504%	219	31	25.122%	\$234	34	27.592%	\$257
935	17	13.910%	\$130	25	20.431%	\$191	29	23.693%	222	31	25.324%	\$237	34	27.814%	\$260
940	17	14.021%	\$132	25	20.594%	\$194	29	23.882%	224	31	25.526%	\$240	34	28.036%	\$264
945	17	14.132%	\$134	25	20.757%	\$196	29	24.071%	227	31	25.728%	\$243	34	28.258%	\$267
950	17	14.243%	\$135	25	20.920%	\$199	29	24.260%	230	31	25.930%	\$246	34	28.480%	\$271
955	17	14.354%	\$137	25	21.083%	\$201	29	24.449%	233	31	26.132%	\$250	34	28.702%	\$274
960	17	14.465%	\$139	25	21.246%	\$204	29	24.638%	237	31	26.334%	\$253	34	28.924%	\$278
965	17	14.576%	\$141	25	21.409%	\$207	29	24.827%	240	31	26.536%	\$256	34	29.146%	\$281
970	17	14.687%	\$142	25	21.572%	\$209	29	25.016%	243	31	26.738%	\$259	34	29.368%	\$285
975	17	14.798%	\$144	25	21.735%	\$212	29	25.205%	246	31	26.940%	\$263	34	29.590%	\$289
980	17	14.909%	\$146	25	21.898%	\$215	29	25.394%	249	31	27.142%	\$266	34	29.812%	\$292
985	17	15.020%	\$148	25	22.061%	\$217	29	25.583%	252	31	27.344%	\$269	34	30.034%	\$296
990	17	15.131%	\$150	25	22.224%	\$220	29	25.772%	255	31	27.546%	\$273	34	30.256%	\$300
995	17	15.242%	\$152	25	22.387%	\$223	29	25.961%	258	31	27.748%	\$276	34	30.478%	\$303
1000	17	15.353%	\$154	25	22.550%	\$226	29	26.150%	262	31	27.950%	\$280	34	30.700%	\$307
1005	17	15.464%	\$155	25	22.713%	\$228	29	26.339%	265	31	28.152%	\$283	34	30.922%	\$311

For Monthly Income Up To	One Child			Two Children			Three Children			Four Children			Five or More Children		
	Current %	Proposed %	Child Support Amount	Current %	Apply this Percentage	Child Support Amount	Current %	Apply this Percentage	Child Support Amount	Current %	Apply this Percentage	Child Support Amount	Current %	Apply this Percentage	Child Support Amount
1010	17	15.575%	\$157	25	22.876%	\$231	29	26.528%	268	31	28.354%	\$286	34	31.144%	\$315
1015	17	15.686%	\$159	25	23.039%	\$234	29	26.717%	271	31	28.556%	\$290	34	31.366%	\$318
1020	17	15.797%	\$161	25	23.202%	\$237	29	26.906%	274	31	28.758%	\$293	34	31.588%	\$322
1025	17	15.908%	\$163	25	23.365%	\$239	29	27.095%	278	31	28.960%	\$297	34	31.810%	\$326
1030	17	16.019%	\$165	25	23.528%	\$242	29	27.284%	281	31	29.162%	\$300	34	32.032%	\$330
1035	17	16.130%	\$167	25	23.691%	\$245	29	27.473%	284	31	29.364%	\$304	34	32.254%	\$334
1040	17	16.241%	\$169	25	23.854%	\$248	29	27.662%	288	31	29.566%	\$307	34	32.476%	\$338
1045	17	16.352%	\$171	25	24.017%	\$251	29	27.851%	291	31	29.768%	\$311	34	32.698%	\$342
1050	17	16.463%	\$173	25	24.180%	\$254	29	28.040%	294	31	29.970%	\$315	34	32.920%	\$346
1055	17	16.574%	\$175	25	24.343%	\$257	29	28.229%	298	31	30.172%	\$318	34	33.142%	\$350
1060	17	16.685%	\$177	25	24.506%	\$260	29	28.418%	301	31	30.374%	\$322	34	33.364%	\$354
1065	17	16.796%	\$179	25	24.669%	\$263	29	28.607%	305	31	30.576%	\$326	34	33.586%	\$358
1070	17	16.907%	\$181	25	24.832%	\$266	29	28.796%	308	31	30.778%	\$329	34	33.808%	\$362
1075	17	17.000%	\$183	25	25.000%	\$269	29	29.000%	312	31	31.000%	\$333	34	34.000%	\$366

DWD Child Support Guidelines Advisory Committee

HIGH INCOME OBLIGORS

Recommendation: Modify the Child Support Guidelines for high-income payers, as follows:

- Apply the current standard percentages in DWD 40 to a payer's income up to the \$150,000 annual gross income level.
 - ✓ 17% for one child
 - ✓ 25% for two children
 - ✓ 29% for three children
 - ✓ 31% for four children
 - ✓ 34% for 5 or more children
- Apply the following reduced percentages that represent 80% of the current standard to the amount of annual gross income between \$150,000 and \$200,000.
 - ✓ 1 child 14% (rather than 17%)
 - ✓ 2 children 20% (rather than 25%)
 - ✓ 3 children 23% (rather than 29%)
 - ✓ 4 children 25% (rather than 31%)
 - ✓ 5 or more children 27% (rather than 34%)
- Apply the following percentages that represent 60% of the current standard to the amount of annual gross income that exceeds \$200,000.
 - ✓ 1 child 10%
 - ✓ 2 children 15%
 - ✓ 3 children 17%
 - ✓ 4 children 19%
 - ✓ 5 or more children 20%
- Provide that the court has the power to create a trust for children if the amount of support exceeds the amount necessary to maintain the child's standard of living.
- Clarify that use of the recommended high-income standards is discretionary; courts retain authority to deviate from the support payment amount upon consideration of factors in the statute.

Justification

- D. Economic data shows that, as income rises above certain high-income levels, families spend a lower percentage of their gross income on their children, although this does not take into consideration other expenditures, for example investments and savings for children.
- E. Under the current standards, there is a significant amount of litigation surrounding shared-time and child support. A payment policy that recognizes the reduced proportion of income spent on children above a given high-income amount may reduce this litigation.
- F. The Committee agreed that the percentage standard should apply in most cases, and therefore chose a high-income starting point of \$150,000 so that this high-income exception will apply to only a small number of cases.

Discussion Points/Considerations

- G. By reducing the support amounts in high-income situations, there may be an increased perception of fairness resulting in more positive relations with children.
- H. Some may perceive it to be unfair that persons with higher incomes will pay a lower percentage of their gross income than others are required to pay.
- I. If high-income payers are permitted to retain a higher amount of their income, they may be more able to set aside money for their children, e.g. pre-tax educational accounts.
- J. Many high-income cases also have shared-time placement for the children, and thus may have a further reduction of support based on the Committee's Shared-time Recommendation.
- K. Because high-income situations tend to have a high degree of variation (income expressed as stock options or bonuses, tax consequences, business expense write-offs), the Committee believes that the courts must have the ability to deviate from the high-income formula to account for these individual case considerations.
- L. Some may perceive that the proposal does not sufficiently reduce the support that high-income individuals should pay.

DWD Child Support Guidelines Advisory Committee

SHARED-TIME FORMULA CHANGES

Recommendation: Modify the Child Support Guidelines for shared-time parents, as follows:

- The shared-time formula shall be applied when both parents have court-ordered periods of placement of 25% or more, and each parent is ordered to assume the child(ren)'s costs, in proportion to the time that the parent has placement of the child(ren). Variable costs shall be ordered in addition to the basic support amount under the formula.
- The periods of placement for each parent shall be determined by calculating the number of overnights or equivalent care exercised by the parents, and dividing that number by 365 days in a year. Equivalent care means a period of time during which the parent cares for the child that is not overnight, but which is determined by the court to require the parent to assume the costs that are substantially equivalent to what the parent would spend to care for the child overnight. The combined periods of placement for both parents should equal 100%.
- In shared-time cases, the formula shall apply a cross-credit calculation that sets support based on the costs of shared parenting when both parents exercise periods placement of 25% or more, as follows:
 - Calculate the basic child support amount for each parent using the Percentage of Income Standards.
 - Multiply the basic support amounts by 150% to account for child-rearing expenditures duplicated by the parents (e.g. the child's bedroom).
 - Allocate shared placement amounts by multiplying each parent's obligation by the proportion of the child's time spent with the other parent.
 - Offset resulting amounts against each other. The parent with a greater amount of support pays the difference, not to exceed the amount that would be paid under the straight percentage standard.

The result represents the base support amount under the shared-time formula.

- In addition to establishing the base support amount under the formula, the court shall appropriately assess the child's variable costs. Variable costs means the reasonable costs incurred by or on behalf of the children, including but not limited to the cost of day care, a child's special needs, tuition and extracurricular activities.
- In deciding whether to impute income for an unemployed parent or a parent employed less than full time, the court shall consider benefits to the child in 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.
- Clarify that use of the recommended shared-time calculation is discretionary. Courts should retain the authority to deviate from the support amount upon consideration of the factors in the statute.

Justification

- A. When both parents exercise significant periods of placement, a formula that takes into account the duplicated costs of child rearing in both households, and both parents' income, will provide a more realistic and equitable basis to set child support.
- B. Research shows that, for placement orders issued during the period from 1996 to 1998, a greater number of parents shared placement of their children, compared to the period from 1990 to 1992. Furthermore, research over the same period shows that these placement arrangements tend to hold up over time. ²
- C. Effective in 2000, changes were made to Wisconsin family law statutes that should further increase the likelihood of shared-placement situations.
- D. Considering these trends, the Committee believes that child support formulas in shared-time cases should be modified to more equitably distribute the available income across both parents' households. The proposed formula may increase parental involvement by encouraging more shared-time arrangements between parents, and may increase compliance with existing shared-placement orders.
- E. Costs for day care, tuition and recreation vary widely, from family to family. The recommended shared-time formula expressly requires the courts to order parents to assume the variable costs in addition to the child support amount under the shared-time formula.

² Cancian, Cassetty, Cook and Meyer, Institute for Research on Poverty, *Placement Outcomes for Children of Divorce in Wisconsin*, Revised January 2002

- F. Nineteen other states currently use cross-credit child support adjustment for shared-time situations. The cross-credit shared-time calculation methodology can be considered the child support *industry standard*.

Discussion Points/Considerations

- G. The current shared-time formula does not proportionately reduce the paying parent's share of support at the same rate as the increase in placement. The recommended changes to the shared-time formula assume that parents will provide for their children, proportionate with the level of placement exercised.
- H. The Committee is concerned about the potential for any shared-time formula to encourage litigation between the parties. The elimination of the 30% and 40% Tables under the current DWD 40 will eliminate the "cliff effects" inherent in those tables and should, therefore, reduce litigation.
- I. Increased public costs: A shared-time formula that substantially reduces the amount of child support paid by parents may increase the likelihood that the children will need public support while the children are in the home of the lower-income parent.
- J. A shared-time formula that substantially reduces the amount of child support paid by parents may reduce the resources available for children where the primary household is headed by a low-income parent.
- K. If very large numbers of parents request modifications of their orders to utilize the new shared-time formula at the same time, it may create an unmanageable work burden on the local child support agencies and the courts.
- L. The Committee recommends a thorough review of the effects of this shared-time formula on low-income payers. Such a review should occur before the Shared-time Recommendation is applied in low-income cases.

DWD Child Support Guidelines Advisory Committee

RECOMMENDATIONS FOR STATUTORY CHANGES

Recommendation regarding Randall v. Randall Decision

The Court, in Randall, held that the presumptive application of the percentage standard applied also to the shared time formula for application of the percentage standard in Chapter DWD 40. The decision infers that the repeal of language in ss. 46.25(9b) and 767.25(1n) was intended to extend the presumptive application of the percentage of income standard to cases involving shared time and serial family status. Although use of the percentage standard itself is presumptive under Wisconsin law, its application in shared time, serial family and split custody cases was intended to be permissive. The language of DWD 40 uses the terminology 'may'. However, that was not deemed sufficient by the court in Randall. The Committee would like to clarify in statute that the application of the standards under these circumstances is discretionary.

Committee Proposal

S. 49.22(9) The department shall promulgate rules that establish a percentage standard for courts to use in determining a child support obligation based upon a percentage of the gross income and assets of either or both parents. The rules shall provide for consideration of the income of each parent and the amount of physical placement with each parent in determining a child support obligation in cases in which a child has substantial periods of physical placement with each parent, and may provide for adjustments to the percentage standard that a court, in its discretion, may use for determining child support in such cases and in other cases with special circumstances, such as when a parent has a preexisting obligation to pay court-ordered support for the benefit of the child. (Underline is Committee recommendation.)

The Committee requests a legislative note be added that the intent of this change is to overrule the Randall decision.

Disclosure of serial family situations

The Committee recommends a statutory provision requiring that when one party requests establishment or modification of a support order in a serial family situation, the court should consider the existence and amounts of other orders.

Committee Recommendation

The Committee recommends adding the following language to the Statutes:

S. 767.085(1)(dm) Whether either of the parties is obligated to pay child or family support under any judgments or orders issued by a court and, if so, the name of the court that issued each judgment or order and the amount of child or family support owed under each judgment or order, if known.

Recommendation regarding Luciani v. Montemurro-Luciani Decision

In Luciani v. Montemurro-Luciani the court applied the percentage standard in a case in which the custodial parent's income was significantly greater than the noncustodial parent's income.

Committee Recommendation

The Committee recommends the following revision to s. 767.25(1m)(b) regarding consideration of the financial resources of both parents.

S. 767.25(1m)(b) The financial resources and standard of living of both parents as determined by the court including any significant disparity between the parties' gross income or earning capacities. (underline is Committee recommended revision.)

The Committee requests a legislative note be added that the intent of this change is to overrule the Luciani decision.

Child Support Guidelines Review Advisory Committee

SUMMARY OF MEETINGS

April 26, 2001

Institute for Research on Poverty (IRP) staff presentation of *Estimates of Family Expenditures on Children* followed by Committee discussion. The Committee asked the Department to request that the sponsors of SB 151 delay their legislation until the Committee concluded its deliberations.

June 18, 2001

Connie Chesnik reviewed the history and development of child support guidelines in Wisconsin and Susan Pfeiffer gave the Committee an overview of the current child support guidelines.

Linda Preysz facilitated a Committee discussion about the strengths and weaknesses of the current guidelines system in Wisconsin.

Catherine Kendrigan, Legal Action of Wisconsin (LAW) representative on the Committee made two proposals:

1. Eliminate the current ability to impute income at 40 hours per week. Replace this with language that would allow the court to determine the support amount based upon the payer's education, training and work experience and the availability of work in the payer's community.
2. Recommended statutory section to limit arrears in certain situations.

The Committee did not take a position on the proposals, but invited LAW to bring revisions to a future meeting.

August 27, 2001

Susan Pfeiffer led a discussion about policy objectives in setting a child support standard.

IRP staff gave a summary presentation of an IRP report, *Experience with Income-Shares and Percentage-of-Income Child Support Guidelines: A Report on Five States*.

Follow-up discussion of the LAW proposal from the June 18, 2001, meeting concerning setting support amounts.

LAW also asked the Committee to consider placing limits on non-custodial parent arrears when the person earns below federal poverty level income. The Committee decided the proposal was not administratively feasible.

The Committee discussed issues concerning the use of the percentage standard in shared-time cases (Randall case), the use of the standard when there is a significant disparity between the parties income or earning capacities (Luciani decision), and disclosure of information about other families when orders are being set in serial family cases.

September 24, 2001

The Committee confirmed its consensus that children should expect the following from the child support standards:

- At least a minimum level of support from both parents
- The same proportion of parental income that they would have received if the family was intact
- Children should benefit as parental income increases over time
- Children in similar situations should end up with similar orders
- A child should not be subjected to inadvisable placement based on economic considerations of the parents
- The child support standard should be fair so that it does not drive economic incentives for placement (a child expects to be loved)
- The standard should not increase conflict between parents
- The standard should have a predictable outcome

The Committee confirmed its consensus that parents should expect the following from the child support standards:

- Similar treatment for parents similarly situated
- Predictable outcome, simple; uniform, understandable. However, the standard should recognize and accommodate the unique circumstances of individual parents/situations
- Orders should be based on actual knowledge of the child's actual living situation
- The standard should not impute income in cases where the payer does not have the ability to earn that income
- The standard should consider low-income, never-married parents
- The standard should leave the parents with enough to meet basic needs
- The standard should allocate significant costs for the child, including day care and health care
- Arrearage limitations
- All children should be supported regardless of birth order

Dr. Robert G. Williams of Policy Studies, Inc. presented materials about establishing guidelines and answered questions from the Committee.

Bob Andersen, LAW, requested that the Committee consider a revision to DWD 40 to require the court to set support at an individual's earning capacity, but if the payer fails to appear in court, impute the income at minimum wage by default. Although the Committee supported the proposal, it did not support changes in DWD 40 until after the Committee completes its deliberations.

October 31, 2001

Connie Chesnik and Elaine Richmond summarized the Income Shares Model. Margaret Hickey summarized the State Bar's proposal. Jan Raz summarized SB 151. Each Committee member was asked to articulate his or her position at this point in the Committee's deliberations.

The Committee decided to retain the percentage standard methodology and address problems associated with low-income situations, high-income situations, and shared-time placement situations.

The Committee confirmed the decision that there should be a statutory change to clarify that the use of the percentage standard in shared-time cases is not mandatory (pertinent to Randall v. Randall decision).

The Committee confirmed a decision to recommend statutory language that if one family in a serial family situation requests the establishment or review of a child support order, the court should consider the existence and amounts of other orders.

The Committee recommended with one dissenting vote to amend s. 767.25(1m) as follows (proposed language underlined), "...the financial resources and standard of living of both parents as determined by the court including any significant disparity between the parties' gross income or earning capacities." Furthermore, there should be a LRB note indicating that this revision is to address the Luciani case, in which the noncustodial parent had significantly lower income than the custodial parent.

December 13, 2001

The Committee decided to accelerate the meeting schedule in order to make recommendations that could be considered in the spring 2002 legislative process. The Committee decided to focus first on recommendations concerning low-income payers. The Committee reviewed charts prepared by DWD staff concerning different payment models for low-income and high-income payers. The Committee discussed low-income payer options.

January 10, 2002

The Committee reached consensus that payers with incomes under 70% of the federal poverty level (FPL) should have a presumptive fixed payment. Payers with gross incomes between 70% and 150% FPL should pay a presumptive minimum support amount based upon a graduated, linear payment progression up to 17% of gross income, according to income. The Committee reached consensus that support for payers with gross incomes above 150% FPL will be calculated using the percentage standard in the Administrative Rule DWD 40.

January 22, 2002

The Committee gave additional consideration to the low-income payer policy considered on January 10, 2002, and confirmed its decision. The decision was made with one dissenting vote. The Committee continued discussion of shared-time and high-income payer policies.

January 31, 2002

The Committee reached the following consensus on shared-time cases: the recommended threshold for overnights or equivalent care will be 25%, with two dissenting votes. After 25% the shared-time formula will apply, with consideration of both parents' incomes. The calculation of support in shared-time cases will involve a 150% calculation of the support owed by each parent, prior to the offset calculation, to recognize the duplication of expenses when a child resides in two households.

The Committee agreed on the following definition of "equivalent care" for shared-time payers: "Equivalent care" means a period of time during which the payer cares for the child that is not overnight but which is determined by the judge to require the payer to assume child care costs that are substantially equivalent to what the payer would spend to care for the child overnight."

The Committee agreed that health care should not be considered a variable cost in determining whether a parent is a shared-time payer, but expressed interest in having the court allocate other variable costs including child care between parents in shared-time situations.

The Committee reached the following consensus on high-income payers with two dissenting votes: The current percentage standard should be used until the payer's annual gross income reaches \$150,000. Income between \$150,000 and \$200,000 should be subject to a reduced percentage, representing approximately 80% of the percentage standard. Income that exceeds \$200,000 annually should be subject to a further reduced percentage, representing approximately 60% of the current standard.

February 14, 2002

The Committee reviewed the draft report and approved edits. The Committee clarified variable cost language for the shared-time recommendation, but made no substantive changes to the other policy recommendations.

One member supported the Committee's recommendation for shared-time placement, but requested that the minutes reflect that she does not support application of the formula to low-income families because the affects have not been inadequately studied.

The Committee considered whether to recommend to the Department that the proposals for low-income, high-income and shared-time placement be included in statute or administrative rule. All members present at the meeting supported retaining the guidelines in administrative rule, and those not present were polled. The poll result is that two members recommended the guidelines be incorporated into statute, rather than administrative rule. One member did not vote due to vacation.

APPENDIX 1 - DISSENTING REPORT

Child Support Guidelines Review Committee

**Department of Workforce Development –State of Wisconsin
(02/11/02)**

RE: Recommendation regarding higher-income family cases:

As members of this review committee, we strongly disagree with the majority recommendation, to continue to use the current percentages in all cases in which the payer's annual gross is less than \$150,000 with minor reductions thereafter. This recommendation is bad public policy, is not rationally based, and does not meet the goals defined by the committee, the Wisconsin legislature, and federal requirements.

We believe that this recommendation is not justified, based on data presented to the committee. (No committee in any other state has endorsed such an arbitrary and irrational policy.) We therefore request Secretary Reinert to reject this recommendation and instead propose a method that achieves the goals defined by the committee, the Wisconsin legislature, and federal requirements. Such a method for dealing with higher income families is included in SB 151/ AB449, which is currently before the legislature and is attached to this report.

The majority recommendation in regard to this issue:

1. Is not only arbitrary and without any economic basis, but is in contempt of established economic data and national child support policy.
2. Fails to meet the committee's own goal to assure children "the same proportion of parental income that they would have received if the family was intact." On the surface the recommendation results in a higher entitlement for children in non-intact higher-income families than children receive in similar intact families.
3. In reality, as noted by Wisconsin courts, this is a hidden maintenance award in all above-average-income family cases; even in the 49% of the cases where the mother earns a similar or higher income than the father. This allows the primary or sole-placement parent (90% of which are mothers) to escape her or his fundamental obligation to support the children and in some cases themselves.

4. Fails to meet the intent of Wisconsin's policy of expecting both mothers and fathers to assume personal financial responsibility for their children, and the family law policy, as defined in Wisconsin Statute 765.001(2), which reads "Each spouse has an equal obligation in accordance with his or her ability to contribute money or services or both which are necessary for the adequate support and maintenance of his or her minor children and of the other spouse. No spouse may be presumed primarily liable for support expenses."
5. Fails to meet the committee's goal that "Parents in similar situations should be treated similarly." The majority recommendation results in requiring the payer in a non-intact family to pay a significantly higher portion of his or her income for the children than what a similar parent would spend in an intact family.
6. Will continue to aggravate gender-based conflicts, since approximately 90% of parents that benefit from the excessive child support awards in these cases are women and those that are negatively impacted are men. It is no surprise that all 11 women on the committee voted for this proposal, and that it was not objected to by the overwhelmingly female staff of the DWD Division of Child Support.
7. Fails to meet the committee's goal that "child support should be fair so that it does not drive economic incentives for placement". Since 69% of the families with shared placement had combined incomes in excess of \$48,000, this recommendation will continue to provide a greater adjustment for placement than is actually incurred by the parents.
8. Does not address the fairness issue in the approximately 30-40% of the cases where the combined gross income exceeds \$50,000 per year. It only provides minor relief in less than 1% of the cases where the payer's annual gross income exceeds \$150,000.
9. May result in loss of federal funding for Wisconsin because this recommendation fails to meet the intent of the Code of federal regulations 45CFR302.56
 - (h) *As part of the review of a State's guidelines required under paragraph (e) of this section, a State must consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines. The analysis of the data must be used in the State's review of the guidelines to ensure that deviations from the guidelines are limited.*

10. Will continue to require the resources of both the legislature, and the administration to deal with this issue in the future.
11. Will require taxpayers to continue to pay the courts costs for these families to resolve the fairness issue on a case-by-case basis.
12. Will continue a punitive state policy that may discourage some higher income parents from growing their businesses and careers in Wisconsin or moving to Wisconsin.

Sincerely:

Jan Raz
Wisconsin Fathers for Children and Families
<http://www.wisconsinfathers.org>
PO Box 1742 Madison, WI 53701
Home:
10120 West Forest Home Ave.
Hales Corners, WI 53130
414 425-4866 fax 425-8405
e-mail jraz@wi.rr.com

James Luscher
Legislation for Kids and Dads
1401 Beld Street
Madison, WI 53715
james@jluscher.com

SUMMARY OF DATA TO SUPPORT THESE CONCLUSIONS

1. At the 8/27/01 meeting, the committee reached consensus on the goals of Wisconsin's child support policy that included that:

- *children should expect the same proportion of parental income that they would have received if the family was intact*
- *child support should be fair so that it does not drive economic incentives for placement*
- *parents in similar situations should be treated similarly*

2. At the 9/24/01 meeting, Dr. Williams, a nationally known expert in the establishment of child support awards, during a four hour presentation to the committee concluded, "***At higher income levels (\$2,500 - \$3,000) per month net income, the percentage amounts per child (In Wisconsin) cannot be justified by current child rearing studies.***"

3. At the 10/31/01 meeting, Jan Raz presented economic data, case data, and approaches used by other states, which demonstrated that the use of the current percentage standard in families where the combined annual gross income of both parents exceed \$50,000, exceed the amounts spent on children in intact families and how this allows the parent that receives the child support order to escape his or her obligation.

4. At the 12/13/01 meeting the DWD staff presented a chart on various economic studies that define the "*Cost for two children as a percent of combined gross income*". In all cases this data showed families with higher incomes spent a smaller percentage of their gross income on their children than families with lower income. The data for high-income cases shown on the DWD chart was based on a combined family annual gross income starting at \$64,804 or \$73,000. Three out of four studies showed that at these levels the percentage of income that parents spend on children in intact families is similar or less than the 25% defined by the current standard.

5. In a 12/26/01 letter, which was distributed to the committee, Jan Raz explained that the DWD chart presented at the 12/13 meeting was deliberately misleading to support the incorrect DWD statement "*The studies do not show high-income families spending significantly less than the Wisconsin percentages on children.*" He again provided a table with more comprehensive summary of studies, which defines what portion of an intact family's income is spent on children in families with different incomes to demonstrate that the DWD statement in the Option paper, was incorrect.

6. At the 1/10/02 meeting the DWD staff, distributed a report titled "Presumptive State Child Support Guidelines: A decade of Experience" authored by Maureen A. Pirog. This report noted that while Wisconsin child support orders in low and average income cases are reasonably close to mean awards in other states, in the highest income case, where a father earned a gross income of \$6,300/month, (\$75,600/yr), in 1999 **the \$1,575 order in Wisconsin was \$408 more than the mean award of \$1,167.** (Comment: This \$408 is not more money going to the children, but maintenance disguised as child support which allows the mother to escape her fundamental responsibility to share an equal portion of her income with the same children. The \$1,167 is representative of what other states find, based on economic data, parents in similar intact families spend on children.)

7. At the 1/10/02 meeting, the DWD staff distributed data on family incomes which included:

- The number of sole placement cases, with a combined annual gross income in excess of \$48,000, reviewed in an IRP study, was 32% when the mother had sole placement and 47% when the father had sole placement
- Of the 1997 shared placement reviewed in an IRP study, 69% had a combined income in excess of \$48,000 and 27% had a combined income greater than \$72,000.
- The Department of Revenue estimates that in the year 2000, 5% of the families with an adjusted annual gross income in excess of \$107,043, 2% over \$154,959, and 1% over \$253,595.

8. At the 1/10/02 meeting, the DWD staff distributed a 2001/2002 IRP report titled "Placement outcomes for Children of Divorce in Wisconsin". This included the following statistics:

- In 1996-8 mothers had sole or greater placement in 71% of the cases, fathers in 10% of the cases. This suggests that women (mothers) represent about 87% of the recipients of child support orders. (Figure 1)
- In 1996-8, of the 1,529 cases reviewed, 746 (49%) the mothers had a similar or greater income than the father and 159(10%) mothers had and income 4 times greater than the father. (Table 1C)
- The number of shared placement cases increased for 11.5% in 1990-2 to 23.1% in 1996-9. (Table 1C)

9. At the 1/10/02 meeting, DWD staff attorney Connie Chesnick, who played a key role in setting up the current child support formula in 1987, who has been educating the Wisconsin legal community on and defending the current formula since 1987, and who played a major role in selecting the members of this policy review committee, urged the committee to disregard the economic data and to continue to ignore the income of the primary placement parent.

10. At the 1/31/02 meeting, all eleven of the women on the committee voted for continuing to use the current percentages in all cases in which the payer's annual gross is less than \$150,000 with minor reductions thereafter. Both men that represent fathers groups voted against this proposal.

11. 2001 IRS tax tables indicate that a significant difference in federal tax liability (28% v 15%), which reduces the disposable income families have for children, begins when the family income exceeds \$4,158/month, and continues to increase as a percentage of the family's income as the family income increases.

DWD Child Support Guidelines Advisory Committee

APPENDIX 2: MINUTES OF COMMITTEE MEETINGS

Minutes

DWD Child Support Guidelines Review Advisory Committee April 26, 2001 Meeting

Committee Attendees: Ron Hunt, Chairperson, DWD; Jan Raz, Wisconsin Fathers for Children and Families; Sally Phelps, Wisconsin Woman's Network; Carol Medaris, Wisconsin Council on Children and Families; Hon. Philip Kirk, Chief Judges Subcommittee on Child Support; Elaine Richmond, Wisconsin Child Support Enforcement Association; Margaret Wrenn Hickey, State Bar; Catherine Kendrigan, Legal Action of WI; James Luscher, Wisconsin Legislation for Kids and Dads; Katie Mnuk, Wisconsin Women's Council; Patti Seger, Wisconsin Coalition against Domestic Violence; Hon. Ann Krummel, Wisconsin Family Court Commissioners Association; Connie Chesnik, DWD Legal Counsel;

Visitors: Jennifer Noyes, DWD; Susan Pfeiffer, DWD, Bureau of Child Support (BCS); Kathy Fullin, BCS; Todd Kummer, BCS; Roni Harper; citizen, Marguerite Roulet; Center for Fathers, Families and Public Policy

Jennifer Noyes, Executive Assistant to the DWD Secretary, welcomed the committee on behalf of Secretary Reinert and thanked the members for their willingness to participate on the committee. She noted that the federal government requires states to review the child support guidelines every four years and in 1998 Wisconsin did not have an extensive review including public input. The committee's charge is to make recommendations to the Department in the Spring of 2002 for modifications of the child support guidelines and that it would be important to take into consideration the best interests of children.

Ron Hunt introduced himself as Deputy Administrator of the Division of Workforce Solutions and Chair of the committee. He clarified the goal of the committee to be advisory to the Secretary of DWD regarding proposed changes to the child support guidelines, not percent-expressed orders. He noted that the recommendations of the committee would likely lead to either or both proposed legislation or amendments to the Child Support Percentage of Income Standard, Administrative Rule, Chapter DWD 40.

Mr. Hunt also noted that part of the committee's charge would be to review reports from the University of Wisconsin, Institute for Research on Poverty (IRP) and that the first one to be discussed today concerned estimates of family expenditures for children. He noted that the next report, to be ready in July 2001, will look at implementation issues in 4-5 states, including a comparison of issues in percent of income states and income shares states. The third report, to be available in December 2001, will examine the use of the standard in first orders in recent cases.

The general schedule for the committee is to meet every two months between now and the Spring of 2002. IRP will present its analysis of guidelines in four to five states at the August meeting. In September the committee will recommend a guideline model. In November the committee will review the application of the methodology selected in special circumstances other than shared-time high income, low income, serial family, and split custody situations. In February 2002, following presentation of reports by IRP, the committee will discuss shared time and child care.

A number of committee members raised concern about SB 151 currently pending in the Wisconsin Legislature. Should this bill pass prior to the committee making its final recommendations, they were concerned it would render the committee's deliberations moot. It was suggested that the Department bring to the attention of SB 151 sponsors the existence of the committee and the benefits to waiting for the committee to conclude its work prior to legislative consideration. Mr. Raz disagreed with the suggestion to delay action on SB 151. To date the Department has not taken a position on SB 151. The Committee Chair will communicate the committee's recommendation to Secretary Reinert.

Maria Cancian, Daniel Meyer, Judith Cassetty, and Ingrid Rothe of the Institute for Research on Poverty gave a presentation about the IRP and related research about child support issues done by IRP in the past, key public policy issues crucial to a discussion of child support guidelines, and a summary of the most recent paper, *Estimates of Family Expenditures for Children: a Review of the Literature*. A copy of the overheads discussed is attached.

The committee discussed a variety of approaches to considering child support guidelines. It was agreed that at the next meeting, the committee would analyze existing DWD 40 to identify issues related to the current methodology for establishing support. There was some discussion on the need to take a historical perspective in looking at this issue. Some members expressed an interest in hearing some of the history behind how the Department initially decided to adopt a percentage of income standard. However, there was also some feeling that too much emphasis on the past may make it difficult to take a fresh look at the issue.

Several committee members recommended that the Department bring in experts from outside Wisconsin to provide input. Additionally, other reports about determining expenditures on children or the calculation of support guidelines would be useful. Suggested resources were Robert Williams, Policy Studies Inc., "Development of Guidelines for Child Support Orders," DHHS, September 1987 and a report commissioned for the Virginia Legislature in 2000.

The committee requested an up-to-date chart of other states' methodologies in determining child support guidelines. Margaret Hickey will send Ron Hunt a copy of the State Bar Family Law Section's chart.

Ron Hunt noted that the Department has several automated tools available for use by the Committee to brainstorm, identify concerns and assist in finding consensus and noted that the committee may want to utilize one of these at a future meeting.

Next Meeting: June 18, 2001, 9:00 – 1:00 with lunch provided. Location TBD

ATTACHMENT

Minutes
DWD Child Support Guidelines Review Advisory Committee

June 18, 2001 Meeting

Present: Ron Hunt, Chair, Division of Workforce Solutions; Catherine Kendrigan, Connie Chesnik, Sally Phelps, Katie Mnuk, Honorable Ann C. Krummel, Jan Raz, Carol Medaris, Honorable Philip Kirk, Margaret Wrenn Hickey, James Luscher, Elaine Richmond, Patty Seger, Jacquelyn Boggess

Guests: Susan Pfeiffer, Director, Bureau of Child Support; Linda Presyz, Facilitator, Office of Organization Management, DWD; Todd, Kummer, Bureau of Child Support; Bob Andersen, Legal Action of Wisconsin; Kathy Fullin, Bureau of Child Support

Ron Hunt asked for review of April 26, 2001 meeting minutes and reviewed the plan for today's meeting. Minutes of April 26, 2001 meeting were accepted as written.

Plan for today's meeting:

1. Review of historical purposes of the child support program in Wisconsin
2. Overview of current child support guidelines in Wisconsin
3. Discussion
 - Identify strengths and weaknesses of current guidelines
 - Identify potential recommendations for change
 - Generate consensus on recommendations for change

At the Senate Judiciary Committee hearing on SB 106 held on June 5th, Legal Action of Wisconsin (LAW) testified in support of an amendment to SB 106 to deal with the implications of fixed dollar orders on low income payers. The Department requested that Senator George refer consideration of Law's proposal to this committee. Cathy Kendrigan will present LAW's proposal.

History and Development of Child Support Guidelines in Wisconsin – Connie Chesnik

1. Child support program was created in 1975 as Title IV-D of the Social Security Act.
2. Support Above Basic Allowance (SABA) was first guideline, but not perceived to meet needs of children. Allowed large amount of judicial discretion, thus two individuals in very similar situations might have dissimilar support awards.
3. IRP looked at different guidelines and proposed the percentage standard.
 - As additional children were added the percent increase is half of previous percentage, e.g., the increase from 17% to 25% for the second child is half of 17%. The percentage of income necessary to raise a child recognizes the cost to the noncustodial parent (NCP) of maintaining two households by reducing the percentage, e.g. 17% for one child is adjusted down from 20%.
 - Uses gross income of NCP.
 - No cap for high income cases.
 - Goal was to provide the same standard as child would have enjoyed in joint household.
4. Guidelines began in 1983 as recommendation from DHSS. The legislature created the Committee for Review of Initiatives in Child Support to review and make recommendations on the application of the guidelines. The 1985 budget bill created the percentage standard which became effective and was presumptive for all court cases effective July 1, 1987. At same time, DHHS was directed to develop Administrative Rules and that the Rules should address special situations, such as serial families.
5. The Rule has had one major change affecting the NCP's reduced obligation when the child(ren) spends time with the noncustodial parent above given thresholds.
6. A 1988 federal child support law required all states to have guidelines, but did not identify what should be included. The law requires that the guidelines are reviewed every 4 years. The last review of WI guidelines was completed in 1999. This committee is involved in the next review.

Overview of Child Support Guidelines – Susan Pfeiffer

Susan reviewed state statutes relevant to the child support program, Chapter DWD 40, and the Child Support Percentage of Income Standard

In a serial family situation, the court may not go back on its own and modify previous orders, unless the NCP requests it and proper notice is given to all other parties affected by those orders. When an NCP has more than one order for support and the total of all orders exceeds the Consumer Credit Protection Act, child support payments received for current support are prorated among all the NCP's court cases.

The administrative rule assumes that each parent contributes variable costs in relation to the percentage of time they have the children.

A recent appellate court case opinion said the shared time formula is presumptive.

Strengths and Weaknesses of current system

Linda Preysz facilitated a discussion of the strengths and weaknesses of the current system. Results of this discussion are attached as flip chart notes.

Legal Action of Wisconsin (LAW) Proposal

Catherine Kendrigan made a proposal on behalf of LAW for the Committee's consideration with the intention of submitting the agreed upon points for proposed legislation. LAW is concerned about the impact removal of percentage orders will have on low income payers. Fixed orders will be made based on formula with no relation to the payer's ability to pay.

1. Eliminate current ability to impute income at 40 hours per week times the federal minimum wage. This should be replaced by support in, " an amount determined by the court to represent the payer's education, training and work experience, and the availability of work in or near the payer's community."
2. Recommendation to include a new statutory section to limit arrears in certain situations. Suggested statutory language: "Any arrears in child support that is attributable to months during which the payer has an income that is below the federal poverty guidelines amount for a single person, as reported by the federal department of health and human services, shall not exceed \$500 in total."

There was no consensus to support either proposal as worded. LAW was invited to bring revised language before the Committee at its August meeting.

Next meeting: August 27, 2001 from 9:00 a.m. to 1:00 p.m. at the State BAR Center.

Minutes
DWD Child Support Guidelines Review Advisory Committee

August 27, 2001 Meeting

Present: Ron Hunt, Chair, Division of Workforce Solutions, Connie Chesnik, Sally Phelps, Katie Mnuk, Honorable Ann C. Krummel, Jan Raz, Carol Medaris, Honorable Philip Kirk, Margaret Wrenn Hickey, James Luscher, Elaine Richmond, Patti Seger, Jacquelyn Boggess

Guests: Susan Pfeiffer, Director, Bureau of Child Support; Todd, Kummer, Bureau of Child Support; Bob Andersen, Legal Action of Wisconsin; Kathy Fullin, Bureau of Child Support; Dan Meyer, Institute for Research on Poverty; Ingrid Rothe, Institute for Research on Poverty.

Ron Hunt welcomed committee members and reviewed the agenda for the day's meeting.

Review of minutes from June 18th meeting: A number of questions were raised concerning the edited flipchart attachment. Some members thought that there was not consensus in areas where the minutes indicated consensus. It was agreed that the minutes are sufficiently accurate since they say that the bolded areas reflect "possible consensus among committee members."

Discussion of policy objectives in setting a child support standard

Susan Pfeiffer led this discussion. The results are included on the attached flip chart notes.

Institute for Research on Poverty Presentation

: Dan Meyer and Ingrid Rothe of the UW – Institute for Research on Poverty made a summary presentation about the paper, "Experience with Income-Shares and Percentage-of-Obligor-Income Child Support Guidelines: A Report on Five States which was previously sent to committee members. Dr. Meyer and Ms. Rothe presented using the overheads attached to these minutes.

The following points were made in the discussion that followed

- Use of the Income shares model generally requires extra work because income and other information must be collected from both the noncustodial parent (NCP) and the custodial parent (CP).
- Both models arrive at the same child support payment amount if the same percentage of income is used to calculate the support amount.
- The income share model may be perceived to be fairer because the calculation of support looks at both parents' income.

- If dollars are allowed to determine placement, will not arrive at reasonable solution. Need chronological solution. Early on parents want to continue discretionary expenditure of money.
- Question was raised about how many child custody orders place children in families below given percent of time thresholds.
- Question about how much CP and NCP information is needed for the income shares model to be effective?
- Current application of WI percentage of income model uses an income shares-like calculation when children have a 40% or more placement with the noncustodial parent. This is viewed by some as a problem with the current formula because it doesn't specifically look at both parents' incomes until the 40% placement threshold is met.
- Pressure on courts to order support when it may not be appropriate is driven by federal incentive formula. People don't always know that they can go to court at a later date and argue for deviation. Child support agencies are in difficult situations because they have several different customers to satisfy.

Discussion of Legal Action of Wisconsin proposal presented by Bob Anderson.

This is a follow-up to proposals for discussion at the June 18, 2001, committee meeting. The Senate Judiciary and Consumer Affairs Committee offered an amendment to SB 106 to eliminate percentage expressed orders. The Judiciary Committee offered an amendment saying the court may impute income when the NCP has no income and requested input from the Guidelines Committee how to fairly impute income.

Mr. Anderson referenced two reports. One report was from the Office of Child Support Enforcement suggesting that income should not be imputed unless the noncustodial parent has the ability to pay, but is uncooperative. Committee members were concerned that this proposal places increased burden on the custodial parent to show that the noncustodial parent is being uncooperative.

The second method to impute income is for the court to impute income by setting an order consistent with the NCP's ability to pay. Current administrative code at DWD 40.05 now provides a methodology to impute income.

Mr. Anderson would like to eliminate the automatic calculation of imputed income by multiplying 40 hours times the federal minimum wage in whatever calculation is used. This could be done with a revision to the current rule rather than passing new legislation.

Issue is whether court should impute income and how. The court could do this at the hearing except in a paternity situation. In a paternity hearing, the statute requires the child support order to be determined at the hearing when paternity is established.

However, because it is a paternity situation, the child support agency may not obtain information about the potential father's earnings before paternity is established. One option is for Statute to say that child support liability is determined for paternity situations at a second trial after paternity is established and income fact finding for the NCP can be completed.

The committee did not believe the proposal to set support at the earning capacity would be possible in paternity defaults. The committee would consider alternate proposals to address this concern.

The second issue the Guidelines Committee was asked to consider is placing limits on NCP arrears. OCSE and others have recognized this as a problem, in particular for low income NCPs who have a reduced ability to pay current support and accumulated arrears.

One proposal is to limit arrears to \$500 during any period a person earns below federal poverty guidelines. Mr. Anderson drafted an amendment to suspend arrears when a person is earning below federal poverty guidelines. This would have to be stated in the support order, not part of a retroactive modification. If the person has the capacity to earn above the poverty level, then the arrears limitation does not apply.

The Senate Judiciary Committee did not approve due to concerns of limiting arrears when someone's income is low even when they may receive an inheritance or receive a financial windfall. The Judiciary Committee requested that the Guidelines Committee report back with its recommendation no later than October.

Issues raised concerning any policy to limit arrears:

- Some NCPs might voluntarily reduce income if they know arrears will be limited.
- Administratively would be difficult. CSA would have to retroactively back out arrears and interest and correct record. Burden will be in CSA, which doesn't currently have sufficient time to do basic tasks.
- Most arrears to be forgiven are due to state.
- Question is how to modify as go along, so don't get to the point that there are arrears and then have to act retroactively.

Maryland has program that reduces arrears by 25% if the NCP participates in a fatherhood program.

There was consensus that the LAW proposal is not administratively feasible.

Follow-up review of proposed draft legislation from previous committee meeting

1. Response to Randall case – In this case the court said that the use of shared time formula is presumptive.

Proposal is to clarify that regardless of placement, the court may apply the percentage standard or it may deviate from the standard with a justification in the record. This would only apply when the NCP has the child for more than 30% of the time.

2. Response to Luciani decision

Question is whether the current statute at s. 767.25(1m) gives courts the necessary discretion to deviate from the standard when parents have high incomes. Decision was to hold this item for further discussion when Margaret Wrenn Hickey is present.

3. Response to current limit on serial family orders – Currently in serial family situations, there is no requirement for disclosure about other families.

Recommendation for statute language that if one family requests a child support modification, the court would be required to disclose information about other obligations the NCP has to pay support. This raises a question of confidentiality. Should the custodial parent in the case before the court be informed of other children and child support obligations by the NCP?

The Committee decided not to take a position on the three issues at this meeting.

Next Meeting

The next meeting will be on September 24, 2001 at the State Bar Center, 9:00 a.m. to 2:00 p.m.

Agenda will include:

1. Review and confirm consensus on primary customers from August 27th meeting
2. Bob Williams from Policy Studies, Inc. will make a presentation and be available to answer questions from committee members.
3. Continue review of legislation

Minutes
DWD Child Support Guidelines Review Advisory Committee

September 24, 2001 Meeting

Present: Ron Hunt, Chair, Division of Workforce Solutions, Connie Chesnik, Sally Phelps, Katie Mnuk, Honorable Ann C. Krummel, Jan Raz, Carol Medaris, Honorable Philip Kirk, Margaret Wrenn Hickey, Elaine Richmond, Patti Seger, Cathy Kendrigan

Guests: Susan Pfeiffer, Director, Bureau of Child Support; Todd, Kummer, Bureau of Child Support; Bob Andersen, Legal Action of Wisconsin; Mike McCoy (for James Luscher), Marguerite Orulet (for Jacquelyn Boggess)

Ron Hunt welcomed committee members and reviewed the agenda for the day's meeting. Committee members were asked to approve minutes of the August 27, 2001 meeting. Two questions were raised.

- Clarification was provided that the issue in the Randall case is that the threshold for shared time placements automatically kicks in at 30% time.
- Item number 7 under **Parents** from the flip chart discussion includes 'arrearage limitations.' The committee agreed that this should be a separate point. Revision is attached.

Ron summarized the committee's work in the previous three meetings. One of the charges to the committee is to recommend to the DWD Secretary at a high level what methodology the committee recommends to use as a starting point for establishing child support in Wisconsin. In general, this would include one of the following models:

- Percent of gross income – status quo
- Modification of percent of gross income
- Income shares
- Hybrid between percentage and income shares

The committee will need to meet in October to decide on the recommendation to make to the Secretary's office.

Bob Williams, Policy Studies, Inc. – Presentation of the attached overheads and discussion

Mr. Williams expressed his opinion about the Wisconsin percentage guideline.

- It is difficult because it is a flat percentage of gross income. One could argue for a flat percentage of net income.
- No economic study on expenditures for children show that the percent of those expenditures increases as a percentage of gross income. Taxes are not flat.
- At higher income levels (\$2,500-\$3,000) per month net income, the percentage amounts per child cannot be justified by current child rearing studies. This problem

could be addressed by either using net income, doing a step-down at the higher income levels or switching to an income shares model.

- Although both the percentage and income shares models consider the earnings and contribution of the custodial parent, because the income shares model includes the CP income in the calculation, it is perceived to be more fair. In North Carolina, CPs increased cooperation when there was a switch to an income shares model because it was perceived to improve the fairness of the system.
- Recommends WI include an adjustment for health insurance.
- Wisconsin's shared custody formula and serial family formula are adequate.
- In states with an income shares model, the administrative cost of operation has not been a driving force.

Next Committee Meeting

Committee members agreed that at the next meeting there needs to be time allocated for general discussion among members. Anyone who wants to give a brief presentation about the benefits of a given model should contact Ron Hunt. After those presentations, each person will have 3-5 minutes to express their opinion about the guideline models. The committee will also discuss the draft legislation considered at previous meetings.

Anyone wishing to bring new items of business to the committee should send them to Ron Hunt, committee chair, for consideration prior to the committee meeting.

The next committee meeting is scheduled for October 31st at 9:00 a.m. at the Office of State Courts office on the 4th floor of the Tenny Building, 110 E. Main Street, Madison.

LAW Proposal

Bob Anderson distributed for the committee's consideration a proposed revision to DWD 40.03. The proposed revision would require the court to set support at an individual's earning capacity, but would allow the court, in a situation where a payer fails to appear at a court ordered hearing, to impute the income at minimum wage by default when calculating support owed. The committee supported the proposal, but indicated that no administrative rule changes would be proposed until the committee had completed its work on all issues.

Mr. Anderson stated that LAW is satisfied that the Guidelines Committee will address the other issues it has brought before the committee.

Minutes
DWD Child Support Guidelines Review Advisory Committee

October 31, 2001 Meeting

Present: Ron Hunt, Chair, Division of Economic Support; Jacquelyn Boggess, Honorable Ann C. Krummel, Elaine Richmond, Honorable Philip Kirk, James Luscher, Carol Medaris, Jan Raz, Connie Chesnik, Patti Seger, Katie Mnuk, Margaret Wrenn Hickey

Attendees: Jesssica Andersen, WI Women's Council; Roberta Rieck, LAW for Cathy Kendrigan; Susan Pfeiffer, Bureau of Child Support; Todd Kummer, Bureau of Child Support; Robert Anderson, LAW; Kathy Fullin, Bureau of Child Support

- Ron Hunt welcomed the committee. The minutes of the September 24 meeting were approved. The objective of today's meeting is for the committee to arrive at a consensus on a proposed guidelines methodology and, at the end of meeting, review statutory items from the previous meeting.
- Ron handed out a worksheet for use in evaluating the scheduled presentations. The worksheet included the committee guidelines consensus items in the left column and four basic guideline methodologies across the top. Carol Medaris stated that she does not agree with consensus item #2.

Presentation of Models

Income Shares Model – Presented by Connie Chesnik and Elaine Richmond

1. Income shares can lead to higher standard of living for CP than NCP.
2. Non-recognition of adult goods important in all models. Use of intact family in calculation of support order creates difficulty. This is a problem when most family units for child support are not intact units.
3. One of the persistent questions concerns the effect of using net vs. gross income. This is constant difficulty for current standard when set support using gross income, yet people get paid on net. Use of income shares begs same question and same dilemmas.
4. Most income shares models don't incorporate medical and childcare in the basic calculation. These are add-on's making the support levels higher than in percentage model. Therefore, as the committee looks at different models it should be careful to note whether childcare and medical are included.
5. Value in perceived fairness of looking at both parents' income.

State Bar Proposal – Presented by Margaret Wrenn Hickey

The Family Law Section believes that the current system addresses needs adequately and doesn't want to start over with a new model.

The current 30% and 40% time thresholds are a problem. Bar recommends making the amount of support discretionary at given levels. Shouldn't have to rebut presumption. Make the threshold 25% (or 90 days) which will address both parents' incomes and improve the perception of fairness.

Allow courts to order support within a percentage range, e.g. if the child is with the NCP 156 days, child support might be 10 - 12%. This gives the courts additional flexibility and addresses special needs of children.

SB 151 – Presented by Jan Raz

SB 151 is based on comprehensive economic data that recognizes that families with different incomes share a different portion of their income on behalf of the children. Both parents are expected to share an equal portion of their income to support their children.

Makes child support orders more consistent with established economic data on cost of raising children and case data. Assures that both parents contribute a similar percentage of his or her income to support their children in all families.

Committee Member Views

- ❖ Carol Medaris - Believes current law does not need to be changed. It takes care of needs and avoids fighting at lower income levels. Courts would be required to deem income at the lower levels if no earned income exists. If deviations were permitted for shared time at 25%, CP's would have to choose between accepting lesser support or working at low-income amount.
- ❖ Connie Chesnik – There is a strong push for change and others are looking to this group for a proposal. Concerned that if a proposal is not brought forth, it will happen anyway. Shared time could be addressed in any of the formulas.
- ❖ Elaine Richmond – County CSA directors generally believe current guidelines are destructive to low-income payers, therefore need to start with lower payment amount, i.e. lower than 17%. Although the current standard allows for deviation, the parties must present the arguments to the court and court time isn't available. Predictability is important.
- ❖ Ann Krummel – People don't understand law and there is not enough time to present it. If the system could give adequate time and educate people, many issues would be addressed. Current standard with articulated discretion process would address issues. Don't change existing system. Income shares won't result in the perception of a fairer system. People must have sense of fairness in process and not at expense of predictability.
- ❖ Jacqueline Boggess – The issue is about time and looking at situation and applying law fairly. She would change guideline for low-income persons. Suggests minimum order at low end. Allow for real deviation in real situations. Minimum order is necessary and beyond that, how people are cared for is up to social welfare policy.
- ❖ Margaret Wrenn Hickey – Personally thinks that ranges could be difficult. Don't make system any more complicated because it needs to work for non-lawyers. Appears WI orders are in ballpark for most cases, though problems exist at low and high end. Don't tailor the system for high-income cases because only 5% of people make over \$100,000. Low end should be addressed to make formula fair.
- ❖ Patti Seger – Concerned about low-income women. Prefers having a low set amount of support so there is a higher probability of receiving something. Middle income women want percent-expressed to remain because they don't want to have to go back into court for a change. Victims of domestic violence at high incomes are most at risk because the NCP can hire a lawyer to control issues.

- ❖ James Luscher – Use Wyoming for example because more related to economic data. Reason to address high income is to take care of those situations when CPs can't afford to defend himself or herself. Model should address low-income obligors because there is not enough money available to pay support and meet personal expenses. System should not unnecessarily add to NCP burdens, e.g. charge interest when can't afford or credit rating may be adversely affected when paying child support even though expenses are the same.
- ❖ Katie Munk – Not convinced that there is a better model than current. However, lower and higher ends need to be addressed.
- ❖ Sally Phelps – Submitted her opinion in letter to committee members.
- ❖ Judge Kirk – What change to the current law would satisfy those who want change? From a practical standpoint, child support is not considered in a vacuum. Have to determine policy which addresses all cases in WI, but allow for each to be unique. To say that we must change the standard means that the current standard is wrong which isn't necessarily true. Address low income and shared income situations, but no matter where line is drawn, there will be fighting.
- ❖ Jan Raz – Agrees that system is okay for average case. No strong feeling about low-income situations. For high-income cases, the current formula starts to be incorrect at \$50,000 income. Shared placement – biggest adjustment is between 30-60 percent. The problem for NCPs occurs as soon as child support is ordered because they have to have adequate room for children to stay even for one night and pay all the expenses that go with it. Children have expenses at both households regardless of amount of time.
- ❖ Ron Hunt – The committee has received a considerable amount of information and heard from several knowledgeable speakers. Is the committee ready to agree to a methodology? Three approaches might be:
 1. Status quo,
 2. Existing standard with modifications to address key issues, or
 3. Shared time and address issues in that

There was consensus to retain the percent standard methodology, and address problems of low-income and high-income situations when using the percentage standard and shared time cases.

The Bureau of Child Support staff will prepare two papers for the next committee meeting. First, show at what income levels different welfare (W-2, food stamps, medical assistance, etc.) eligibility is affected. Second, propose different approaches at high-income levels.

Consideration of Legislative Proposals

Legislative Recommendations:

Randall Case: The committee previously agreed to the following: There should be a statutory change to clarify that the use of the percentage standard in shared time cases is not mandatory. The legislation is necessary to overturn the Court of Appeals decision in *Randall v. Randall*.

Serial Family Situations: The committee had previously agreed to recommend statutory language that if one family requests a child support modification, the court would be required to disclose information about other obligations the NCP has to pay support.

Luciani Decision:

Committee recommended with one dissenting vote:

1. To amend s. 767.25(1m) as follows, "...the financial resources and standard of living of both parents as determined by the court including any significant disparity between the parties' gross income or earning capacities."
2. There should be a LRB note indicating that this revision is to address the Luciani case.

Jan Raz disagrees with this proposal because it is not a final fix to the problem. It is only a partial solution.

The purpose of this statutory revision is to address the inequities in the Montemurro – Luciani case in which there were significant disparities in income between the parties with the NCP having lower income than the CP.

Minutes
DWD Child Support Guidelines Review Advisory Committee

December 13, 2001 Meeting

Present: Ron Hunt, Chair, Division of Workforce Solutions; Jacquelyn Boggess, Connie Chesnik, Margaret Hickey, Cathy Kendrigan, Honorable Philip Kirk, Honorable Ann C. Krummel, James Luscher, Carol Medaris, Sally Phelps, Jan Raz, Elaine Richmond, Patti Seger

Absent: Katie Mnuk

Attendees: Robert Andersen, LAW; Marguerite Roulet and Rebecca May, CFFPP; Kathy Fullin, Donna Lemke, Susan Pfeiffer, BCS

Comments on the Minutes of Oct. 31, 2001—Section on Committee Member Views

- Carol Medaris would like the first sentence of her comments to read: "Believes current law does not need to be changed beyond the specific statutory changes already discussed in response to specific court cases."
- Ann Krummel would like the last sentence of her comments to be changed to read: "The child support process entails more than the application of a formula. It includes access to a decision maker and application of the formula by a fact finder. This all affects the perception of fairness."

Update on Legislative Action

Ron Hunt explained that Rep. Gundrum plans to schedule committee action on child support legislation in February. DWD will have to respond to the legislation.

Ron outlined several options for the Guidelines Committee:

- The Committee could push to make recommendations to the DWD Secretary. The recommendations could cover all of the issues addressed in the child support bills or only some of them.
- The Committee could continue on its own schedule without reference to pending legislative action.
- The Committee could pursue a 2 part strategy:
 - 1) provide input on the legislation
 - 2) continue in a more deliberate manner to recommend changes in the Administrative Rule to DWD

The Committee agreed that it should proceed and make some recommendations that could be considered in the legislative process. The Committee noted that because the Legislature adjourns for the year in March, final passage of new child support legislation may not take place this session. Several members suggested that continued deliberations geared toward changes in the Department's Administrative Rule would be useful. The Committee agreed that its first focus would be developing a recommendation on appropriate orders for low-income payers.

Presentation of Data

Susan Pfeiffer explained a number of charts summarizing economic data on the cost of raising children, income figures for minimum wage and for eligibility for needs-based public assistance, and the income distribution for sole placement child support cases in Wisconsin.

Committee members requested the following information about shared placement cases:

- a breakdown of shared placement cases by different percentages of sharing (i.e. the proportion of cases in which the placement is 50/50, 60/40, and 35/65)
- income distribution of shared placement cases, similar to the information distributed about sole placement cases.

Susan Pfeiffer explained the chart titled "Analysis of Proposed Child Support Legislation" and offered to extend the chart to include the Committee's recommendations in the listed topic areas.

Low Income Payer Options

The Committee discussed issues affecting low-income payers, including family owed arrears, state-owed arrears and birth costs, whether income should be imputed, and the Consumer Credit Protection Act garnishment maximums. The Committee agreed to set these issues aside while it worked on a proposal to reduce the support obligation at lower income levels, which the Committee unanimously agreed to pursue.

Ron Hunt presented some options developed by the Department for reducing the obligation for low income payers. The Committee asked that the Department further develop an option for establishment of a minimum amount due for payers with incomes below the Federal Poverty Level (FPL) for one individual. For payers with income above the FPL for one individual, the obligation would be the minimum amount plus the appropriate percentage of the portion of income that exceeds the FPL for once person.

Carol Medaris presented an option developed by Legal Action of Wisconsin, the YWCA, the Wisconsin Council on Children and Families, the Wisconsin Coalition against Domestic Violence, and the Council on Fathers, Families, and Public Policy with the involvement of the Urban League. Carol clarified that this option presumes the court has reviewed earning *capacity*. The Committee asked that the Department further refine the option presented by the coalition, to reduce the size of the cliffs as income changes.

Ron Hunt indicated the Department would refine these two options for the next meeting. The Department would develop some rationale for the changes, along with supporting data if available. In addition, the Department will outline some of the consequences of making these changes, including how to address the issue of modifications of existing orders.

Next Meetings

The Committee agreed to meet on January 10 from 9 a.m. to 3 p.m., January 22, and January 31 if necessary. The Committee agreed that the first priority at the next meeting would be resolution of the issue of obligations for low-income payers. The Committee agreed to begin a limited, preliminary discussion of shared placement at the next meeting, and then address the issue of obligations for high income payers.

High Income Payer Options

Ron Hunt presented some options developed by the Department for reducing the obligations of high income payers. He indicated that there are five decision points concerning high income payers:

- At what income level does the Standard begin to reduce the obligation?
- Is this income level based on combined income of both parents, or only the payer's income?
- Does the Standard define the reduced rate(s) (step-downs), or is judicial discretion used above the chosen income level?
- If the Standard defines the reduced rates, what are those reduced rates?
- Is there a limit on the total amount of support that can be ordered?

Jan Raz indicated his disagreement with the Department's presentation of the Williams data on the cost of raising children. Susan Pfeiffer and Jan Raz agreed to discuss the numbers later. Margaret Hickey indicated that whatever is decided concerning high-income must be made presumptive, or it will be ignored.

The Committee agreed to work on the issue of reducing the obligations for high-income payers. It was agreed that the issue of modifications due to any change in the Standard would have to be addressed as well. The Committee asked for data, if it is available, on the relationship between high income and shared placement, and on disparity between parents' incomes in high income cases.

Minutes

DWD Child Support Guidelines Review Advisory Committee

January 10, 2002 Meeting

Present: Ron Hunt, Chair, Division of Workforce Solutions; Jacquelyn Boggess, Connie Chesnik, Margaret Hickey, Cathy Kendrigan, Honorable Philip Kirk, Honorable Ann C. Krummel, Carol Medaris, Sally Phelps, Jan Raz, Elaine Richmond, Katy Mnuk, Patti Seger

Absent: James Luscher

Attendees: Susan Pfeiffer, Kathy Fullin, Todd Kummer, Bureau of Child Support; Rebecca May, Marguarete Roulet, Allison Lipscomb and Louisa Medaris, CFFPP

Run Hunt, committee chair welcomed the committee. His hope was to complete the committee work on the low-income policy today and get started with high income and shared time placement policies. They will be completed at subsequent meetings. Also, he would like to review a draft format of a report to go to the Department.

Minutes of the December 13, 2001 were approved.

Consideration of guideline for low income payers

Bureau of Child Support (BCS) staff refined two examples discussed at the December meeting. These demonstrate the difficulty in developing a guideline which eliminates cliffs and doesn't present undesirable outcomes. To assist the committee in its deliberations, staff identified five key policy triggers to follow as each option is considered. These are:

1. What is the minimum amount of child support that should be paid by low-income payers?
2. Should the minimum amount of child support vary based on the number of children in the family? (Eg. \$20 for one child; \$25 for two children; \$30 for three children, etc.)
3. What is minimum payer income "breakpoint" below which the minimum child support amount should be used for low-income payers? (E.g., LT 100% FPL? Other low-income breakpoint?)
4. What is the maximum payer income "breakpoint" above which regular child support percentage amounts should be used? (E.g., 130% FPL; 150% FPL).
5. For payers with income between the minimum and maximum breakpoints, should there be different incremental ranges that set support at different amounts within those ranges? What would those ranges be?

The committee recommended that rather than reference the "minimum amount of child support," it should say "presumptive amount." This change will be in future documents.

Sue Pfeiffer reviewed two examples included in the committee handouts. Example 1 was a revision of an option presented by a group of committee members in December. Although this example eliminated cliffs, at some income levels the payer pays in excess of the incremental income in support – an unexpected consequence. This would be unacceptable because payers would not earn above the level at which the child support payment is equal to or greater than the additional dollar earned.

Carol Medaris reviewed a proposed linear model she handed out at the meeting. There is a presumptive child support payment amount below \$500 monthly income. The child support payment increases incrementally above \$500 to 150% of FPL, after which the calculation uses the current percents in DWD 40.

Discussion:

- Courts should take time to determine ability to earn so persons with little ability to earn money are not required to pay. Committee already handled this at an earlier meeting in response to concern brought by Bob Anderson.
- Courts should base payment on actual earning capacity. There is not sufficient court time to analyze all orders for possible deviations. Committee wants to give courts direction rather than relying on them for deviations
- Child support should reflect economic needs of children. Low orders may deny some children money when the parent could pay more. Committee wants to establish reasonable guideline to encourage higher proportion of payments. Further, families are eligible for Badger care with no co-pay below 150% FPL making that a reasonable break point below which there are lower payments.
- Question whether the linear model is too difficult to calculate. Members thought it is not too difficult and these cases rarely come before the court.

Committee Proposal for Low Income Guideline – The committee agreed to recommend the linear model to DWD. It is percentage based and easy to explain and understand. Requested that it be developed in the BCS format.

Modification of Existing Orders after the Change in Guidelines

The committee is concerned about the transition to a new and lower guideline for low-income payers. Payers with existing orders may want to seek revised orders. Discussion included consideration of the following:

- Existing case law may take care of this.
- If it isn't addressed, there will be a perceived unfairness. Many payers will not request a change and allege unfairness.
- Policy regarding modification must be applicable to low, high and shared time situations or else there will be perception of unfairness.
- Could allow current 33 month rule to handle this staggered over a period of 3 years.
- SB 151 establishes a threshold amount between the old and new guideline. When the difference is greater than the threshold, a person may seek an immediate revision of order due to the change in guideline. Otherwise, the 33 month rule applies.
- Could permit held over orders and orders resulting from imputed income to be revised immediately, otherwise 33 month rule applies.

Consideration of Guidelines for High Income Payers

There was general agreement on the following points:

- It is extremely difficult to find reliable economic data about the cost to raise a child.
- At some income level, parents' percent of income spent on their children begins to decline.
- Exactly what is high income for purposes of determining when income spent on children begins to decline is not precise.
- Available economic data doesn't consider money put into savings for children.
- If choose an amount above which the child support standard is reduced, that will be the point when litigation will start. If it is too low, there will be a large increase in high income cases coming before the courts.

There was general committee agreement that the reduction in the guidelines should begin at \$175,000 annual income. The committee requested that staff develop some examples with numbers, including one with the reduction beginning at \$107,000. The policy should eliminate the incentive to drive income down.

The committee did not want to reach a final decision about high income payers until there was additional discussion about the shared time policy because the two are so intertwined.

Shared Time Formula

Sue Pfeiffer reviewed materials included in the packet provided to committee members. This issue will be considered at the next meeting.

At the next meeting the committee will consider the following:

- Shared placement discussion
- High-income discussion.

At a future meeting the committee will review:

- Recommendation of guidelines for low income payers
- Mock up of draft of report from committee to the Department

The next meeting will be on January 22, 2002 at the state Bar building beginning at 9:00. There will also be a meeting on January 31, 2002, at the state Bar building.

Minutes DWD Child Support Guidelines Review Advisory Committee

January 22, 2002 Meeting

Present: Ron Hunt, Chair, Division of Workforce Solutions; Connie Chesnik, Margaret Hickey, Cathy Kendrigan, Honorable Philip Kirk, Ann C. Krummel, Carol Medaris, Sally Phelps, Jan Raz, Katy Mnuk, Patty Seger, James Luscher

Absent: Elaine Richmond, Jacquelyn Boggess,

Attendees: Susan Pfeiffer, Todd Kummer, Bureau of Child Support; Allison Lipscomb, CFFPP

Ron Hunt, Chair, welcomed the committee members and said that he would like to complete the low-income policy first and then focus on the shared time placement and high-income policies.

Minutes of January 10, 2002 meeting were approved with the following correction and comments

- ✓ Patty Seger attended the meeting but was not listed as an attendee.
- ✓ The sixth bullet point *under Modification of Existing Orders after the Change in Guidelines* should say, "Could permit held open orders..."
- ✓ Under *Consideration of Guidelines for High Income Payers*, Jan Raz disagreed with the minutes as written in the following areas:
 - He disagrees with the first bullet point that it is extremely difficult to find reliable economic data about the cost to raise a child.
 - He disagrees with the fifth bullet point that if the amount is reduced there will be an increase in litigation.
 - He disagreed that the reduction in guidelines should begin at \$175,000 annual income.
- ✓ The minutes should reflect that considerations for high and low-income payers are not the same. For low-income payers a primary concern is the ability to pay; even a minimal amount of support may impact the payer having sufficient money for daily needs. The policy for high-income payers has very different considerations. Availability of money is not the issue, but whether the percentage payment should be reduced above a certain threshold.

Consideration of Guidelines for Low Income Payers

DWS staff had prepared a draft proposal based on the committee decisions at the January 10, 2002 meeting. Although the proposal eliminates cliffs in payments, a question was raised whether cliffs might be appropriate given the fact that there are different eligibility levels for various public aid programs. The committee believes that it is important to eliminate the cliffs.

Carol summarized the rationale for lowering the percentage of income paid as support by low-income payers. The belief is that if the payment amount is set at a reasonable and affordable level, there is a greater likelihood that support will be paid and family relationships will improve. This same argument doesn't apply to high-income situations because a reasonable payment is affordable. One concern with this policy is that it may lower payment expectations, which may take money away from children. The goal should be for people to be responsible for their children as much as possible. A question was raised regarding prisoners payment of child support. State statutes require child support to be paid ahead of room and board.

From a legal standpoint, we can't change the guideline because a person is in jail. There can't be a benefit due to committing a criminal act. Therefore, there is a need for continued judicial discretion in this area.

It was suggested that before applying a reduced formula, the NCP must show hardship, or make lower payment for a few years and then raise the percent.

The Department draft plan expressed the standard for low-income payers in dollar amounts based on a percent of the federal poverty level (FPL). This was done so that new charts would not have to be produced and used each year. Rather, updates could be made every four years as required by federal law. The committee requested that the guidelines be expressed as a percent of FPL. This may result in an increase each year of a small amount which could make a difference of a few dollars per month. At the low-income levels this increase in payment would be significant. Expressing the payment amount as a percent of FPL will mean that parties using the guidelines would need to obtain the updated payment charts each year.

A question was raised about the justification section and how it will be used. Ron Hunt said the committee proposal will be presented to the Department and the justification section will provide the rationale so the reader will understand the nuances of recommendations. Carol Medaris would like to beef up the considerations to provide more detail on how the committee arrived at its recommendation. She would like IRP chart to be reflective of low-income payers. She will work on edits to the justification section.

The committee discussed whether the increase in payment should be adjusted for each increase in a dollar earned. The intent of the proposal was that the support amount will increase gradually with each increase in dollar earned. The chart could be adjusted to provide for an increase in set dollar amounts, e.g. \$5, \$25, etc., or it could be constructed similar to tax tables. The committee requested that staff provide a chart using dollar increments and using a tax table type chart.

Jan Raz stated that he did not agree with the committee's low-income proposal. Even if support awards are set according to the current guidelines, some people will still come up with money. There is no good information about safety nets for children. The amount of the child support payment is only part of larger problem, including arrears, birthing expenses, fathers getting and retaining jobs, etc. These should all be included in package of payment of CS and helping dads becoming self-supporting.

Some on the committee supported adding these issues to the *Considerations* bullet points.

The committee policy changes the focus of how the guidelines work, i.e. it gives a break for low income and only increases support if the payer can afford it.

Consideration of Shared Placement Policy

The committee agreed with a basic assumption that the current formula needs to be changed.

Some of the key issues which need to be considered as part of the shared time policy:

- Variable cost and should they be included, and if so, what costs to consider?
- Overnights: how many before payment amount is changed and what constitutes an overnight.
- Concern about reducing support payments as percent of time increases, are we getting away from supporting children as if the home had remained intact.
- As shared time increases, is it unrealistic to expect the same standard of living to exist in the households. What becomes important. Is to have a comparable standard of living in both households. However, the courts have not agreed with this. One policy consideration is, as time with both parents increases, is it beneficial to have households comparable.

Question was raised about the 140 or 150% child rearing factor and its purpose. According to the Bob Williams material, it is included in recognition that both parties must provide a basic living situation for the child(ren). Usually shared placement situations do include 140% child rearing factor plus child care and medical as variables.

The current law and rule look at overnights or equivalent. However, daytime care isn't always given credit for overnight equivalent. A footnote in the Rule (DWD 80) provides guidance about overnight equivalents. It was suggested that putting the footnote in the body of the Rule would give it more weight. However, an issue was raised as to how equivalent overnights should be defined. Some members of the committee felt that it should be defined to include some reference to additional costs incurred by the obligor.

One suggestion was to move the overnight footnote into the rule or statute while keeping a footnote that when there is tangible value to an equivalent overnight, it should count as an overnight. As a companion to this, it was suggested that there be some formula written into the rule or statute that a given number of daytime hours would have the financial equivalent value of an overnight. The Department will request LRB to draft proposed language for the next committee meeting.

Another key policy trigger is the placement threshold when a shared-time formula should be applied. The current Rule reduces the support obligation when a child spends more than 30% of time with the parent and considers both parents' income when the child spends more than 40% time with the parent. Should the threshold be dropped or keep the 30% threshold and begin counting both incomes at 30% time?

Judge Kirk recommended that 25% time with a child would be viewed as a rational standard and trigger a reduction of support obligation from which judges may deviate. A

footnote could state the rationale for original percentage reduction of 30% and if don't agree with that, then go with 25%.

Jan stated that 25% is used by many states and it is acceptable if the NCP is permitted to use some of the support money to care for children. There should be a dollar for dollar reduction in support above the threshold. Concern is that fathers have sufficient money to care for kids when they are with him, the same as mothers. Have to recognize fixed expenses. VA, CO and MI use Jan's formula and it works, but they don't include childcare and health care in the formula.

The proposal to drop the percentage from 30 – 25 will be more fair only if parents share variable expenses in equal percents.

The committee requested staff to prepare examples with 15% and 25% times thresholds up to 40% and a 150% multiplier. Include examples with 25%, and look at payer's income up to 40% using current law. Also, create a continuum for the State Bar's proposal to eliminate the ranges.

Consideration of Guidelines for High Income Payers

There was a question about what standard deductions exist for self employed taxpayers. Generally they may deduct a self employment tax (½ employment taxes), IRA, maintenance, net on Schedule C, business losses, passthrough to business partner and health insurance.

The key policy question is at what income should the percent of support be reduced from the current standard, i.e. what is considered high income? Margaret stated that \$100,000 is too low. That amount will encourage fighting between the parties. Also, a first adjustment in the percentage to 10% is too large an amount and will result in the parties fighting to get that break. Changes should be incrementally small so don't invite disputes.

The number of high-income cases is a small percentage of total cases, and those contested are even smaller. Therefore, it is questionable whether to make special rules for high-income cases. However, there is concern that at higher income levels the formula doesn't consider incomes of both parents.

The committee had the most difficulty agreeing on what income was high income when an adjustment in percentage paid should begin. Most committee members favored \$150,000. However, other opinions included:

- \$72,000 combined income of both parents
- \$125-175,000 depending upon residence in state. This was rejected because it would likely drive people to move or file for divorce in different counties.
- Won't make much difference because it affects few payers.
- \$150,000 the lowest, but probably \$240,000. The lower the amount, the more litigation will result and judge will decide.
- \$175,000
- Focus should be on the children and what they should have based on parents' incomes. Children should benefit when parents have the money.

Committee requested that staff bring examples to the next meeting using the first step-down at \$150,000 and a second step-down at \$200,000.

May not put money in trust after age of majority, but has been change in law. Bar proposal suggests putting money into a trust post age of majority.

The next meeting is on January 31, 2002 at 9:00 AM at the State Bar Building. The committee will consider the following:

1. Shared time issues with worksheets.
2. DWD will show recommendations on high income
3. Discuss report of the committee.

Minutes not formally approved by the Committee

**Minutes
DWD Child Support Guidelines Review Advisory Committee**

January 31, 2002 Meeting

Present: Susan Pfeiffer, Substitute Chair, Division of Workforce Solutions, Honorable Philip Kirk, Ann C. Krummel, Carol Medaris, Sally Phelps, Jan Raz, Katy Mruk, Patti Seger, James Luscher, Jacquelyn Boggess, Cathy Kendrigan, Margaret Hickey

Absent: Ron Hunt, Elaine Richmond, Connie Chesnik,

Attendees: Todd Kummer and Kathy Fullin, Bureau of Child Support; Marquerite Roulet, Rebecca May and Louisa Medaris, CFFPP; Robert Andersen and Michele Bopp, Legal Action of Wisconsin; Kisun Nam, Tom Van Ess

Susan Pfeiffer announced that Ron Hunt is ill today and will not attend. He asked Susan to chair the committee meeting.

Minutes of January 22, 2002 meeting were approved with the following corrections:

- ✓ Page 3, fourth dot point: Combine second and third sentences.
- ✓ Change references to DWD 80 to DWD 40.
- ✓ Page 2, paragraph 3: Clarify that the 140 or 150% factor is a multiplier to account for child-rearing expenditures duplicated by the parents, e.g. the child's bedroom.
- ✓ Page 4, top partial paragraph: Last sentence should read, "VA, CO and MI use Jan's formula and it works, but they have provisions to add in childcare and health care in the formula."
- ✓ Page 4, first paragraph: Revise to say, "Carol Medaris stated that the proposal to drop the percentage from 30 – 25 will be more fair only if parents share variable expenses in proportion to placement."
- ✓ Page 4, listing of high-income amounts: \$72,000 should be changed to \$60,000.

Consideration of Guidelines for Shared Time Placement

The committee reviewed the proposed language about equivalent care and variable costs. There was considerable discussion about inclusion of childcare and health care costs in variable costs. Since health care costs are treated separate from the calculation of child support by statute, they do not need to be included as a variable cost. Childcare costs should be considered in some manner.

The committee agreed that "Equivalent Care" means a period of time during which the payer cares for the child that is not overnight but which is determined by the judge to require the payer to assume child care costs that are substantially equivalent to what the payer would spend to care for the child overnight.

Jacquelyn raised a concern about the variable placement and shared time placement policies. Low income will not have the ability to pay the variable costs.