

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

5. Unemployment insurance.

6. Income continuation benefits.

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

8. Military allowances and veterans benefits.

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

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

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

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

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

a. Child support.

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

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

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

e. Food stamps under 7 USC 2011 to 2036.

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

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

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

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

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

**SECTION 8. DWD 40.02 (20) is repealed.**

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

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

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

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

DWD 40.02 (14) "Income imputed based on earning capacity" means the amount of income that exceeds the parent's actual income and represents the parent's ability to earn, based on the parent's education, training and 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 11. DWD 40.02 (15) is amended to read:**

DWD 40.02 (15) ~~“Imputed income for child support~~ Income imputed from assets” means the amount of income ascribed to assets ~~which that~~ that are unproductive ~~or and~~ to which income has been diverted to avoid paying child support or from which income is necessary to maintain the child or children at the ~~economic level~~ standard of living they would ~~enjoy~~ have if they were living with both parents, and ~~which that~~ that exceeds the actual ~~earnings of~~ income from the assets.

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

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

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

DWD 40.02 (19) “Low-income payer” means a payer for whom the court uses the monthly support 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 a level set forth in the schedule in Appendix C.

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

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

**SECTION 16. DWD 40.02 (28) is repealed.**

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

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

DWD 40.02 (28) “Standard” or “percentage standard” means the percentage of income standard under s. DWD 40.03 (1) which, when multiplied by the payer’s ~~base or~~

adjusted base monthly income available for child support or adjusted monthly income available for child support, results in the payer's child support obligation.

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

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

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

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

**SECTION 20. DWD 40.02 (30) is repealed.**

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

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

DWD 40.03 (1)(intro.) DETERMINING CHILD SUPPORT USING THE PERCENTAGE STANDARD. The court shall determine a parent's monthly income available for child support by adding together the parent's annual gross income or, if applicable, the parent's annual income modified for business expenses; the parent's annual income imputed based on earning capacity; and the parent's annual income imputed from assets, and dividing that total by 12. This may be done by completing the worksheet in Appendix B, although use of the worksheet for this purpose is not required. Except as provided in s. DWD 40.04 (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 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 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 24. DWD 40.03 (4), (6), and (7) are renumbered DWD 40.03 (7), (10), and (11).**

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

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

1. The parent has ownership and control over any real or personal property, including but not limited to, life insurance, cash and deposit accounts, stocks and bonds, business interests, net proceeds resulting from worker's compensation or other personal injury awards not intended to replace income, and cash and corporate income in a corporation in which the parent has an ownership interest sufficient to individually exercise control and the cash or corporate income is not included as gross income under s. DWD 40.02 (13).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Assumptions:

Parent A's current base monthly income available for child support is \$3000.

Parent A and Parent B were married, had a child in 1990 and divorced in 1991. Parent A is subject to an existing support order of \$450 per month.

Parent A remarries and has two children, one born in 1996 and the other in 1997, and remains an intact family.

Parent A was adjudicated the father in 1998 for a child born in 1995. Child support needs to be established for this child.

Order of parent A's legal obligation for child support.

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

Calculation:

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



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

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

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

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

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

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

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

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

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

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

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

shared-placement payer is also a low-income payer, the child support obligation may be the lesser of the amount determined under this subd. or under sub. (4).

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

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

Number of children: Two

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

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

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

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

**DWD 40.04 (3) DETERMINING THE CHILD SUPPORT OBLIGATIONS OF SPLIT-PLACEMENT PARENTS.** For parents who have 2 or more children and each

parent has placement of one or more but not all of the children, the child support obligations may be determined as follows:

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

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

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

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

Assumptions:

Parent A and B have 3 children.

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

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

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

Calculation:

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

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

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

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

**DWD 40.04 (4) DETERMINING THE CHILD SUPPORT OBLIGATION OF A LOW-INCOME PAYER.** (a) The court may use the monthly support amount provided in the schedule in Appendix C as the support amount for a payer with a 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 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.

(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 an income 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 appropriate for the payer's total economic circumstances. For monthly income 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 percentage rates used in s. DWD 40.03 (1) apply to payers with income greater than or equal to approximately 125% of the federal poverty guidelines.

**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.

**SECTION 33. DWD 40.05 is repealed.**

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

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

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

**SECTION 37. EFFECTIVE DATE.** This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Check one ~ Temporary ~ Final
Judge
Branch

**Chapter DWD 40**

**APPENDIX B**

**Child Support Percentage Worksheet**

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

Case name	~ Mother	Case number
	~ Father	

**SECTION I – Determination of Child Support Using the Percentage Standard**

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

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

**Gross Income:**

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

**Income Modified for Business Expenses:**

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

**B. Calculation of Income Imputed Based on Earning Capacity**

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

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

**C. Calculation of Income Imputed from Assets**

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

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

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

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

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

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

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

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



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

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

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

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

**This is the second adjusted monthly income available for child support.** \_\_\_\_\_

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

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

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

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

**This is the third adjusted monthly income available for child support.** \_\_\_\_\_

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

---

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

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

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

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

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

c) Subtract line 11(b) from line 11(a). \_\_\_\_\_

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

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

---

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

**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%	\$117	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



# Today's Dads

Newsletter of

**Wisconsin Fathers for Children and Families**

( <http://www.wisconsinfathers.org> )

OCT 23 2003

September/October, 2003

## DWD child support revisions complete legislature review phase

By Jan Raz  
Hales Corners, WI

The Administrative Rule Change (CR03-22) initiated by the Department of Workforce Development has completed the legislative review process and should become effective in the very near future. Legislative action on AB 250/SB156, in the meantime, has been on hold waiting to see how the Department addressed the concerns of the legislature.

### THE GOOD NEWS:

As of October 1, the Department's proposal includes the following changes:

#### *Shared Placement*

The DWD proposal creates a new shared placement formula that recognizes that both parents incur significant expenses during their respective placement periods. The formula considers the amount of placement and the income of both parents, when both have placement more than 25% of the time (92 overnights or equivalent care).

This is a significant improvement over the current standard.

#### *Higher Income Cases*

The DWD has taken a first step to recognize that the amount defined by the current formula exceeds the needs of children in higher income families. Their latest proposal maintains the existing percentages unless the payer only earns over \$7,000/month (\$84,000 a year), regardless of the other parent's income. The child support amount based on the income above this threshold would be calculated at approximately a 20% lower rate between \$7,000 to \$12,500 monthly income and a 40% lower rate above the \$12,500 monthly income of the payer. In light of legislative pressure, the \$7,000/\$12,500 thresholds were reduced from the \$12,500/\$16,667/month thresholds originally proposed by DWD in the March hearings.

#### *Lower Income cases*

At the March hearings the Department was proposing reduced child support amounts for lower income payers. In light of significant opposition at hearings outside of Madison, this proposal had been abandoned when initially introduced to the legislature. Heavy lobbying by a coalition of Madison groups

has resulted in a less drastic reduction for low income payers. The current proposal by the Department includes a reduction from the amount defined by the current standard if the payer's monthly income is less than \$950, with a \$64 per month minimum for one child for a payer with \$575 or less monthly income.

### THE BAD NEWS:

#### *Higher Income Cases*

While the Department has taken a first step to make Wisconsin child support orders in these families more realistic, the thresholds are not low enough, fail to consider the incomes of both parents, and the reduced percentages are still too high for these cases.

There is no economic justification for either the thresholds or reduced percentages proposed by DWD. They instead have been primarily chosen to make sure they would have a minimal impact on an extremely small number of cases.

This will continue to provide an incentive for unnecessary litigation over child placement and support in higher income families, especially when both parents work.

#### *Predictability and uniformity*

The Department's proposal continues to be in contempt of the 2001 Court of Appeals ruling in *Randall*, which noted that the special provisions must be applied presumptively. The DWD proposal continues to allow the court to arbitrarily decide if the special provisions should be used or not. This will result in significantly different outcomes in similar circumstances and will therefore promote unnecessary litigation. This is bad for Wisconsin children and families.

#### *Consideration of income:*

The Department's proposal includes a definition of maintenance income that is in conflict with the IRS treatment of this income, and the proposal continues to allow courts to assess child support on a parent's earning capacity even if that parent is working full time.

### WHAT NOW?

Since the Department's proposed changes fall short of the significant changes needed to make Wisconsin's child support formula more fair and realistic with the economic needs of children, further changes are needed.

(Continued on page 2)

(Continued from page 1)

These could be accomplished by the passage AB250/SB156 or at future revisions to the administrative rule by the Department. The latter is not likely to occur unless there are significant staff changes in the Department's child support bureau, that would allow a more honest and rational review of Wisconsin's child support program.

Today's Dads readers are encouraged to offer their opinions on child support re-

form to their state legislators and especially Representative Kestell, Chair of the Assembly Committee on Children and Families (PO Box 8952, Madison, WI 53708) and to Senator Zien, Chair of the Senate Judiciary Committee (PO Box 7882 Madison, WI 53707).

At this point AB250/SB156 must be passed by the above mentioned committees, before they go before the entire legislature.

## Dane County Judge applies maximizing placement criteria to order equal placement with each parent.

Numerous people contacting our ALL-DADS phone line and web site have reported that legal professionals in their cases are ignoring the latest statutory requirement to "maximize placement with each parent". Instead they are pushing fathers to accept stipulated agreements which fall short of maximizing the time they can care for their children. In light of this, our readers may be interested that not all legal professionals are ignoring the newest law regarding placement.

In a September 7, 2003 written decision regarding WFCF member Tom Pfeiffer, Dane County Judge Sarah O'Brien, ruled "... in order to have regularly occurring, meaningful periods of physical placement with each parent that maximizes the amount of time the children spend with each parent, equal placement should be ordered.", and that "An equal placement schedule during the school year would be in the best interest of the children."

In 1998, Tom was awarded 40% placement of

his three children and ordered to pay child support to his ex-wife based on a much higher income than he was earning, even though she earned a higher income.

Having most remaining assets wiped out by huge legal fees since the divorce action was initiated in 1996, and an unrealistic child support order, Tom could no longer afford an

*"... in order to have regularly occurring, meaningful periods of physical placement with each parent that maximizes the amount of time the children spend with each parent, equal placement should be ordered."*

attorney and had to proceed pro-se in his latest efforts to assume his full parental responsibilities for his children.

Tom filed a motion and brief addressing the legal standards in this case, which among other things pointed out that the

## ABA Chair suggests child support guidelines that consider the incomes of both parents are more fair.

The Chair of the child support committee of the American Bar Association's Family Law Section, Laura Morgan, has suggested in an August 2003 article in the ABA journal "that perhaps the percentage-income model should be dropped since it is perceived as more unfair."

## Tennessee changes from percentage of NCP income to income shares for calculating child support.

Now 34 states consider the income of both parents and established economic data for calculation of child support.

See: [http://www.knoxnews.com/kns/state/article/0,1406,KNS\\_348\\_2292367,00.html](http://www.knoxnews.com/kns/state/article/0,1406,KNS_348_2292367,00.html)

Thanks to Andrea Laack for this information.

from the existing child support order. (These inequities would no longer exist under the new shared time payer formula in CR03-22)

WFCF salutes Judge O'Brien for having the wisdom and courage to recognize the problems with her original order and to change that order, especially in light of the recommendations of the guardian ad litem and family court counseling director to not change it.

The issues in this case are common to many cases involving good fathers, who want nothing more than to have an equal role in the raising of their children. Judges throughout the state should consider making sure this criteria is similarly applied, not only to modifying existing orders, but also to the initial orders involving contested cases between two fit parents.

This could save both parents and the children the unnecessary emotional and financial costs of resolving the placement issue in their cases, based on the old vague and often arbitrary criteria, which many legal professionals are still applying in contested custody cases.

existing order obstructed his fundamental right to care for his children.

After a two day trial, Judge O'Brien further demonstrated her wisdom regarding child support when she wrote in her order, "The fact that he has paid a large amount of support to the mother, and she has made most of the purchases for the children, has skewed each parent's relationship with the children. Tom should be put back in a more natural role of providing directly for the children's needs."

Judge O'Brien then ordered no child support for either parent and ordered both parents to pay directly for the children's expenses while in their placement and to alternate responsibility for payment of certain common expenses.

The family court counseling director and guardian ad litem, Thomas Glowacki, showed no concern for the newest maximizing placement criteria in this case or the economic inequities resulting

## SB257 has been introduced

DWD is trying to overrule two published appellate court decision regarding the application of Wisconsin's child support standard with SB257.

The *Randall* decision is a good decision for Wisconsin

families and should not be overruled.

The bad results in the *Luciani* decision are being corrected by the new formula for shared placement cases proposed in CR03-022.

This legislation is not needed.



### Do you want your children to have two parents?

Maybe you or your partner would like to emerge from court flashing a victory sign, but what about your children? If you believe that kids need both parents, I can help. I can teach you how the family law system works, how to develop a winning strategy and how to choose and direct a lawyer for maximum effectiveness.

2-hour private session (by appointment only): \$125.00  
 Jim Novak - (608) 753-2688

## Today's Dads

*Today's Dads*, published monthly, is a moderate voice for children whose parents aren't married. Seeking fairness, equality and justice in divorce and paternity actions. Advocating diminished use of sole custody and the preservation of family ties. Promoting shared parenting and a child's right to equal access to both parents. Reminding courts that both parents have a responsibility to provide child support. Opposing false allegations of battering or abuse to gain the upper hand in custody or visitation disputes.

*Today's Dads* is distributed to all paid members of Wisconsin Fathers for Children and Families. In addition copies of each issue are distributed, without charge, to all Wisconsin legislators, judges and court commissioners as an educational outreach.

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## Supreme Court hears parental rights case

Published Sept. 17, 2003 in the *Milwaukee Journal Sentinel*

**Madison** - A child's best interests, not the results of a paternity test, should determine who is recognized as the father under the law, an attorney argued Tuesday before the Wisconsin Supreme Court.

Attorney Matthew J. Price made his case to the justices as they reviewed a decision by the 2nd District Court of Appeals that awarded a Pewaukee man custody of a now 5-year-old girl he thought was his biological child.

The court used the "equitable parent doctrine" in arriving at its decision. That doctrine extends the rights and responsibilities of a natural parent to a non-biological parent seeking custody or visitation. Once a court determines someone to be an equitable parent, that person has the same rights and responsibilities as a biological parent.

According to court records, Randy and Norma Johnson were married in 1990, and she gave birth to a baby girl in January 1998. He filed for divorce after Norma Johnson was sentenced to eight years in prison for embezzlement in 1999.

During the divorce proceedings, Norma Johnson confessed the girl was another man's child, and the biological father, Brendan Brennan, tried to establish paternity and obtain custody.

Genetic testing established to a 99.99% degree of certainty that Brennan is the father, court records show.

Brennan saw the child weekly because of his relationship with Norma Johnson, until Randy Johnson obtained a court order barring Brennan from having contact with the child, according to court records.

Waukesha County Circuit Judge Lee S. Dreyfus Jr. ruled in 2001 it was in the best interests of the child to remain with Randy Johnson and declared him the legal father.

Norma Johnson and Brennan appealed, arguing that the genetic testing should trump the legal assumption that a child born during a marriage is a child of the man married to the mother.

But the appeals court ruled Randy Johnson was entitled to be treated as the "natural father" because he had cared for the child since her birth and had established a close bond.

The justices gave no indication of when they would issue a ruling.

## Fathers night out

Tuesday, November 4, 2003 and December 2 6-8PM

(First Tuesday of every month)

At: The Vientiane Inn Restaurant

1126 South Park St, Madison

Social function for WFCF members and friends

Contact Joe at 608-882-2412

# Are you looking out for your kids?

By Bill O'Reilly from the 9/23/03 Parade section of the Milwaukee Journal Sentinel.

As a parent, your first duty is to give your children the tools they need to build a successful life. Here are my 10 rules for effective parenting:

- 1. A parent who is looking out for a child will make time for the child.
- 2. Discipline is essential, but no parent should inflict frequent physical or mental pain on a child. Parents are the grown-ups and have to be patient, within reason, and remember that words can deeply wound a child.
- 3. A good parent will ensure that home is a refuge - a place where a child feels protected and loved. There will be no random violence, intoxica-

tion, sexual displays, uncontrolled anger or vile language at home.

4. A parent who is looking out for a child will provide a good education. That includes paying college tuition, if possible. Education comes before the vacation or a new car.

5. An effective parent will be available when a child has a problem. Ditch the meeting, get back from the mall, get off the phone. There is nothing more important than dealing with a child's crisis immediately.

6. A good parent will screen a child's friends, know his or her whereabouts, look at homework and ask questions about school daily.

7. An effective parent will enforce the rules and explain them. "because I say so" can work when a kid gets stubborn, but first try connecting some dots with your child. It doesn't always work, but the effort is worth it.

- 8. A parent who is looking out for a child will be honest and lead by example: No lying, no cheating, no nasty gossip, no cruelty, no manipulation, no envy of your child.
- 9. A good parent will be respectful of his or her own parents. You can't effectively look out for your kids if you don't look out for your folks. (Even if your folks don't de-

serve it.)  
10. Finally, an effective parent will not allow a TV or computer in a child's room. This is a dangerous world, and the danger is now inside the house. The exploiters want your kids. You must look out for them. Fight Hard.

Next General Membership meeting  
**Tuesday October 21, 2003**  
7:00-9:00PM

**Speaker: Representative Frank Lasee**

Topic: How to work with the legislature

Place: Coliseum Bar and Restaurant  
232 E Olin Ave (South side of Madison -  
1 mile north on John Nolan Drive exit Hwy 12/14)

All members, friends and prospective members  
are welcome to attend.

## Wisconsin Fathers for Children and Families

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