

Concern was raised about childcare not being ordered as a variable cost because the custodial parent receives a subsidy through WI Shares. What will happen if eligibility for WI Shares ends. The state policy may be that if the parents share the child placement, eligibility of WI Shares is based on either parents eligibility. Staff will confirm the policy.

Susan Pfeiffer reviewed the two apparent areas of committee consensus:

- ✓ Health care costs: Committee consensus to remove from variable costs.
- ✓ Childcare costs: There seemed to be interest in dealing with this in a separate statutory section, although concern was expressed that it would be too confusing to have child support issues located in too many different sections in the statutes. A Legislative Council study in the mid-1990s considered the question of childcare costs. If the committee wants to include childcare as a variable cost, it should consult the findings of that study.

The Committee agreed with the definition of Equivalent Care handed out at the meeting:

"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."

Summary of committee members' thoughts about shared time:

Carol – Primary concern is with deeming income of the primary custodian. State Bar bill addresses this problem, but still has cliff and doesn't solve the problem of deeming income. Believes there should be a way to develop a formula that will reduce the cliff at 40% placement. Believes 30% placement is appropriate place for reduction in payment to begin. Deal with the cliff problem and leave other things alone. Include statute section about variable costs so the courts will address them when ordering support.

Katie – Agrees with Carol about cliffs. Concerning variable costs, doesn't want to weigh money for children against shared time. Sensitive to tax consequences and their impact on parents in the shared placement policy and need to explore further.

Margaret – We haven't concluded that support being paid is too high. If we conclude that WI is way off, then perhaps should change. Wants to have justification for lowering support. Key issues are the cliff and comparing incomes at lower levels. There may be a perceived unfairness when comparing incomes at lower levels. Believes some reduction in the threshold would be good, but not down to 15%. When looks at numbers in the examples presented, Table C is not Bar proposal. Personal opinion is that 150% variable factor is best and with a lower threshold.

Cathy – Reduction at 15% is too low. Could live with lowering threshold a bit to between 25 – 30%, but couldn't go below 25%.

Jan – Believes it is important that the formula consider incomes of both parents. Economics are different when one or other parent has more income. Doesn't want a lot of reduction when the custodial parent has much more income than the noncustodial parent (Luciani type case), therefore there should be a large reduction as soon as possible. Variable expenses should be shared in proportion to placement time, but formula should allow parents to keep enough money to do that. If parents have children same amount of time, they should have the same amount of money to take care of the children. Present formula doesn't do that. 150 or 140 factor doesn't matter, but does help to equalize disparities. Payment of variable costs makes parent feel better about kids. Variable costs include, for example, field trips, shoes for sports. Some parents who can communicate about things, put money in joint account and pay from there, e.g. tuition for private or school instruments

Jim – Favors lower threshold, could live with 15%, but would like 0. Concerning the 140/150% multiplier, no strong feeling, but thinks it gives better awards in middle income levels. Of the examples, likes third column with 150%. Sharing at 15% is still sharing and it is important that it be recognized. If there is no adjustment until 30 or 40% placement, then the policy does not recognize sharing and involvement with kids.

Anne – 15% is too low because costs not shared there. Agrees that reduction in support orders is not merited. Feels strongly that terminology must be consistent. Need consistency with how costs are labeled. From experience, frequently variable costs are not paid. Therefore, perhaps variable costs should be addressed as fixed cost or better enforcement. Believes important policy issue is the comparable standard of living between two parents, because it has important implications for the children. Courts need the ability to prioritize how parents spend their money, i.e. child support dollars be spent for child, and perhaps at times direct payment for variable costs to provider. Committee considered income shares and rejected it as is reflected in the minutes.

Sally – Not ready to change current law. Tends toward 140% factor, because it recognizes duplicate costs.

Patti – 15% threshold is too low, 25% is the lowest she would go. 150% multiplier does appear to even out the cliff the most.

Judge Kirk - Today should be the end of committee. At previous meetings we suggested remedy for Randle decision and now we are creating a second standard. Hasn't seen that too much support is paid under current formula and cliffs are legitimate. CS is based upon best interests of children, and applying that formula has never been rejected. From judicial interest, removing judicial exercise of discretion is nonnegotiable. He doesn't believe that one formula is better than next. Don't go below 25%, perhaps 30% because it is reasonable amount of placement.

Susan summarized the themes which emerged and possible consensus areas:

1. 150 % formula: 6 people said could support that. Other 4 were silent or didn't support. Could those 4 people support it. Ann, yes; Carol, yes; Katie, yes; Judge Kirk, yes. Everyone agreed to use the 150% factor in the formula.

2. At what percentage of time with the noncustodial parent should there be an adjustment in support paid: 25% - 3; 15% - 2, Key issue is perception of fairness. This is the point at which kick in 150% calculation which means gentle curve rather than large changes. This will result in less litigation and people feel like the system is treating them more fairly and no cliffs to fight about.

All but two members (Sally and Carol) could support the 25% threshold. Committee agreed to have Dept. draft proposed policy with 25% threshold.

Jan stated he could support the proposal as long as committee keeps its previous agreement concerning the Luciani case. Findings in an IRP report support the fact that an increasing percent of female custodial parents have more income than the male noncustodial parents. There was agreement to include reference to IRP report as reliable resource.

There was agreement that courts should order appropriate payment of variable costs. These may include, for example, paying for a child's special needs, tuition, recreation fees and expenses, sports equipment, camp, music lessons, or costs associated with extra-curricular activities.

Consideration of Guidelines for Low Income Payers

Concern was raised whether deviation would still exist when payer has income below 150% FPL. At times the court may believe payer is not telling truth about income. Needs to be some mechanism to allow support to be set based upon credibility of testimony.

Committee agreed to use chart with \$5 increments in income. Chart will be applied in more situations, because more shared placement situations. Shared placement will become more pervasive with low-income situations. Concern was raised whether the shared time policy agreed to earlier by committee will be detrimental to low income payers. Recommendation should reflect that committee did not have time at this meeting to overlay shared time with proposed low income policy.

Susan Pfeiffer requested guidance from the committee about how to proceed in terms of communicating the committee's work to the DWD Secretary.

Judge Kirk - Accomplished substantive amount today which could be communicated to the legislature. Staff could do summary draft and send it to members and there may be a need for one final meeting to hash out any remaining issues.

Jackie - Would prefer another final meeting, but would accept email. Concerned that committee doesn't approve something that is bad for low-income people.

Katie - would like to see more in writing before it goes out. Could do by email, but would not be as effective.

Margaret - Need to complete final report quickly. Committee doesn't want to let the legislature dictate whether we are done or not. We must stick with it to do a good job. Numbers don't look offensive to her in a few examples. There is a small reduction in ordered amount, but it is not outrageous.

Kathy - Could get out a report via email. But there a few outstanding issues and in one more meeting could to deal with them.

Jan - More information is needed to determine low-income policy. Legislature will do something within next couple of weeks and if we don't give them anything, they may act without it. Email acceptable.

Jim - Not much more to do, keep in mind we are guidelines committee and others will take this and proceed with it. Any remaining issues are low level. Shared placement formula is flexible and likely will work with all income levels.

Ann - Meetings have brought consensus and email is acceptable, but we should have one last meeting to finalize the report. Must take advantage of giving good input to legislature. Lots of time spent on small percent of population - high income. Need to make sure we adequately address low income.

Sally – Concerned that we still address high income. Low income agreement except one person.

Patti – Wants final report circulated, and then have short meeting.

In summary, the committee will proceed as follows:

- ✓ Committee members will review shared time and low-income policies off line to satisfy that there is not an unintended negative consequence to low income payers.
- ✓ Staff will draft a preliminary report.
- ✓ Draft report will be distributed for review and comment.
- ✓ Committee will have a short meeting to review final report.

Tentative date – Draft report to committee within a week. The committee will meet the afternoon of February 14th. 1-3:00 at a downtown location to review and finalize Committee report.

Consideration of Guidelines for High Income Payers

Some committee members expressed that a change in policy is not warranted because high-income cases are frequently litigated and they are a small percentage of the total. Committee members were asked to summarize their position about high-income payer policy. Could they support the \$150,000/\$200,000 break points or different amount.

Jim - \$60,000 combined income, if add on \$1000 per month for childcare it becomes \$72,000. At this point there would be a gradual reduction in income.

Ann – Support \$150,000 because \$48,000 isn't high income.

Sally – Prefers current standard and provide other opportunities for some money going to children. Rich should have to pay same percent as others. She could reluctantly support \$150/200 with the higher percentage payment example and putting the difference in a trust.

Patti – can't support \$48,000. Could support \$150/200 as bottom point.

Judge Kirk – Apply current standard with committee proposal for shared placement policy in effect. Furthermore, the committee recommendation regarding the Randle decision to apply percentage standard in shared placement cases will be adequate. Could agree to \$150/200 break points.

Carol – Would agree to \$150/200 break points.

Jacquelyn – Would agree to \$150/200 break points.

Katie – Still not clear what is high income. Could support discretionary trust fund. But, can't see compelling need for proposal. Could support \$150,/200 break points if committee needs to make proposal.

Margaret. – Must address high-income situations because legislature will. Can't support \$48,000. Believes \$150,000 is too low, but question is when should people start getting a break. Economic data shows that higher income people spend proportionately less on their kids. Any proposal should include language that court has discretion and there should be trust for education fund. Questions whether should reduce percentage and apply shared placement policy? Problem is out of state case when shared time won't work.

Jim – how much does a child need,

Kathy - Supports \$150,000 as starting point to reduce percentage with language about trusts.

Jan – If have relationship with kids, parents will take care of them. State should not dictate trust. No support for \$150/200 proposal.

In summary, there is a desire by committee to do something and with the exception of two people there is agreement to a reduction at \$150,000.

Staff will draft high-income proposal \$150,000 and 200,000 break points and with 80% and 60% reductions. Committee report will clarify that some committee members could not support that proposal.

Staff will put today's revisions into an interim report for review and comment prior to the last committee meeting on February 14, 2002.

Minutes not formally approved by the Committee

Minutes
DWD Child Support Guidelines Review Advisory Committee

February 14, 2002 Meeting

Present: Ron Hunt, Chair and Susan Pfeiffer, Substitute Chair, Division of Workforce Solutions; Honorable Philip Kirk, Ann C. Krummel, Carol Medaris, Sally Phelps, Jan Raz, Katie Mnuk, James Luscher, Jacquelyn Boggess, Cathy Kendrigan, Margaret Hickey, Connie Chesnik

Absent: Elaine Richmond, Patti Seger

Attendees: Todd Kummer and Kathy Fullin, Bureau of Child Support; Marquerite Roulet, Allison Lipscomb, Cara Gabor and Louisa Medaris, CFFPP; Robert Andersen, Legal Action of Wisconsin, David Pate, Jr.

Ron Hunt Welcomed the Committee and said that the Committee should complete its work today so a final report could be forwarded to the Department. Anyone who cannot agree to broad consensus items is welcome to forward letters stating their position to him. Those will be added as addenda to the final Committee report.

Ron also thanked the Committee members for their diligent and hard work to complete the work of the Committee and produce substantive recommendations for the Department.

Ron requested Susan Pfeiffer to chair the meeting because he has a conflict in his schedule and will be unable to stay.

The primary work of the Committee at this meeting was to review and edit the draft report. The results of the discussion and edits are reflected in the final report forwarded to the Department.

Jacquelyn requested that the meeting minutes reflect that she is uncomfortable with the shared time proposal only as it is applied to low-income payers. There has not been sufficient discussion and analysis concerning the impact of the proposed policy on low-income payers.

There was discussion at the end of the meeting whether to recommend that the Committee proposals for low-income, high-income and shared time placement be included in statute or as administrative rule. Because a number of Committee members had left at the time of the discussion, it was agreed to poll absent members before making a Committee recommendation.

Halbur, Jennifer

From: Seaquist, Sara
Sent: Monday, August 25, 2003 2:46 PM
To: Halbur, Jennifer
Subject: FW: BLOOD Talking Points for Jennifer,

Amy wants us to contact the other co-chairs and figure out who is saying what. I can contact them if you want...but I forgot who the 4th co-chair is (aside from Gielow and Robson)...

-----Original Message-----

From: Amy L. Boyer [mailto:boyer@hamilton-consulting.com]
Sent: Monday, August 25, 2003 2:42 PM
To: sara.seaquist@legis.state.wi.us
Subject: Fw: BLOOD Talking Points for Legislators

Here are the talking points. If possible, could you let me know who is planning to say what?

Thanks,
Amy

----- Original Message -----

From: LenzJ@usa.redcross.org
To: boyer@hamilton-consulting.com
Sent: Friday, August 22, 2003 8:07 AM
Subject: BLOOD Talking Points for Legislators

Hi Amy,

Attached are the talking points, broken down into 4 categories (approximately two 'blood facts' under each category), along with some general statements about the Coalition (I basically used the quotes that are in the news release).

Hope this helps. Please let me know if you have any questions or thoughts on these.

Thanks! <<Talking_points.doc>>

Janna Lenz

Media Specialist

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08/25/2003

Legislator Talking Points
B.L.O.O.D. Coalition Press Conference
Tuesday, September 2, 2003
Capitol Rotunda

General Blood Facts - Category 1:

- Every two seconds, someone in America needs blood. Every day, 38,000 donations are needed in the United States to help save the lives of cancer patients, accident victims, children with blood disorders, among others.
- There is no current substitute for blood. Blood is the gift of life that can only be given by the generous act of donating blood. Donating blood is a selfless way to give back to your community. It only takes about an hour to donate blood and help save a life.

General Blood Facts - Category 2:

- It is estimated that 60 percent of the U.S. population is eligible to donate blood, however, only five percent of the eligible population ever do. In other words, out of 100 people, three would be blood donors.
- While blood can be donated every 56 days, the average blood donor gives blood only 1.7 times per year. Donors must be healthy men and women age 17 and older and weighing at least 110 pounds.

General Blood Facts - Category 3:

- On any given day, an average of 34,000 units of red blood cells are needed for patients in the United States.
- The Red Cross collects approximately half of the nation's blood supply. Approximately 13.9 million units of whole blood are donated in the United States each year by approximately 8 million volunteer blood donors.
- In the Badger-Hawkeye Region, we collect nearly 1,000 units of blood every day.

General Blood Facts - Category 4:

- Each unit of blood that is donated can save up to three lives, making every blood donation important to our nation's **blood supply** and potentially one that will save the life of a loved one.
- Blood transfusions are often needed for trauma victims – due to accidents and burns – heart surgery, organ transplants and patients receiving treatment for leukemia, cancer or other diseases such as sickle cell disease.

General B.L.O.O.D Coalition Overview Points:

- In an effort to help improve the nation's blood supply, legislators from across Wisconsin are joining together to educate citizens on just how important giving blood really is.
- Members of the **Bipartisan Legislators Organized for Outreach to Donors**, or **B.L.O.O.D.**, bring their support in educating constituents about the importance of blood donation, awareness of donation opportunities and increasing blood donor levels throughout Wisconsin.
- We are proud to join in the mission of saving lives, and look forward to spreading the message about the constant need for blood donations.
- As the coalition works together, we hope to accomplish the task of building awareness of the need for blood, as well as helping build the blood supply.
- As legislators, it is our duty to support and present programs that truly benefit communities and lives throughout our state and this nation. Red Cross blood drives are one of those important and necessary community initiatives that enhance volunteerism, build humanitarian principles, and provide an opportunity for citizens to give of themselves in order to help others.
- Many people are unaware that donated blood is frequently in short supply. We encourage more people to become *regular* blood donors.



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MEMORANDUM

TO: Members, Assembly Committee on Children and Families

FROM: Family Law Section of the State Bar of Wisconsin

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

DATE: August 26, 2003

BACKGROUND

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

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

1. The Family Law Section of the State Bar of Wisconsin **strongly opposes** Assembly Bill 250.
2. The Family Law Section **greatly prefers and strongly supports** the approach taken in Clearinghouse Rule 03-022.

Reasons Why the Family Law Section Supports the Rule

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

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

State Bar of Wisconsin

5302 Eastpark Blvd. ♦ P.O. Box 7158 ♦ Madison, WI 53708-7158

(800)728-7788 ♦ (608)257-3838 ♦ Fax (608)257-5502 ♦ Internet: www.wisbar.org ♦ Email: service@wisbar.org



- Clearinghouse Rule 03-022 represents a consensus with all stakeholders participating, while Assembly Bill 250 can be seen as an attempt to nullify the consensus process.
 - Clearinghouse Rule 03-022 corrects many of the problems with the current child support formula and it balances the interests of the payer and payee without losing sight of the children.
 - The charts provided by the Family Law Section at the hearing clearly illustrate that Clearinghouse Rule 03-022 would not drastically reduce child supporting a broad range of cases the way that Assembly Bill 250 would.
 - The proposed rule will reduce child support payments in high income cases above the thresholds in the rule. It will also reduce child support payments in shared time placements situations (i.e. where the placement time of the parent with the lesser amount of placement exceeds 25%).
3. Proponents of Assembly Bill 250 have suggested that Wisconsin child support orders for high income parents are higher than in surrounding states. This may be comparing apples to oranges. Surrounding states, such as Illinois, require high- income payers to provide (i.e., make payments) for their children's higher education. All the states surrounding Wisconsin promote assistance from high income payers for college expenses in some form or another. To look simply at dollar amounts awarded can be misleading.

Reasons Why the Family Law Section Opposes Assembly Bill 250.

1. Assembly Bill 250 would immediately and dramatically reduce child support for all families where the parents have combined incomes of \$48,000 per year-- the vast majority of Wisconsin families. The child support formula changes in AB 250 would harm children by making less money available for their care and support. The changes in Clearinghouse Rule 03-022 will also tend to lower child support in most cases; however, the reductions are much more modest than under Assembly Bill 250
2. Assembly Bill 250 would dramatically change the child support formula used to calculate child support for all families where the combined annual income of both parents exceeds \$48,000.
 - For these families the bill would substitute a completely new and far more complex way of calculating child support. The text of the bill acknowledges how much more complex the new formula would be. It requires DWD to prepare and make available to judges and other court personnel computer software, as well as tables and instruction manuals, to help with calculating child support under the new method provided in the bill.

- In many counties 70 to 75 % of family court cases are *pro se* cases in which the parties represent themselves without an attorney. Adopting a new and more complicated formula will place burdens on these families and on court personnel who will be called upon to inform unrepresented parties of the new formula. (They may also have to explain the old formula, depending on the circumstances.)
 - Making such a dramatic change in the way child support is calculated is likely to have the unintended consequence of **increasing** litigation because it will negate decades of appellate case law decided under the existing formula. Parties and the courts would be starting from scratch in trying to interpret the new formula.
 - Just last year, thousands of Wisconsin parents, as well as courts and county child support agencies had to wrestle with the impact of changing child support orders from percentage-expressed orders to fixed-dollar orders in response to federal pressure. Senate Bill 156 would force a whole new set of changes in the way child support is calculated on a system that in some ways is still recovering from last year's changeover.
4. Assembly Bill 250 would inappropriately regard all families where the combined annual income of both parents exceeds \$48,000 as "high income."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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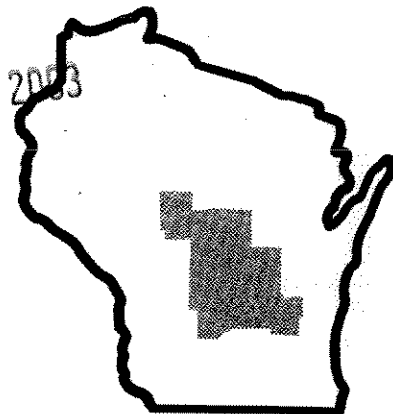
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August 26, 2003

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

RE: SB 156, AB 250, DWD Rule 40

Dear Sen. Zien:

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

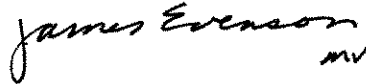
We do not believe that the administrative rule should be repealed in favor of an entirely new method of child support calculation. The proposed DWD rule has undergone extensive public review and revision, and appears to be a balanced approach to the many kinds of cases that present themselves. We believe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

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

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

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

Sincerely,

A handwritten signature in cursive script that reads "James Evenson" with a small "mv" mark at the end.

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

JE/jl

cc: Senator Carol Roessler
Representative Steve Kestell

Jim Doyle
Governor

Roberta Gassman
Secretary



State of Wisconsin

Department of Workforce Development

OFFICE OF THE SECRETARY

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August 28, 2003

Senator Carol A. Roessler, Chair
Senate Committee on Health, Children, Families, Aging and Long Term Care
Room 8 South
State Capitol
P.O. Box 7882
Madison 53707-7882

Re: CR 03-022/DWD 40, relating to the child support guidelines

Dear Senator Roessler and Members of the Committee:

As you know, on July 22, 2003, the Senate Committee on Health, Children, Families, Aging and Long Term Care requested that the department modify the proposed child support rule to provide for a realistic payment amount for low-income payers and review the high-income section of the proposed rule to determine if the level of support required is justified. The department agreed to make modifications to the low-income provision and a new proposal has been developed in cooperation with low-income advocates. The department reviewed the high-income provision and concluded that the proposed rule as submitted to the legislature does accurately reflect research on the cost of raising children.

Modification affecting low-income payers. The new proposal provides a schedule with reduced percentage rates to be used to determine the child support obligation for payers with an income below approximately 125% of the federal poverty guidelines if the court determines that the payer's total economic circumstances limit his or her ability to pay support at the level determined using the full percentage rates. If a payer's monthly income is below approximately 75% of the federal poverty guidelines, the court may set an order at an amount appropriate for the payer's total economic circumstances. This amount may be lower than the lowest support amount in the schedule. For income between approximately 75% and 125% of the federal poverty guidelines, the percentage rates in the schedule gradually increase as income increases. The full percentages rates apply to payers with income greater than or equal to approximately 125% of the federal poverty guidelines.

The modified proposed rule also provides that when income is imputed based on earning capacity the court shall consider a parent's history of child care responsibilities as the parent with primary placement, along with the other factors of the parent's education, training and work experience, earnings during previous periods, physical and mental health, and the availability of work in or near the parent's community.

In addition, if the court is imputing income at minimum wage because information on the parent's actual income or ability to earn is unavailable, the court may impute to the parent the income that a person would earn by working 35 hours per week for the federal minimum hourly wage, rather than 40 hours per week.

The modified proposed rule language is as follows:

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

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

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

DWD 40.02 (19) "Low-income payer" means a payer for whom the court orders a monthly support amount at or below the amount provided in the schedule in Appendix C based on the court's determination that the payer's total economic circumstances limit his or her ability to pay support at the level provided under s. DWD 40.03 (1) and the payer's income available for child support is at or below a level set forth in Appendix C.

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

DWD 40.03 (1)(intro.) DETERMINING CHILD SUPPORT USING THE PERCENTAGE STANDARD. The court shall determine a parent's monthly income available for child support by adding together the parent's annual gross income or, if applicable, the parent's annual income modified for business expenses; the parent's annual income imputed based on earning capacity; and the parent's annual income imputed from assets, and dividing that total by 12. This may be done by completing the worksheet in Appendix B, although use of the worksheet for this purpose is not required. Except as provided in s. DWD 40.04 (4) and (5), the percentage of the parent's monthly income available for child support or adjusted monthly income available for child support that constitutes the child support obligation shall be:

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

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

(a) Adding wages paid to dependent household members.

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

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

DWD 40.03 (3) DETERMINING INCOME IMPUTED BASED ON EARNING CAPACITY. In situations where the income of a parent is less than the parent's earning capacity or is unknown, the court may impute income to the parent at an amount that represents the parent's ability to earn, based on the parent's education, training and work experience, earnings during previous periods, physical and mental health, history of child care responsibilities as the parent with primary physical placement, and the availability of work in or near the parent's community. If evidence is presented that due diligence has been exercised to ascertain information on the parent's actual income or ability to earn and that information is unavailable, the court may impute to the parent the income that a person would earn by working 35 hours per week for the federal minimum hourly wage under 29 USC 206 (a)(1). If a parent has gross income or income modified for business expenses below his or her earning capacity, the income imputed based on earning capacity shall be the difference between the parent's earning capacity and the parent's gross income or income modified for business expenses.

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

DWD 40.04 (4) DETERMINING THE CHILD SUPPORT OBLIGATION OF A LOW-INCOME PAYER. (a) The court may use the monthly support amount provided in the schedule in Appendix C as the support amount for a payer with monthly income available for child support at a level set forth in the schedule if the payer's total economic circumstances limit his or her ability to pay support at the level determined under s. DWD 40.03 (1). If a payer's monthly income available for child support is below the lowest income level in Appendix C, the court may order an amount appropriate for the payer's total economic circumstances. This amount may be lower than the lowest support amount in Appendix C.

(b) The department shall revise the schedule in Appendix C at least once every four years. The revision shall be based on changes in the federal poverty guidelines since the schedule was last revised. The department shall publish revisions to the schedule in the Wisconsin Administrative Register.

Note: The schedule in Appendix C provides reduced percentage rates that may be used to determine the child support obligation for payers with a monthly income available for child support below approximately 125% of the federal poverty guidelines. If a payer's monthly income available for child support is below approximately 75% of the federal poverty guidelines, the court may order an amount appropriate for the payer's total economic circumstances. For monthly income available for child support between approximately 75% and 125% of the federal poverty guidelines, the percentage rates in the schedule gradually increase as income increases. The percentages rates used in s. DWD 40.03 (1) apply to payers with monthly income available for child support greater than or equal to approximately 125% of the federal poverty guidelines.

SECTION 36. DWD 40 Appendix C is created to read as attached in Appendix C.

Department response to committee on high-income payers. The Committee requested that the department review its proposal for high income payers in light of the comments made at the hearing by a representative of Wisconsin Fathers for Children and Families. This representative indicated that the proposed guidelines for high income parents were out of line with the actual cost of raising children.

In 2001, the department asked the UW-Madison Institute for Research on Poverty (IRP) to review literature on the cost of raising children, with particular attention to the issue of expenditures on children in high-income families. Wisconsin's child support rule is based on the principle that a child's standard of living, should, to the degree possible, not be adversely affected because his or her parents are not living together. Therefore, the IRP looked at estimates of expenditures on children in intact families.

In reviewing the basic research, the IRP found that higher income families spend between 23 and 33% of their income on two children. Further, the IRP noted that the studies take into account only current consumption and exclude such items as savings for future education and accumulation of home equity that can later be borrowed against.

The attached two charts comparing the proposed guidelines to research on the cost of raising two children for families with incomes of \$120,000 and \$156,000 provide a visual demonstration that the department's proposal is in line with the best known studies. As the charts demonstrate, these studies indicate that a family with an annual income of \$120,000 would spend between \$26,830 and \$40,000 annually on two children (not including savings). The department's proposal would require \$29,100 in support from a payer with an income of \$120,000. A family with an annual income of \$156,000 would spend between \$26,830 and \$51,480 annually on two children, and the department's proposal would require \$36,300 in support.

The department has reviewed the information provided by a representative of Wisconsin Fathers for Children and Families. The information does not contain any citation to what study the figures on the cost of raising children are based on. The department's charts contain figures from the best known studies on this issue. Also, the amounts indicated as "Wisconsin child support awards" in the charts provided by Wisconsin Fathers for Children and Families are based on the current child support guidelines and not the proposal submitted to the legislature. The department can provide a detailed explanation of our analysis on request.

In light of this information, the department believes that the high income adjustment in its proposed rule is appropriate. For the portion of annual gross income exceeding \$102,000, a lower percentage will be applied, with a further reduction at \$150,000. This proposal is consistent with both the IRP research and appellate case law and will increase the perception of fairness without compromising the principle that children are entitled to a standard of living based upon the incomes of both of their parents.

Respectfully submitted,



Jo Anna Richard
Executive Assistant

Attachments:

DWD 40, Appendix C

Chart entitled "Proposed Child Support Guideline Compared to Research on Cost of Raising Two Children at Income of \$120,000"

Chart entitled "Proposed Child Support Guideline Compared to Research on Cost of Raising Two Children at Income of \$156,000"

Copy: Representative Kestell, Chair, Assembly Committee on Children and Families

References

Lino, Mark. *Expenditures on Children by Families, 2002*. U.S. Department of Agriculture, May 2003.

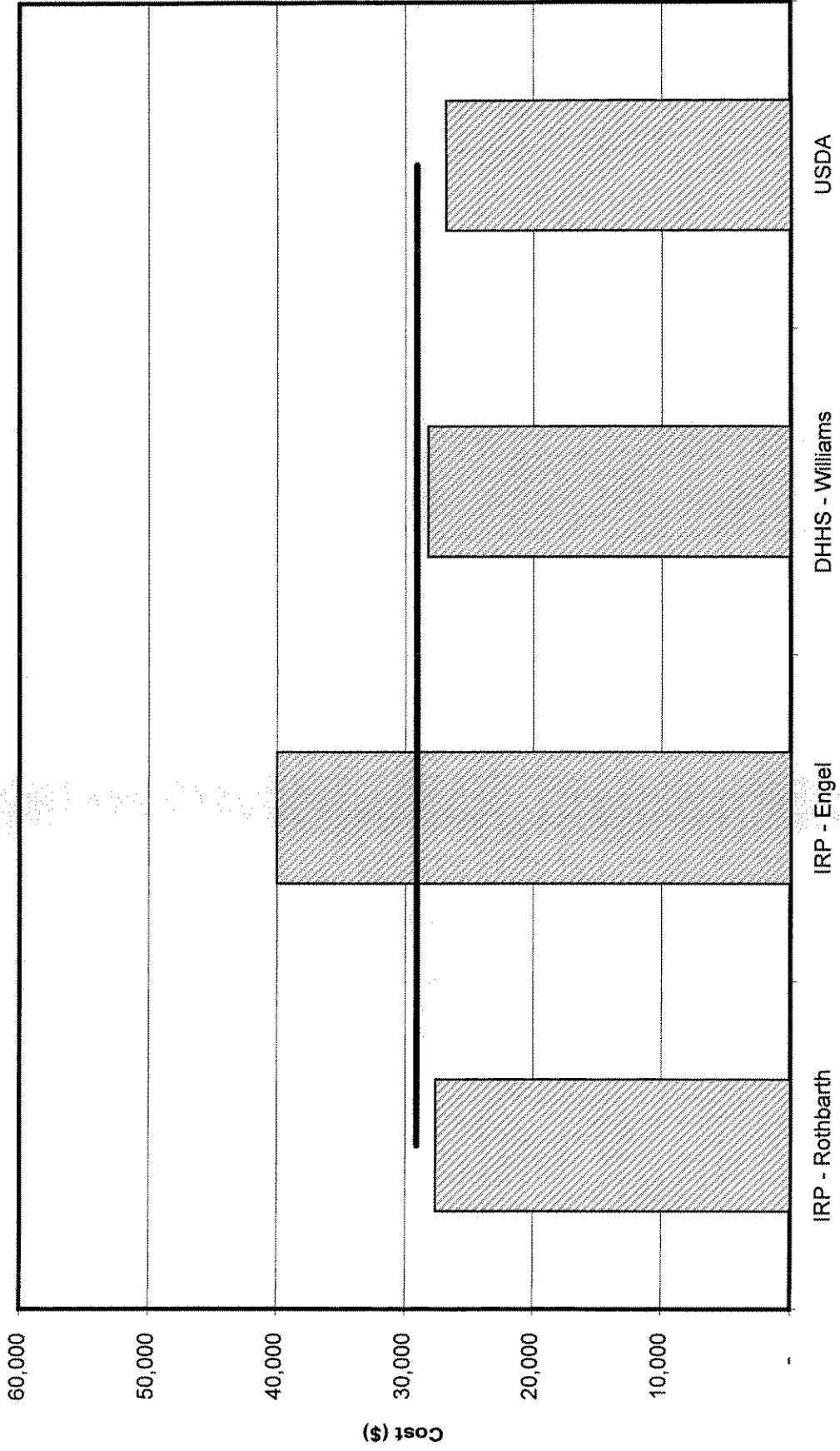
Rothe Ingrid, Judith Cessetty, and Elisabeth Boehnen. *Estimates of Family Expenditures for Children: A Review of the Literature*. Institute for Research on Poverty, University of Wisconsin-Madison, 2001.

Williams, Robert G. *Development of Guidelines for Child Support Orders*. U.S. Department of Health and Human Services, 1987.

Chapter DWD 40
Appendix C
Child Support Obligation of Low-Income Payers

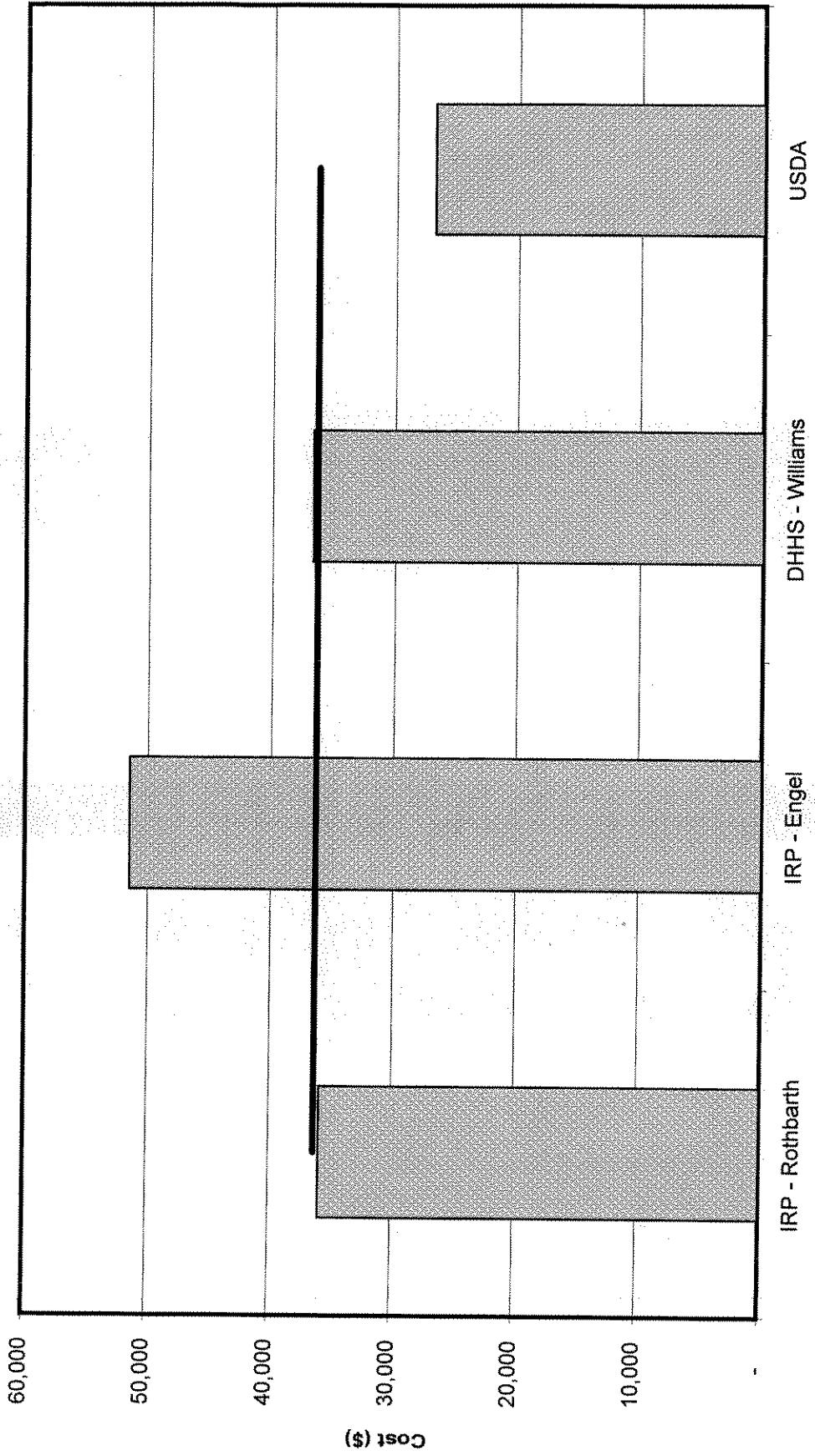
Monthly Income Up To	One Child		Two Children		Three Children		Four Children		Five Children	
	Percent	Child Support Amount	Percent	Child Support Amount	Percent	Child Support Amount	Percent	Child Support Amount	Percent	Child Support Amount
575	11.13%	\$64	16.36%	\$94	18.99%	\$109	20.27%	\$17	22.23%	\$128
600	11.52%	\$69	16.94%	\$102	19.65%	\$118	20.99%	\$126	23.01%	\$138
625	11.91%	\$74	17.51%	\$109	20.32%	\$127	21.70%	\$136	23.80%	\$149
650	12.30%	\$80	18.09%	\$118	20.99%	\$136	22.42%	\$146	24.58%	\$160
675	12.70%	\$86	18.66%	\$126	21.66%	\$146	23.13%	\$156	25.37%	\$171
700	13.09%	\$92	19.24%	\$135	22.32%	\$156	23.85%	\$167	26.15%	\$183
725	13.48%	\$98	19.82%	\$144	22.99%	\$167	24.56%	\$178	26.94%	\$195
750	13.87%	\$104	20.39%	\$153	23.66%	\$177	25.28%	\$190	27.72%	\$208
775	14.26%	\$111	20.97%	\$163	24.32%	\$189	25.99%	\$201	28.51%	\$221
800	14.65%	\$117	21.54%	\$172	24.99%	\$200	26.71%	\$214	29.29%	\$234
825	15.04%	\$124	22.12%	\$182	25.66%	\$212	27.42%	\$226	30.08%	\$248
850	15.43%	\$131	22.70%	\$193	26.33%	\$224	28.14%	\$239	30.86%	\$262
875	15.83%	\$138	23.27%	\$204	26.99%	\$236	28.85%	\$252	31.65%	\$277
900	16.22%	\$146	23.85%	\$215	27.66%	\$249	29.57%	\$266	32.43%	\$292
925	16.61%	\$154	24.42%	\$226	28.33%	\$262	30.28%	\$280	33.21%	\$307
950	17%	\$162	25%	\$238	29%	\$276	31%	\$295	34%	\$323

**Proposed Child Support Guideline Compared to Research on
Cost of Raising Two Children at Income of \$120,000**



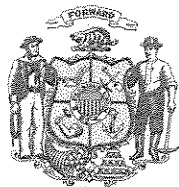
 Research on Cost of Raising Two Children at Income of \$120,000
  Proposed CS Guideline

**Proposed Child Support Guideline Compared to Research on
Cost of Raising Two Children at Income of \$156,000**



Research on Cost of Raising Two Children at Income of \$156,000

 Proposed CS Guideline



Carol Roessler
STATE SENATOR

August 29, 2003

To: Senate Health, Children, Families, Aging and Long Term Care Committee
Members

From: Senator Carol Roessler, Chair

Re: CR 03-022 relating to child support guidelines

On July 22, 2003 the Committee voted 9-0 to request further modifications to CR 03-022.

The Department of Workforce Development submitted the attached modifications to the rule. The Committee has until September 11, 2003 to request further modifications.

Please let me know by September 5, 2003 if you have concerns with the rule.

Halbur, Jennifer

From: Halbur, Jennifer
Sent: Friday, August 29, 2003 2:27 PM
To: Carpenter, Tim; Ferris, Amy; Foster, Marianne; Kleinschmidt, Linda; Mnuk, Katie; O'Neill, Eileen; Soderbloom, Kathy; Witzel-Behl, Maribeth
Cc: Rose, Laura
Subject: CR 03-022

Hi,

I just wanted to pass along that the following groups were involved in crafting the modification language for CR 03-022, child support:

- WI Council on Children and Families
- Legal Action
- WI Coalition Against Domestic Violence
- Center on Fathers, Families, and Public Policy
- The Department also ran group suggestions past judges

Thanks!

Jennifer

CR 9/4/03
Seid
"take no
action"

Halbur, Jennifer

From: Jan Raz [jraz@wi.rr.com]
Sent: Friday, August 29, 2003 12:25 PM
To: Halbur, Jennifer
Subject: RE: CR 03-022 child support guidelines...looking for Jan Raz

Yes! Please send to my attention.

*Sent copy on
8/29*

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

-----Original Message-----

From: Halbur, Jennifer [mailto:Jennifer.Halbur@legis.state.wi.us]
Sent: Friday, August 29, 2003 11:50 AM
To: 'wfcf@wi.rr.com'
Subject: CR 03-022 child support guidelines...looking for Jan Raz

To Whom it May Concern:

On July 22, 2003, Jan Raz of WI Fathers for Children and Families testified in opposition to CR 03-022. The Committee asked the Department of Workforce Development to make changes to the rule. The Department sent the Committee a modified version of the rule on 8-28-03. I am trying to reach Jan to find out if he would like to see the modified rules and provide comment.

Sincerely,

Jennifer Halbur
Office of State Senator Carol Roessler, Chair
Senate Committee on Health, Children, Families, Aging and Long Term Care
608-266-5300

Halbur, Jennifer

From: Jan Raz [jraz@wi.rr.com]
Sent: Tuesday, September 02, 2003 8:48 AM
To: sen.roessler@legis.state.wi.us
Cc: mark.gundrum; mary.lazich; gary.george; terry.musser; Steve.Kestell@legis.state.wi.us; Sen.Zien@legis.state.wi.us
Subject: Comments re-DWD response re- CR 03-022/DWD 40, re- child support guidelines



dwdresponse1tr1.pdf

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Dear Senator Roessler and members of the Committee:

Thank you for forwarding the Department's August 28, 2003 response for my review and comment.

The attached pdf file includes my comments regarding the department's response.

If you or any of your committee members have any questions regarding my comments, please do not hesitate to contact me.

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

Wisconsin
for Children



Fathers
and Families

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

September 2, 2003

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

Re: DWD response regarding CR 03-022/DWD 40, relating to the child support guidelines

Dear Senator Roessler and Members of the Committee:

Thank you for forwarding the Department's August 28, 2003 response for my review and comment. I offer the following comments:

1. The new low income table, appears to be more reasonable than the originally proposed \$21 minimum support. It however rests on the court's applying actual income rather than a minimum imputed income of \$781/month.
2. Rather than clarifying that courts should use actual income, the proposed modifications to the imputed income provisions allow the court to impute income to a parent that is working full time but not at his or her maximum earning potential. This should be offensive to people such as legislators, who work at meaningful jobs at lower pay than they could earn elsewhere. This provision would allow the court to order such a legislator to pay child support based on an much higher non-public service sector job income.

The legislature should reject this provision and send this back to the department, with instructions, that these provisions for imputed income should be modified to clarify that the court may only impute income when a person is not working full time.

3. As discussed below, the response to the high-income payers is based on false and misleading information provided by the staff of the DWD. Aren't there laws against providing false information to legislative committees? How can the legislature make informed decisions if they can not rely on the staff of an administrative department to provide them truthful information.

1. Contrary to the department's claim, on numerous occasions, including on 5/17/01 and at the hearings for the CR 03-022, AB250 and SB156, I provided the citations to the sources of my economic data on the attached table. The DHSS-Williams, and the USDA reports, referenced in the Department's response, were included in my data. The IRP reference is obscure data, not recognized by anyone outside of Wisconsin.
2. All of these reports referenced in the response are based on the income of both parents. They can not justify the department's proposal which is based on only one parent's income. It is particularly irresponsible to ignore the income of one of the parents, when Wisconsin is a

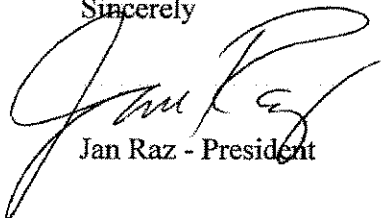
community property state where the legislature in Statute Section 765.01 has established the intent of the state policy is for both parents to equally share the responsibility for the support of minor children, based on their ability to do so.

3. To suggest that the department's proposal is justified by the DHSS - Williams report is a intentional false statement intended to deceive the legislature. The percentages in my table are correct, and are supported by the fact that they are reasonably consistent with the Wisconsin results in the \$30-40,000 income range, and the similar results in Indiana and Arizona are based on this data. In fact at the September 24th, 2001 meeting of the DWD review committee, Mr. Williams was reported in the DWD minutes as stating "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." How can department suggest this data justifies their proposal, when the author of the study has clearly stated that it does not?
4. The USDA report, is a well funded and established source of economic data, however no state has so far applied these results as a basis of child support orders. This is because it includes health care and child care expenses, which are usually added to the basic child support order, in Wisconsin as well as most other states. It also results in higher child related expenses because it uses prorates expenses, instead of incremental expenses of raising children. As noted on the attached sheet, it suggests that, the expenditures on two children is 52%, 34.2% and 26.7% for lower, middle and higher income families, respectively. By continuing to support the establishment of child support orders to be 25% of a parent's income, the DWD has rejected the methodology of this economic data for Wisconsin. It is therefore intentionally misleading to suggest this data, justifies the department's proposal for families where only the payer's income exceeds \$102,000 and \$150,000 when
 - a. The department has rejected this data for lower and middle income cases.
 - b. This report only defines the expenditures on children where the combined income of both parents is greater than \$67,000 (Average \$100,300), not when one parent's income exceeds \$102,000 and \$150,000.
 - c. This study demonstrates the dramatic decline in the percentage of income parents spend on children as the family income increases, not the same in all cases.

The legislature should reject this response and send this back to the department, with instructions, that the method of calculating child support must be based on the income of both parents and to be reasonably consistent with the DHSS/Williams economic data on the cost of raising children used by the vast majority of other states for establishing child support orders.

If they refuse to do so, the legislature should consider initiating an investigation to find out why the department staff is providing false and misleading information to legislative committees.

Sincerely



Jan Raz - President

Copy: Representative Kestell, Senator Zien

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

Combined gross annual family income (both parents)	IRP*/Jacques Gaag (WI Cost of raising children study) 1982?	US DHSS (Develop. of guide-lines/ Cost of raising children study) *** 1987	IRP*/ R. Douthitt (Cost of raising children study) 1990	IRP*/Pitog - Good (Study of mean awards by all states in 1991) 1993	US Dept of Agric. (Cost of raising children study) **** 1999	Arizona (Cost of raising children study) *** Typical for 30+states 1999	Indiana (Cost of raising children tables) *** Typical for 30+states	Wisconsin proposed SB 156 / AB250 (2003)	Wisconsin DWD 40 Standard 1987-2001
\$ 14,400		28.8%		28.1%		30.0%	33.6%	25%	25%
\$ 20,066	27%**	26.9%	46%			27.8%	30.3%	25%	25%
\$ 23,000		26.0%			52%	27.6%	28.5%	25%	25%
\$ 30,000		23.9%		26.8%		26.8%	26.5%	25%	25%
\$ 41,446		21.6%	29%			24.6%	28.7%	25%	25%
\$ 48,900		21.0%			34%	23.2%	23.2%	24.6%	25%
\$ 52,800		20.8%		23.3%		22.4%	22.7%	23.9%	25%
\$ 92,700		17.4%			26%	17.3%	20.5%	19.0%	25%
\$126,000		15.2%		18.0%		16.1%	17.7%	17.3%	25%
\$180,000						14.2%	13.7%	15.8%	25%
\$208,000							12.4%	15.4%	25%

* IRP = Institute of Research on Poverty - UW Madison

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

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

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

PROVIDED TO DWD COMMITTEE
5/17/01

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.

(\$2,500 - 3000 / MONTH) NET INCOME IS APPROXIMATELY
\$3,400 - 4000 / MONTH GROSS INCOME (OF BOTH PARENTS)

Table 5. Estimated annual expenditures* on a child by husband-wife families, urban Midwest, † 2002

Age of Child	Total	Housing	Food	Transportation	Clothing	Health care	Child care and education	Miscellaneous ‡
Before-tax income: Less than \$39,800 (Average = \$24,900) \$12,939/YR AVERAGE 52% 2 KIDS								
0 - 2	\$5,990	\$2,230	\$840	\$690	\$320	\$450	\$880	\$580
3 - 5	6,150	2,210	950	670	310	420	990	600
6 - 8	6,240	2,170	1,230	780	350	490	580	640
9 - 11	6,310	2,000	1,500	860	390	530	350	680
12 - 14	7,090	2,210	1,570	990	660	540	250	870
15 - 17	7,030	1,780	1,710	1,350	580	570	410	630
Total	\$116,430	\$37,800	\$23,400	\$16,020	\$7,830	\$9,000	\$10,380	\$12,000
Before-tax income: \$39,800 to \$67,000 (Average = \$53,000) \$19,133/YR AVERAGE 34.2% 2 KIDS								
0 - 2	\$8,600	\$3,100	\$1,030	\$1,090	\$380	\$600	\$1,460	\$940
3 - 5	8,860	3,080	1,200	1,070	370	570	1,610	960
6 - 8	8,840	3,040	1,530	1,180	410	650	1,030	1,000
9 - 11	8,830	2,870	1,830	1,260	460	700	670	1,040
12 - 14	9,530	3,080	1,830	1,390	780	720	500	1,230
15 - 17	9,740	2,650	2,050	1,770	690	750	850	980
Total	\$163,200	\$53,460	\$28,410	\$23,280	\$9,270	\$11,970	\$18,360	\$18,450
Before-tax income: More than \$67,000 (Average = \$100,300) \$26,740/YR AVERAGE 26.7% 2 KIDS								
0 - 2	\$12,940	\$4,990	\$1,370	\$1,570	\$500	\$700	\$2,210	\$1,600
3 - 5	13,280	4,970	1,560	1,550	490	670	2,410	1,630
6 - 8	13,100	4,920	1,890	1,660	540	770	1,660	1,660
9 - 11	12,960	4,750	2,210	1,740	590	820	1,150	1,700
12 - 14	13,730	4,960	2,310	1,870	980	830	890	1,890
15 - 17	14,210	4,530	2,450	2,270	880	870	1,560	1,650
Total	\$240,660	\$87,360	\$35,370	\$31,980	\$11,940	\$13,980	\$29,640	\$30,390

*Estimates are based on 1990-92 Consumer Expenditure Survey data updated to 2002 dollars using the regional Consumer Price Index. For each age category, the expense estimates represent average child-rearing expenditures for each age (e.g., the expense for the 3-5 age category, on average, applies to the 3-year-old, the 4-year-old, or the 5-year-old). The figures represent estimated expenses on the younger child in a two-child family. Estimates are about the same for the older child, so to calculate expenses for two children, figures should be summed for the appropriate age categories. To estimate expenses for an only child, multiply the total expense for the appropriate age category by 1.24. To estimate expenses for each child in a family with three or more children, multiply the total expense for each appropriate age category by 0.77. For expenses on all children in a family, these totals should be summed.

†The Midwest region consists of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

‡Miscellaneous expenses include personal care items, entertainment, and reading materials.



United States
Department of
Agriculture

Expenditures on Children by Families, 2002

Halbur, Jennifer

From: Matzen, David
Sent: Thursday, September 04, 2003 4:59 PM
To: Halbur, Jennifer; Cady, Dean; Gruber, Ryan; Little, Sharon; Bott, Eric; Popp, Sarah; Sappenfield, Anne; George, Mary Beth; Kuhn, Jamie
Subject: Children and Families Committee Time
Importance: High

Just making sure everyone saw this, sorry for the confusion about the date...

-----Original Message-----

From: Matzen, David
Sent: Thursday, September 04, 2003 4:40 PM
To: *Legislative Assembly Republicans; *Legislative Assembly Democrats; *Legislative Senate Republicans; *Legislative Senate Democrats; Kestell, Steve
Cc: Sappenfield, Anne; Halbur, Jennifer; Richard, JoAnna - DWD; Chesnik, Constance; 'jraz@wi.rr.com'; Rep.Musser; Sewell, Pete; 'drossmiller@wisbar.org'; 'pcc@quarles.com'; Stigler, Ken; 'skrause@wasb.org'; 'celeson@wccf.org'; 'tkalies@mailbag.com'; Radloff, Gary
Subject: AMENDED: Assembly Children and Families Executive Session (9-10-03, 11:30 a.m., 300 NE)

Assembly

EXECUTIVE SESSION

Committee on Children and Families

-----AMENDED-----

The committee will hold an executive session on the following items at the time specified below:

Wednesday, September 10, 2003
11:30 AM
300 Northeast
State Capitol
Madison, Wisconsin

Clearinghouse Rule 03-022

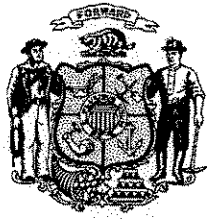
Relating to the child support guidelines.

Assembly Bill 250

Relating to: calculating child support and creating committees to review the method of calculating child support.

By Representatives Musser, Gundrum, McCormick, Albers, Kestell, Ainsworth, Ladwig, Hines, Lothian, Pettis, Loeffelholz, Hahn, Bies, M. Lehman, Gunderson, Nass, Ott, F. Lasee, Van Roy, Stone and Townsend; cosponsored by Senators Roessler, George and Lazich.

SEP 04 2003



Jennifer Halbur
Sen. Roesler's office
8-South

STATE REPRESENTATIVE
STEVE KESTELL
27TH ASSEMBLY DISTRICT

TO: Members of the Children and Families Committee
Representative Ladwig
Representative Albers
Representative Jeskewitz
Representative Vukmir
Representative Miller
Representative Sinicki
Representative Krug

FROM: Representative Steve Kestell, Chair

DATE: September 4, 2003

RE: Committee Review Period of Clearinghouse Rule 03-022

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

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

The Assembly Committee on Children and Families will be holding an executive session on September 11, 2003 at 10:00 a.m. in Room 328 NW to consider CR 03-022 and AB 250.

Steve Kestell
Chairman

September 10, 2003

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

Dear Secretary Gassman,

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

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

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

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

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

Sincerely,

Steve Kestell, Chair
Assembly Committee on Children and Families

Halbur, Jennifer

To: Senate Committee on Health, Children, Families, Aging and Long Term Care; Rose, Laura
Subject: Child Support Rule CR 03-022

Hi,

The Assembly Committee on Children and Families voted to request further modifications to CR 03-022, relating to child support. Our review period is now extended to 10 working days after the date we receive modifications from the Department of Workforce Development.

Thank you,

Jennifer

-----Original Message-----

From: Matzen, David
Sent: Wednesday, September 10, 2003 3:59 PM
To: Chesnik, Constance
Cc: Sappenfield, Anne; Halbur, Jennifer; Richard, JoAnna - DWD; 'jraz@wi.rr.com'; 'drossmiller@wisbar.org'; Radloff, Gary; 'rollie.boehm@earthtech.com'
Subject: September 20 Children and Families Committee Action



Child Support
Mods.doc

SEP 17 2003

THE JOURNAL TIMES
THURSDAY, SEPTEMBER 11, 2003

Child support ploy

When a couple in Wisconsin divorces and one parent is ordered to pay child support, we assume that support guidelines are set so that children are given "a good life."

A public hearing was held by a Wisconsin Senate Committee regarding changes in existing child support guidelines. The committee was given two sets of guidelines that tried to state the actual cost of raising children. The choices for the committee are between (1) SB 156, a bill sponsored by legislators with input from the public and (2) the Department of Workforce Development's (DWD) proposal that was written by the DWD with no public input.

As a citizen who attended the public hearing on the DWD guidelines, I have the following observations to make: This is government politics as usual. The DWD ignored any public testimony that did not support their position. When the Senate committee asked the DWD for more documentation to substantiate their position, they sent the committee a response on August 28, the Thursday before Labor Day (and the Harley Rally). They reminded the Committee that they have only 10 business days to object. If the DWD receives no objection by Friday, September 12, the DWD will make their own policy official and simply toss out the proposal written by legislators and public opinion.

The DWD continues to support a policy of "winner takes all." One parent wins the kids and the money, while the other parent loses both. This encourages litigation and uses the children as a pawn. This is good for the lawyers who back the DWD and good for the state, because federal matching funds are given for every dollar of child support assessed.

The DWD knew that many legislators are avid Harley riders and would be out with their constituents over the holiday.

Here's just another underhanded ploy to get what they want.

If you are or know somebody who is affected by the new guidelines, you need to contact your state legislators immediately. Keep in mind that it's a "good life" for all, especially for the child, when both parents are treated equally. For more information about what you can do to help, visit:

www.wisconsinfathers.org

www.wisconsinlkd.org

www.execpc.com/fairsupport

Malcolm Hatfield, M.D.

Franksville

Malcolm Hatfield, MD
Jeanie Hatfield, MEPD
6937 Brook Rd.
Franksville, WI 53126
262-752-1547

9/11/2003

RE: CR03-22, the DWD 40 administrative rule change proposal, and AB 250

Malcolm's ex-wife filed for divorce in Racine County in 1993. They have a daughter named Mary who is now 14. She currently lives in Illinois with her mother, because Racine County Family Court allowed her to move. In 2000, we married. My daughter Dana is 2 years younger than Mary. Since 1993, Malcolm has been assessed \$5,123.00 per month in child support. He has paid over \$600,000.00 to date. This is paid to a physician mom for one child. He has fought a tremendous uphill battle since 1993 so that he can be a father to Mary. Each and every time he asks for more time with Mary, he is first served with a subpoena to show his tax return, with the implication that they will demand more support, and soon thereafter, another false allegation of abuse arises. Malcolm's drop off/pick up time with Mary serves as a useful time to serve him with this subpoena. On the other hand, Dana has a liberal parenting relationship. Her dad pays \$400 per month in child support. This is used for fixed expenses. In the summer months, I refund his child support as he has Dana half time. Dana is well adjusted and is thriving. Mary was hospitalized in 2001 with inflammatory bowel disease. Her bone age was over 2 years delayed, and her height and weight for age were below the 5th percentile. She is committed to 2 prescription medications until she is 20 years old. She clearly needs a father and is not flourishing. What is more important to a child? Money or a father?

Ironically, the DWD recommends lowering child support for low income payers. They justify this by saying that child support serves as a wedge between children and their parents. Why isn't this true for all incomes? I would like to see the department lower the income threshold to a level more representative of just what it takes to raise a child for Wisconsin families. My husband and I support the provision of AB 250/ SB 156 for parents with combined incomes over \$4000.00 per month. We also support the DWD proposal for low income payers because we share their opinion that child support serves as a wedge between parents and their children. Please do not hesitate to contact us if you have any questions.

Sincerely,


Jeanie Hatfield, MEPD

Halbur, Jennifer

From: Roessler, Carol
Sent: Monday, September 15, 2003 11:16
To: Halbur, Jennifer
Subject: FW: Child Support Rules
Rollie emailed back - not constit.

Karen Asbjornson
Office of Senator Carol Roessler
(608) 266-5300/1-888-736-8720
Karen.Asbjornson@legis.state.wi.us

-----Original Message-----

From: Boehm, Rollie [mailto:Rollie.Boehm@earthtech.com]
Sent: Monday, September 15, 2003 10:08 AM
To: 'Roessler, Carol'
Subject: RE: Child Support Rules

Mrs. Roessler,

It is encouraging to me that you take time out of your busy schedule to read and evaluate e-mail messages. I hope I did not come across too negative in my message. My address is indicated below, I don't believe I am within your district. It is my hope that will not discourage you from evaluating my concerns at the senate level, since I'm quite sure there are many fathers within your senate district that are in the same boat. They probably are not aware of it, since the proposed DWD40 rules are not well published or known about. Of course the lawyers know about them! Imagine if you will that nearly every active divorce case involving child support as the potential for "going back into court". Lawyers are in business to make money, as am I. So it is no surprise the Wisconsin Bar supports the proposed rule. Divorce lawyers are probably down at the magazine stores right now buying the latest edition of Motor Trend magazine so they can decide what kind of sports car to buy with this potential increased case load.

Thank You For Your Time

Rolland Boehm
1608 Fieldstone Lane
Howards Grove, WI 53083
920-565-2723

-----Original Message-----

From: Roessler, Carol [mailto:Carol.Roessler@legis.state.wi.us]
Sent: Monday, September 15, 2003 9:05 AM
To: 'Boehm, Rollie'
Subject: RE: Child Support Rules

Thank you for your email.

Due to the volume of emails I receive, I ask that all emails include a home address. This will ensure that my constituents receive the highest priority. Your assistance is greatly appreciated. I look forward to your response.

09/18/2003

Sincerely,

CAROL ROESSLER

State Senator

-----Original Message-----

From: Boehm, Rollie [mailto:Rollie.Boehm@earthtech.com]

Sent: Friday, September 12, 2003 12:01 PM

To: 'sen.roessler@legis.state.wi.us'

Subject: Child Support Rules

Senator,

As I understand it, you currently chair the committee that deals with family affairs, including child support standards. I was very disappointed that your committee did not act or show interest on the current proposed DWD40 rule changes. The rules as proposed have a very negative affect on fathers that fought hard to achieve a 50% placement arrangement for their children. Under the proposed rule, 50% fathers would/will realize a child support increase by MORE than doubled. At the center of the problem is a proposed formula that increases the theoretical needs of the children by 50% because there are two households. In reality the only significant change in expenditures is housing (obviously both parties need to provide housing for their children). Items such as food, health insurance, health care, pocket spending money for the children, education are all the same as before. The only real significant increase is having to provide a bedroom or bedrooms at one additional place. That simply does not account for the 50% increase DWD is promoting. But more importantly, the disparity in incomes is or has been already accounted for in the issuance of maintenance or a mutually agreed upon maintenance buy-out. This disparity "adjustment" provides the X-spouse with the ability to achieve a similar housing arrangement as the payor. So I am very frustrated that you and your committee did not look into the justification for applying a 50% increase to the supposed costs of raising children. Now Mrs. Rosesser, imagine if you will, that I agreed to a roughly 50% split in incomes over a period of 8 to 10 years (I thought I was doing the right thing on behalf of the children and even my X). But then less than two years later I am threaten (by her) that my child support will more than double. If you work the math, my X wife will have substantially more available monthly income than myself, while she works 40 hours a week for a non-profit organization and I work 60 hours a week in a highly competitive private sector business. At what point, does a man who loves, wants, and yes needs his children, just throw up arms and say "I'm done, I can't take anymore - you got it all and now I can no longer afford my children 1/2 time". She divorced me - her reason - "I loved her too much and she needed more space". Twenty years of 50-60 hour work weeks, never cheated, never abused her, never even unemployed, good active father etc. But people do fall out of love, that is her right, I am man enough to admit that. But now here I am at 44 years of age with net worth of a minus \$40,000 and the State of Wisconsin wants to punish me more, and Lord knows the current system is damn hard on the father/husband already.

Mrs. Roessler, with all due respect you need to look into this. It is so wrong.

Thanks You
Rollie Boehm

09/18/2003

WISCONSIN STATE SENATE



Carol Roessler
STATE SENATOR

September 25, 2003

To: Senate Health, Children, Families and Aging and Long Term Care Committee Members

From: Senator Carol Roessler

Re: CR 03-22 relating to the child support guidelines.

On September 10, 2003, the Assembly Committee on Children and Families requested that the Department of Workforce Development consider modifications to the "high-income payer" portion of the CR 03-22.

Please find attached a letter from the Department which details the modifications that have been made. A copy of the child support guidelines is also attached.

Please contact Jennifer Halbur in my office at 266-5300 by **Tuesday September 30th**.

Jim Doyle
Governor

Roberta Gassman
Secretary

Larry Studeville
Division Administrator

SEP 23 2003



ADMINISTRATIVE SERVICES
201 East Washington Avenue
P.O. Box 7946
Madison, WI 53707-7946
<http://www.dwd.state.wi.us/>
e-mail: dwdasd@dwd.state.wi.us

State of Wisconsin
Department of Workforce Development

September 23, 2003

Representative Steve Kestell, Chair
Assembly Committee on Children and Families
Room 17 West
State Capitol
P.O. Box 8952
Madison, WI 53708-8952

Re: CR 03-022/DWD 40, relating to the child support guidelines

Dear Representative Kestell and Members of the Committee:

On September 10, 2003, the Assembly Committee on Children and Families requested that the Department consider the following issues regarding CR 03-022/DWD 40, relating to the child support guidelines.

Reduction of high-income payer threshold. The Committee requested that the Department consider lowering the threshold at which a payer may be subject to the high-income payer formula. The Department agrees to a reduction in the initial threshold from \$102,000 to \$84,000. A payer will be eligible for a 20% reduction in the amount of support owed under the full percentage standards for the income greater than or equal to \$84,000 and below \$150,000. A payer will be eligible for a 40% reduction in support owed for the income greater than or equal to \$150,000. The \$84,000 threshold is a compromise that keeps the child support amount within the range of the research on the cost of raising children. The modified proposed rule language is as follows:

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

DWD 40.04 (5) DETERMINING THE CHILD SUPPORT OBLIGATION OF A HIGH-INCOME PAYER.

(a) The payer's full monthly income available for child support shall be considered in determining the payer's child support obligation. The court may apply the reduced percentages under pars. (c) and (d) to income at the indicated levels.

(b) The court shall apply the percentages in s. DWD 40.03 (1) to a payer's monthly income available for child support that is less than \$7,000.

Note: A monthly income of \$7,000 is an annual income of \$84,000.

(c) The court may apply the following percentages to the portion of a payer's monthly income available for child support that is greater than or equal to \$7,000 and less than or equal to \$12,500:

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

Note: A monthly income of \$7,000 is an annual income of \$84,000 and a monthly income of \$12,500 is an annual income of \$150,000. The percentages that apply to income between \$84,000 and \$150,000 are approximately 80% of the full percentage standards.

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

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

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

Mandatory application of high-income formula. The Committee also requested that the Department consider requiring courts to apply the high-income formula to payers whose income is at an eligible level. Currently, application of all of the special circumstance provisions is discretionary to allow the court to consider the unique circumstances of each case. There are current and proposed special circumstance provisions affecting serial family payers, shared-placement payers, split-placement payers, high-income payers, and low income payers. There has been general support for retaining the discretionary nature of the special circumstance provisions. It would be inequitable to create a mandatory or presumptive formula for high-income payers and a permissive formula for other payers who may be eligible for application of a special circumstance provision. The Department has concluded that the discretionary application of the high-income formula is the most appropriate means of ensuring that each case will be looked at on its merits.

Application of the new rules to existing cases. The Committee requested that the Department address concerns that under the application of the proposed shared-placement provision, payers who have substantially equal periods of physical placement with the payee and considerably more income than the payee will be ordered to pay a significantly increased amount of child support compared to amounts ordered under current law. This may occur in limited situations because the current guidelines for shared-placement cases provide for a steep drop in support starting at 40% placement and result in support reductions that often far exceed the percentage of placement a parent may have. The purpose of the proposed changes to the shared-placement provision is to provide for a more equitable reduction in support that reflects the percentage of placement exercised by each parent.

Overall, there is consensus that this proposed rule change is good public policy. This change was supported by the Guidelines Advisory Committee, many advocates, and the State Bar. The new policy provides for a more equitable division of income between households, which is in line with the basic principle a child's standard of living should, to the degree possible, not be adversely affected because his or her parents are not living together. Although it is true that the new guidelines affecting shared-placement parents may lead to significant differences in support ordered as compared to amounts ordered under current law, this is also true for the new guidelines affecting high- and low-income payers. It would be inequitable to "grandfather in" payers who may be affected by the new shared-placement provision without also doing so for payers who may be affected by the new high- and low-income provisions. In individual cases, the court will have the discretion to maintain an order at the current level or apply the new guidelines based on the unique circumstances of each case.

Modifications affecting income imputed based on earning capacity. The Committee requested that the Department consider language changes to the section on imputing income based on earning capacity that would require courts to consider a payer's *recent* education,

training and work experience and *current* physical and mental health. The Department agrees to these changes but believes that the word "recent" is more appropriately placed before the reference to "work experience." The modified proposed rule language is as follows:

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

DWD 40.02 (14) "Income imputed based on earning capacity" means the amount of income that exceed the parent's actual income and represents the parent's ability to earn, based on the parent's education, training and recent work experience, earnings during previous periods, current physical and mental health, history of child care responsibilities as the parent with primary physical placement, and the availability of work in or near the parent's community.

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

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

- (a) Adding wages paid to dependent household members.
- (b) Adding undistributed income that meets the criteria in s. DWD 40.02 (13)(a)9. and that the court determines is not reasonably necessary for the growth of the business. The parent shall have the burden of proof to show that any undistributed income is reasonably necessary for the growth of the business.
- (c) Reducing gross income by the business expenses that the court determines are reasonably necessary for the production of that income or operation of the business and that may differ from the determination of allowable business expenses for tax purposes.
- (d) **DETERMINING INCOME IMPUTED BASED ON EARNING CAPACITY.** In situations where the income of a parent is less than the parent's earning capacity or is unknown, the court may impute income to the parent at an amount that represents the parent's ability to earn, based on the parent's education, training and recent work experience, earnings during previous periods, current physical and mental health, history of child care responsibilities as the parent with primary physical placement, and the availability of work in or near the parent's community. If evidence is presented that due diligence has been exercised to ascertain information on the parent's actual income or ability to earn and that information is unavailable, the court may impute to the parent the income that a person would earn b working 35 hours per week for the federal minimum hourly wage under 29 USC 206(a)(1). If a parent has gross income or income modified for business expenses below his or her earning capacity, the income imputed based on earning capacity shall be the difference between the parent's earning capacity and the parent's gross income or income modified for business expenses.

The Department appreciates your willingness to work with us to address your Committee's concerns within the context of the administrative rule. The Department is committed to making the administrative rule change process collaborative and flexible so that all constituencies have had a voice in framing this important public policy issue. We look forward to continuing a positive working relationship with your Committee.

Respectfully submitted,


Roberta Gassman
Secretary

Copy: Senator Roessler, Chair

Senate Committee on Health, Children, Families, Aging and Long Term Care

Jennifer - Sen.
Roesler's
office
8-South

Tab 2

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

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

Analysis Prepared by the Department of Workforce Development

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

Statutes interpreted: Sections 49.22 and 767.25, Stats.

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

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

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

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

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

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

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

The proposed rule provides a schedule with reduced percentage rates to be used to determine the child support obligation for payers with an income below approximately 125% of the federal poverty guidelines if the court determines that the payer's total economic circumstances limit his or her ability to pay support at the level determined

using the full percentage rates. If a payer's monthly income is below the lowest income level in Appendix C, the court may set an order at an amount appropriate for the payer's total economic circumstances. This amount may be lower than the lowest support amount in Appendix C. For income between approximately 75% and 125% of the federal poverty guidelines, the percentage rates gradually increase as income increases. The full percentage rates apply to payers with income greater than or equal to the levels listed in the schedule.

High-income payers. The proposed special provision for high-income payers is based on the premise that above certain income levels, parents share a smaller percentage of their income with their children. The payer's full monthly income is considered in determining the child support obligation. The standard percentages of 17% for 1 child, 25% for 2 children, 29% for 3 children, 31% for 4 children, and 34% for 5 or more children apply to a payer's income less than \$84,000 per year. The court may apply approximately 80% of the full percentage standards to the portion of a payer's annual income that is greater than or equal to \$84,000 and less than or equal to \$150,000. These percentages are 14% for 1 child, 20% for 2 children, 23% for 3 children, 25% for 4 children, and 27% for 5 or more children. The court may apply approximately 60% of the full percentage standards to the portion of the payer's annual income that is above \$150,000. These percentages are 10% for 1 child, 15% for 2 children, 17% for 3 children, 19% for 4 children, 20% for 5 or more children.

Miscellaneous. The department proposes the following additional changes:

- Income imputed based on earning capacity. In determining a parent's ability to earn, the court shall consider a parent's earnings during previous periods, current physical and mental health, history of child care responsibilities as the parent with primary placement education, training and current work experience, and availability of work in or near the parent's community. A requirement is added that evidence must be presented that due diligence has been exercised to ascertain information on the parent's actual income or ability to earn and that information is unavailable before the court may impute income at 35 times the federal minimum hourly wage.
- Income imputed from assets. The proposed rule allows income to be imputed from assets if a parent's assets are underproductive *and* at least one of the following applies: the parent has diverted income into assets to avoid paying child support or income from the parent's assets is necessary to maintain the child or children at the standard of living they would have had if they were living with both parents. The current rule allows income to be imputed from assets if they are underproductive, *or* the parent has diverted income into assets to avoid paying child support, *or* income from the parent's assets is necessary to maintain the child or children at the standard of living they would have had if they were living with both parents.
- Shared-placement order with serial families. The concept behind the special provision for shared-placement parents is that the order is smaller than a full percentage order because the parent has significant placement and is covering the child's basic support expenses while with that parent. A shared-placement parent with one child is spending approximately 17% of his or her income on the child even though the child support order may be substantially less than that amount if the parents' placement

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

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

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

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

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

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

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

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

SECTION 4. DWD 40.02 (4) is repealed.

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

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

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

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

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

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

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