Committee Name:
Senate Committee – Judiciary, Corrections and Privacy (SC–JCP)

Appointments

03hr_SC–JCP_Appt_pt00

Committee Hearings

03hr_SC–JCP_CH_pt00

Committee Reports

03hr_SC–JCP_CR_pt00

Clearinghouse Rules

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Hearing Records

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Misc.

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Record of Committee Proceedings

03hr_SC–JCP_RCP_pt00

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MEMORANDUM

TO: Members, Senate Committee on Judiciary, Corrections and Privacy

FROM: John Short, Family Law Section of the State Bar

RE: **Opposition to Senate Bill 156, relating to calculating child support**

DATE: August 26, 2003

I am the current Chair of the Family Law Section and have served on the Family Law Section Board since 1995 in a variety of capacities. I am an attorney in private practice. I have been a solo practitioner and small firm practitioner since 1970 and have always been in Fort Atkinson (Jefferson County). My practice has always emphasized family law, and I have represented both men and woman, payers and payees. I have been a frequent lecturer on family law-related topics and have taught at the Judicial College for the past four years on family law topics.

The Family Law Section of the State Bar of Wisconsin **strongly opposes** Senate Bill 156 for a number of reasons.

First and foremost, Senate Bill 156 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 SB 156 would harm children by making less money available for their care and support.

Second, Senate Bill 156 would regard all families where the combined annual income of both parents exceeds $48,000 as "high income" and would significantly reduce child support in all cases where combined annual income exceeds $48,000. (See attached charts.)

- 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.

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

- 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.

Third, the basic structure of the bill is flawed. The $48,000 figure used in Senate Bill 156 is far too low a combined income figure at which to be making reductions in child support. The proponents of SB 156 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.

Although in many counties in northern and western Wisconsin—such as the Duluth-Superior, Eau Claire, and LaCrosse metropolitan areas--$48,000 may not be considered low-income, for

most of the state's population, Senate Bill 156 would start reducing child support at an income level that is much too low. The "one size fits all" approach used in Senate Bill 156 simply doesn't work on a statewide basis and will harm children.

According to the federal Department of Housing and Urban Development, median annual family income in Wisconsin in 2002 was $59,200. 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 SB 156 does) would 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.

Fourth, Senate Bill 156 is not the product of consensus. In fact, it attempts to nullify the consensus process. The Child Support Guidelines Advisory Committee created by former Department of Workforce Development Secretary Jennifer Reinert explicitly considered 2001 Senate Bill 151, the bill upon which 2003 Senate Bill 156 is based. The Advisory Committee opted not to accept the approach in Senate Bill 156. Instead it recommended the approach reflected in the proposed rule currently before the Senate Committee on Health, Children, Families, Aging and Long-Term Care. (More on the proposed rule follows.) The only portion of Senate Bill 156 that reflects the consensus is shared time formula, but every other item of consensus agreed upon by the Advisory Committee has been left out of Senate Bill 156.

Fifth, 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 already considers both parties' incomes 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 fall under this threshold. Therefore, if the proposed rule is adopted there is little need to make a dramatic change in the formula that SB 156 proposes.

Sixth, 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. Senate Bill 156 focuses too much on the interests of the child support payer and loses sight of the best interest of the children.

Seventh, proponents of Senate Bill 156 have used dated statistics from a limited sample to argue their point on economic needs of children. Whenever economic data are considered it is important that policy makers know the "as of" date. Statistics from Arizona data gathered five

or six years ago are of limited value in assessing Wisconsin needs and, should not be considered determinative in any event. As indicated above, child support should reflect more than the most basic economic need.

Eighth, Senate Bill 156 does not address concerns of low-income payers. For low-income payers a primary concern is ability to pay. For many truly needy low-income payers meeting even a minimal amount of support may make it difficult to have sufficient money for daily needs. Senate Bill 156 not only fails to address such situations, it makes them worse by taking away flexibility from the courts in fashioning orders in these circumstances.

- For example, the provisions on imputing income for low-income payers would **require** the court to impute income based on a 40–hour work week to a parent who is not working at least 40 hours per week if the court determines that the parent is able to work and that work is available in the parent's community. This limits the courts discretion to take into account other factors that may be relevant.

By failing to address low-income payers, Senate Bill 156 frankly ducks the most controversial issue the Advisory Committee faced, an issue the Advisory Committee agreed needs to be addressed.

Ninth, Senate Bill 156 does not address the *Randall* decision, which held that the presumptive application of the percentage standards applied to what most observers and practitioners thought was a discretionary shared time formula for child support. The Advisory Committee agreed that it was necessary to change the statutes to accomplish this. The Family Law Section is working with Senator Roessler to prepare legislation to address this.

Tenth, Senate Bill 156 does not address the results of the *Luciani* decision where the court applied the percentage standard to a payer where the custodial parent had significantly higher income. The Advisory Committee agreed that it was necessary to change the statutes to accomplish this. The Family Law Section is working with Senator Roessler to prepare legislation to address this.

Eleventh, a provision in Senate Bill 156 appears to be drafted incorrectly and would actually make it harder for parents to modify an existing child support order to take into account the formula changes this committee is considering. Under current statute, the passage of 33 months (since the date the last child support order is entered) creates a rebuttable presumption of a substantial change in circumstances sufficient to justify the revision of a child support order. (See s. 767.32(1) b.2., Wis. Stats.)

This proposed change would actually impose an additional requirement on those seeking a modification to a child support order. Under SB 156, not only would 33 months have to pass from the effective date of the last child support order, but an order calculated under the new formula would also have to differ from the last order by at least 20% of the amount of the last order or by at least $60 per month in order to constitute a substantial change of circumstances sufficient to justify the revision of a child support order under s. 767.32, Stats.

(Phrased a different way, Senate Bill 156 changes the circumstances that constitute a rebuttable presumption of a substantial change of circumstance from the expiration of 33 months since the last support order to a more restrictive or higher standard of expiration of 33 months if the amount of support under the new approach exceeds the amount of the last order by 20% of the last order or at least $60 per month.)

Limiting the circumstances that create the rebuttable presumption for a substantial change of circumstances limits the opportunity for payees to address the courts for needed changes in support. The figures are also completely arbitrary. A 20% change in amount or at least $60 per month will be substantial in some cases but certainly not others.

Note: Courts have consistently held that a change in circumstances sufficient to justify a revision of an order under s. 767.32, Stats., must be a change in the circumstances of the parties, **not** a change in the law. This serves the practical purpose of allowing courts to implement a change in the law in a gradual, staggered manner rather than being flooded with requests for modifications following a law change.

The Family Law Section **greatly prefers and strongly supports** the approach taken in Clearinghouse Rule 03-022. That approach was the product of a consensus process. An advisory committee formed by the Department of Workforce Development worked for a year and spent close to 100 hours in meetings discussing and studying child support issues in Wisconsin, not counting the many hours that Committee members spent on their own time reading the many reports and analyses put forth to the Committee by DWD and by other experts.

The DWD Committee was a well-rounded group with members of the judiciary, Family Court Commissioners, fathers', grandparents' and children's rights advocates, advocates for those who have been victims of domestic violence, and those who represent clients with low, middle and high incomes. The DWD Committee heard from national experts, considered a variety of proposals and in the end produced the proposed rule that is before you here today in a form that led to a nearly unanimous consensus.

The proposed rule would, 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. It should also lead to more equitable results in situations where families have shared placement.

These are things that Senate Bill 156 attempts to do. The proposed rule simply does these things better … and in a fairer and more balanced way than Senate Bill 156 does.

- Clearinghouse Rule 03-022 represents a consensus with all stakeholders participating, while Senate Bill 156 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 attached charts clearly illustrate that Clearinghouse Rule 03-022 would not drastically reduce child support the way that Senate Bill 156 would.

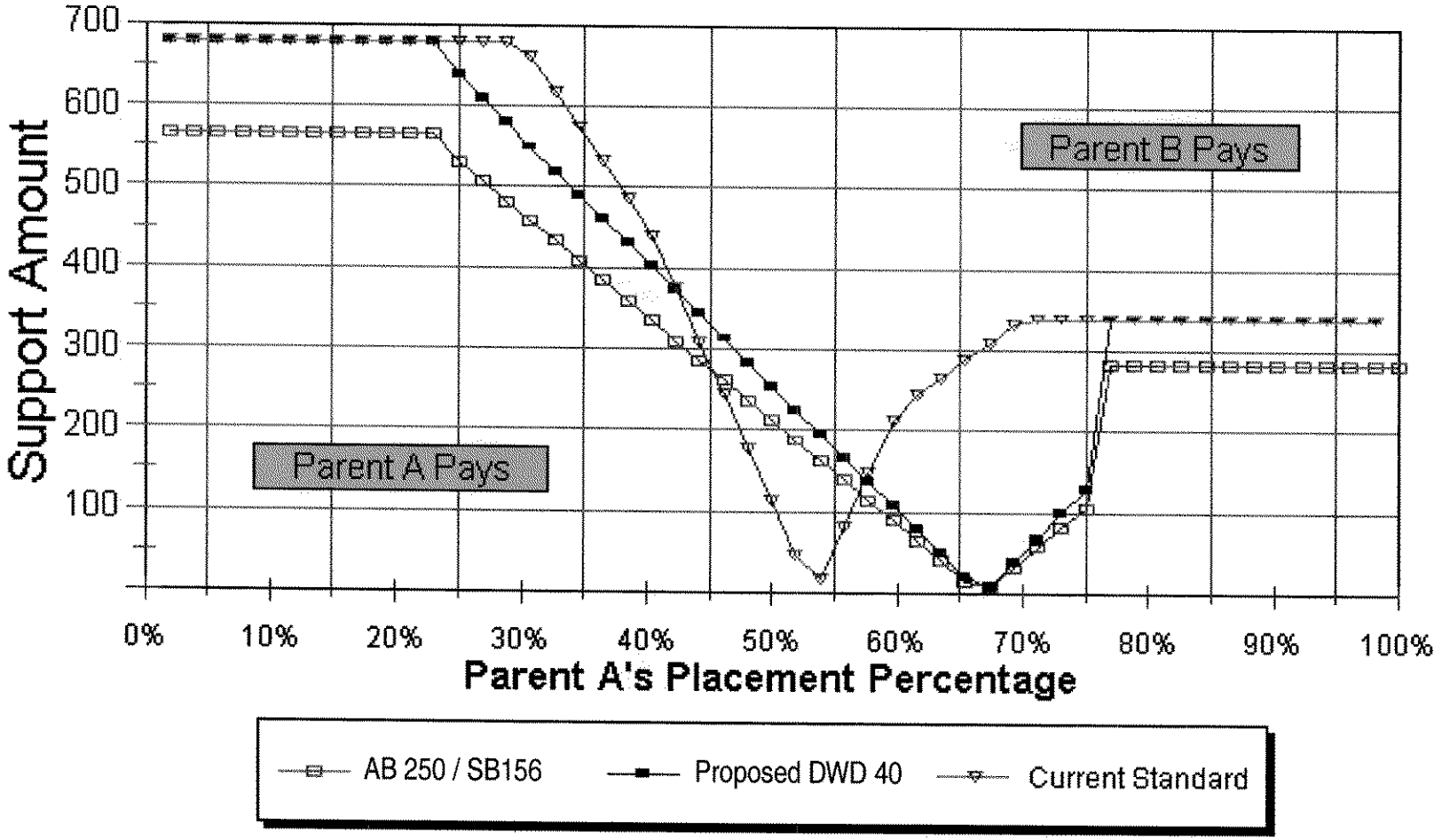
Clearinghouse Rule 03-022 is the consensus approach for a reason. It is a better proposal. It is moving through the committee review process. The Senate Committee on Judiciary, Corrections and Privacy should allow the Senate Committee on Health, Children, Families Aging and Long-Term Care to advance Clearinghouse Rule 03-022. The committee **should not** recommend Senate Bill 156 for passage.

Thank you for your time and your attention. I would be happy to answer any questions that you might have.

Attachments:
Charts Illustrating Current Law vs. CR03-022 vs. SB 156

#1 **Parent A: $4,000 Monthly Income** **Parent B: $2,000 Monthly Income**

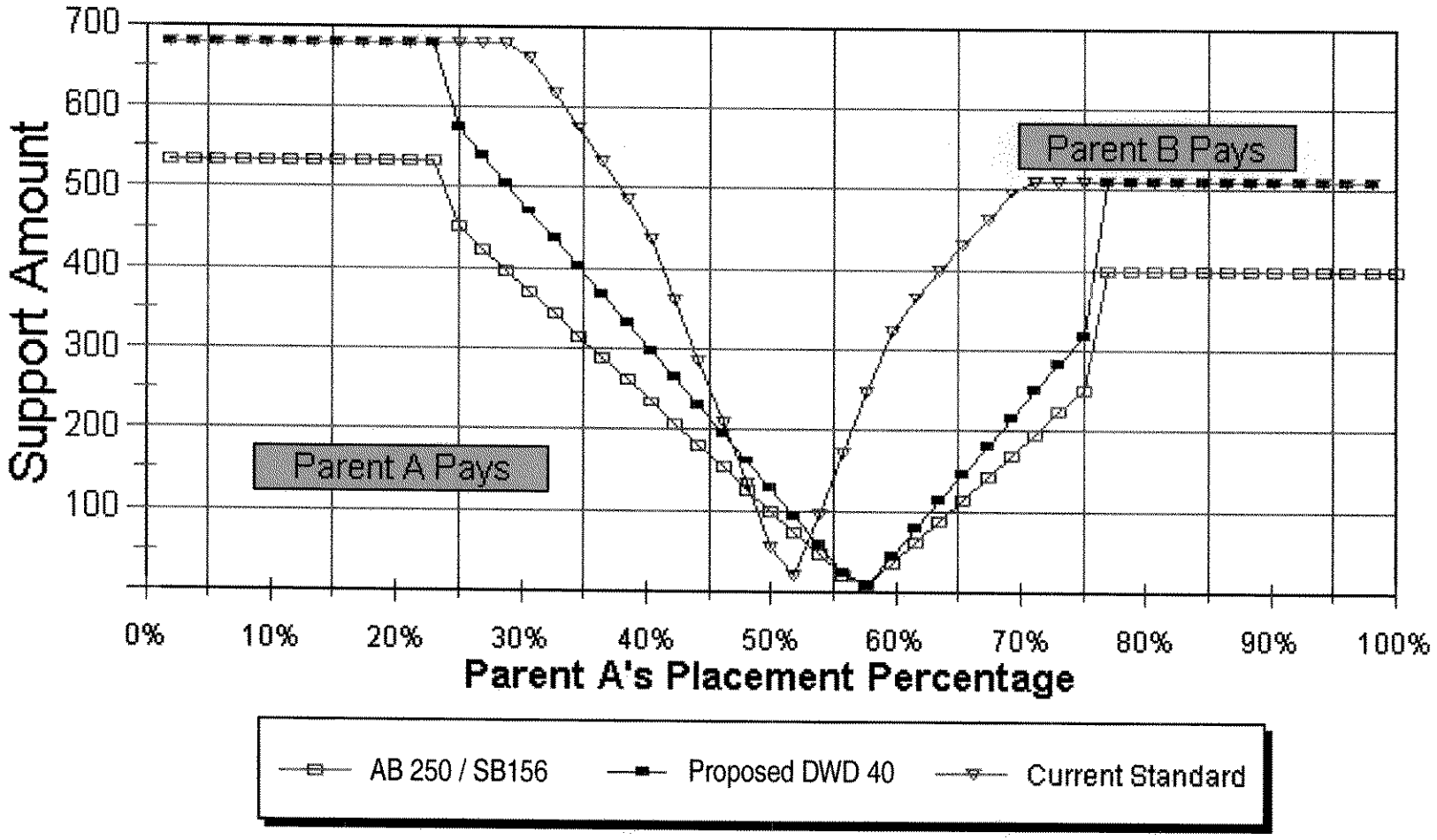
Child Support Comparison



Produced by the Family Law Section of the State Bar of Wisconsin

#2 **Parent A: $4,000 Monthly Income** **Parent B: $3,000 Monthly Income**

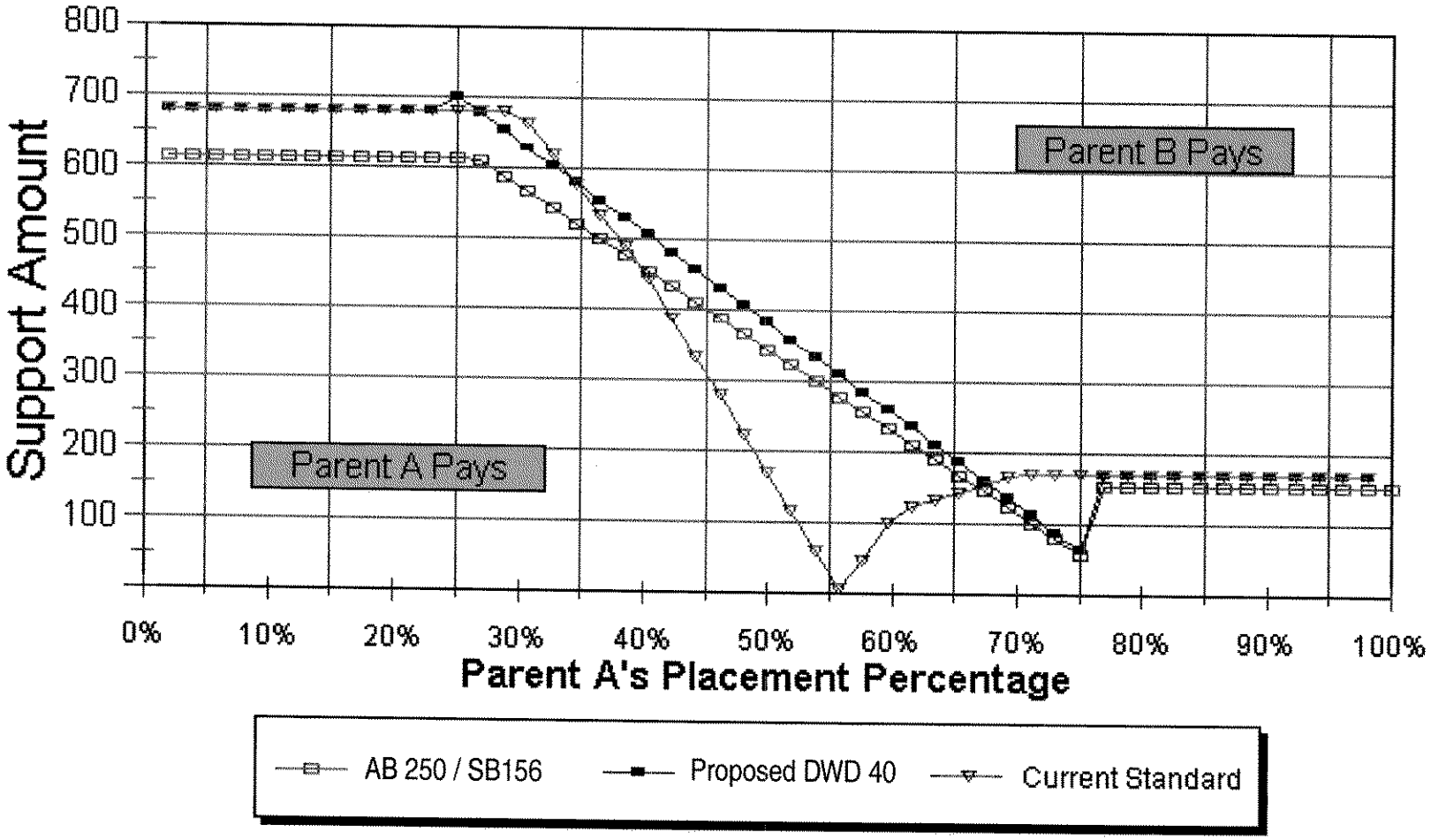
Child Support Comparison



Produced by the Family Law Section of the State Bar of Wisconsin

#3 **Parent A: $4,000 Monthly Income** **Parent B: $1,000 Monthly Income**

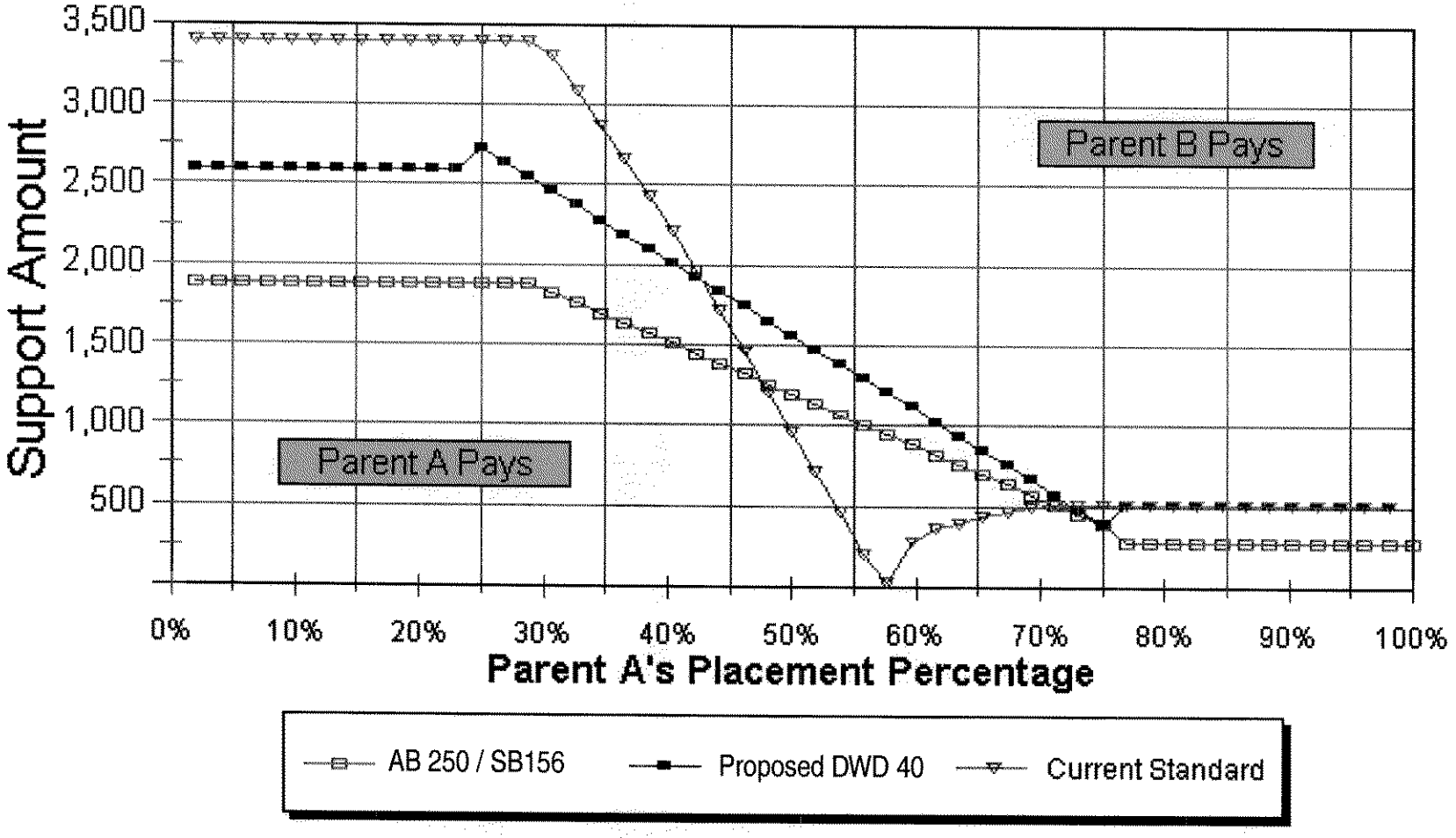
Child Support Comparison



Produced by the Family Law Section of the State Bar of Wisconsin

#4 **Parent A: $20,000 Monthly Income** **Parent B: $3,000 Monthly Income**

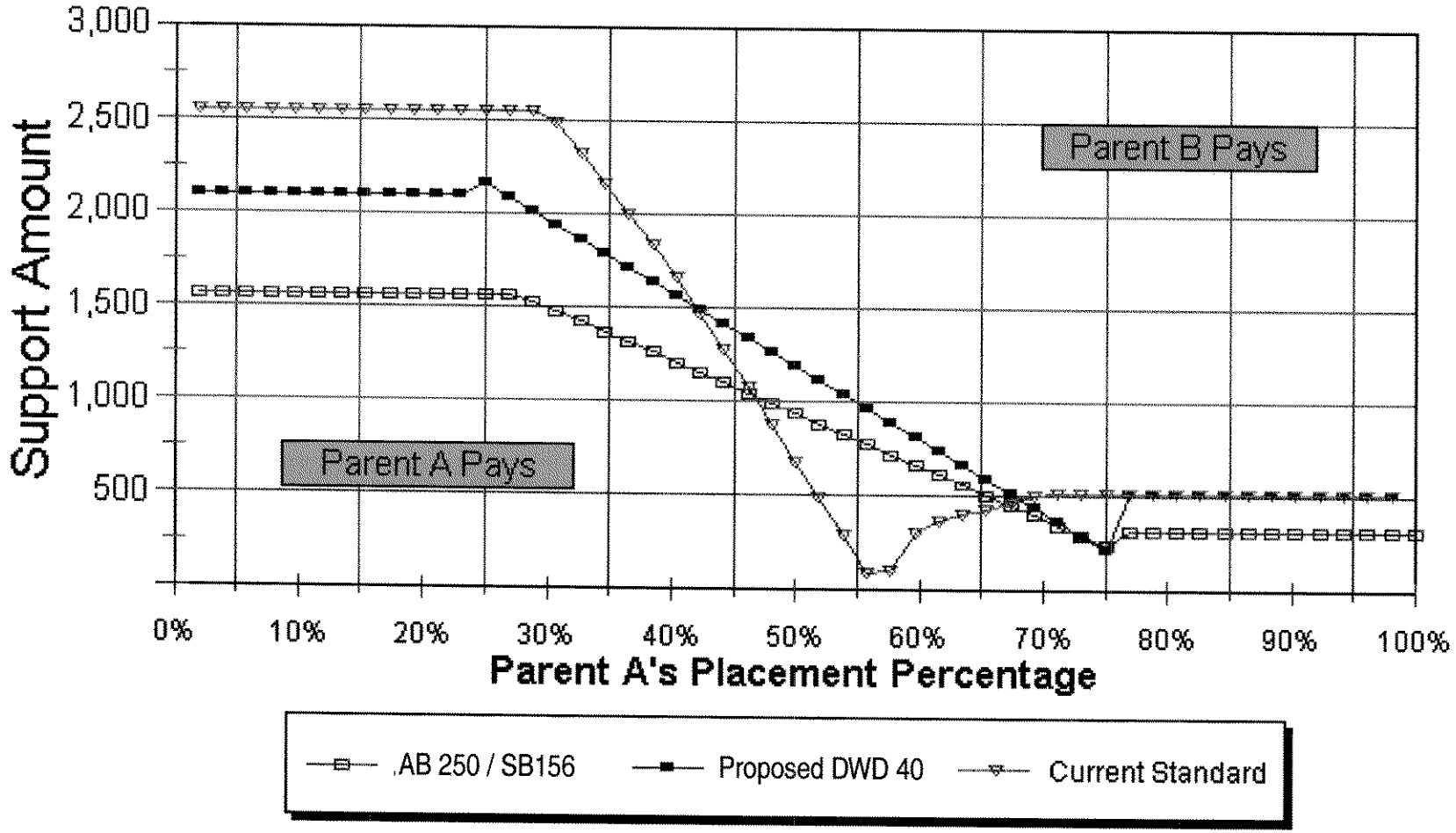
Child Support Comparison



Produced by the Family Law Section of the State Bar of Wisconsin

#5 **Parent A: $15,000 Monthly Income** **Parent B: $3,000 Monthly Income**

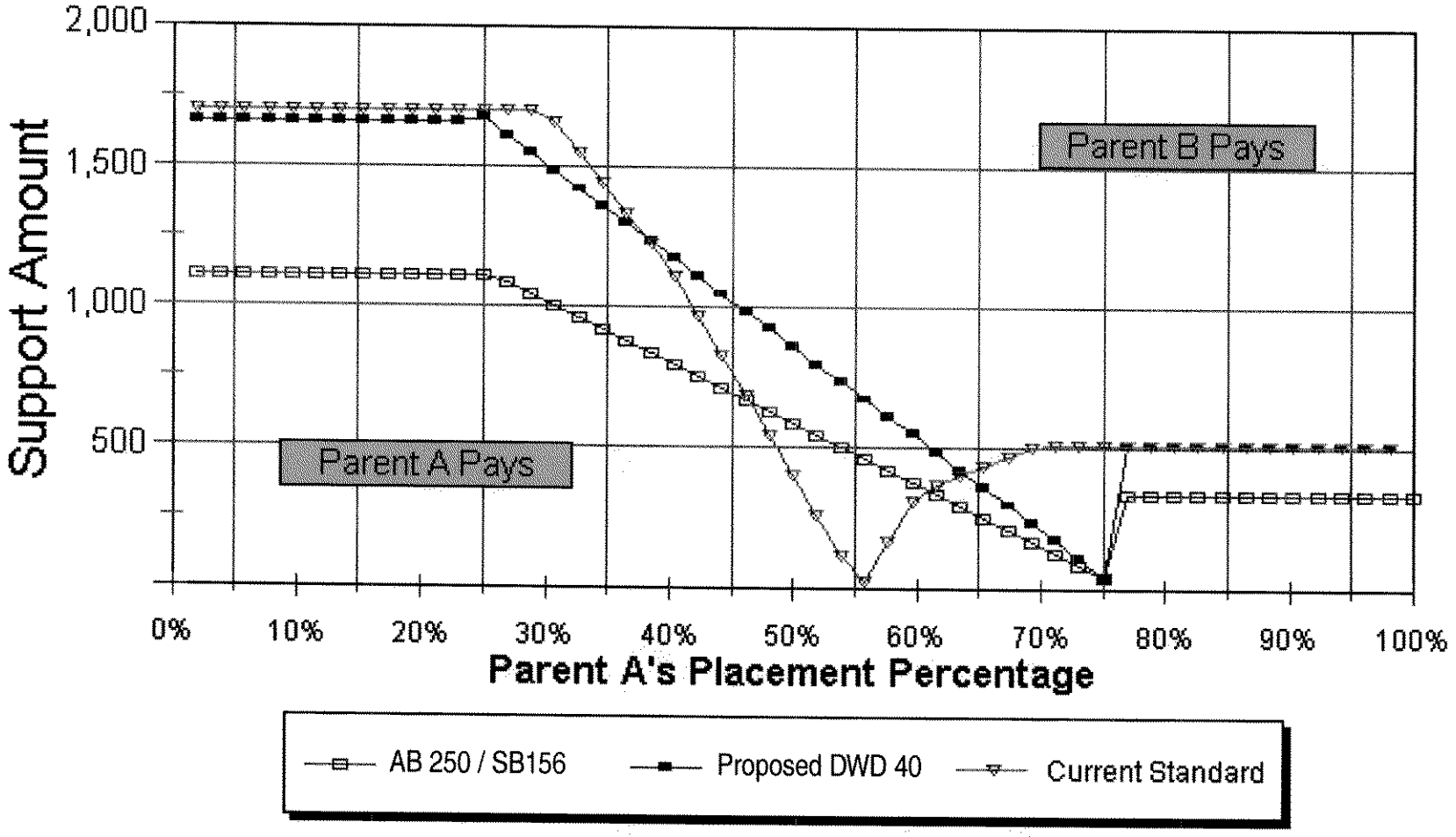
Child Support Comparison



Produced by the Family Law Section of the State Bar of Wisconsin

#6 **Parent A: $10,000 Monthly Income** **Parent B: $3,000 Monthly Income**

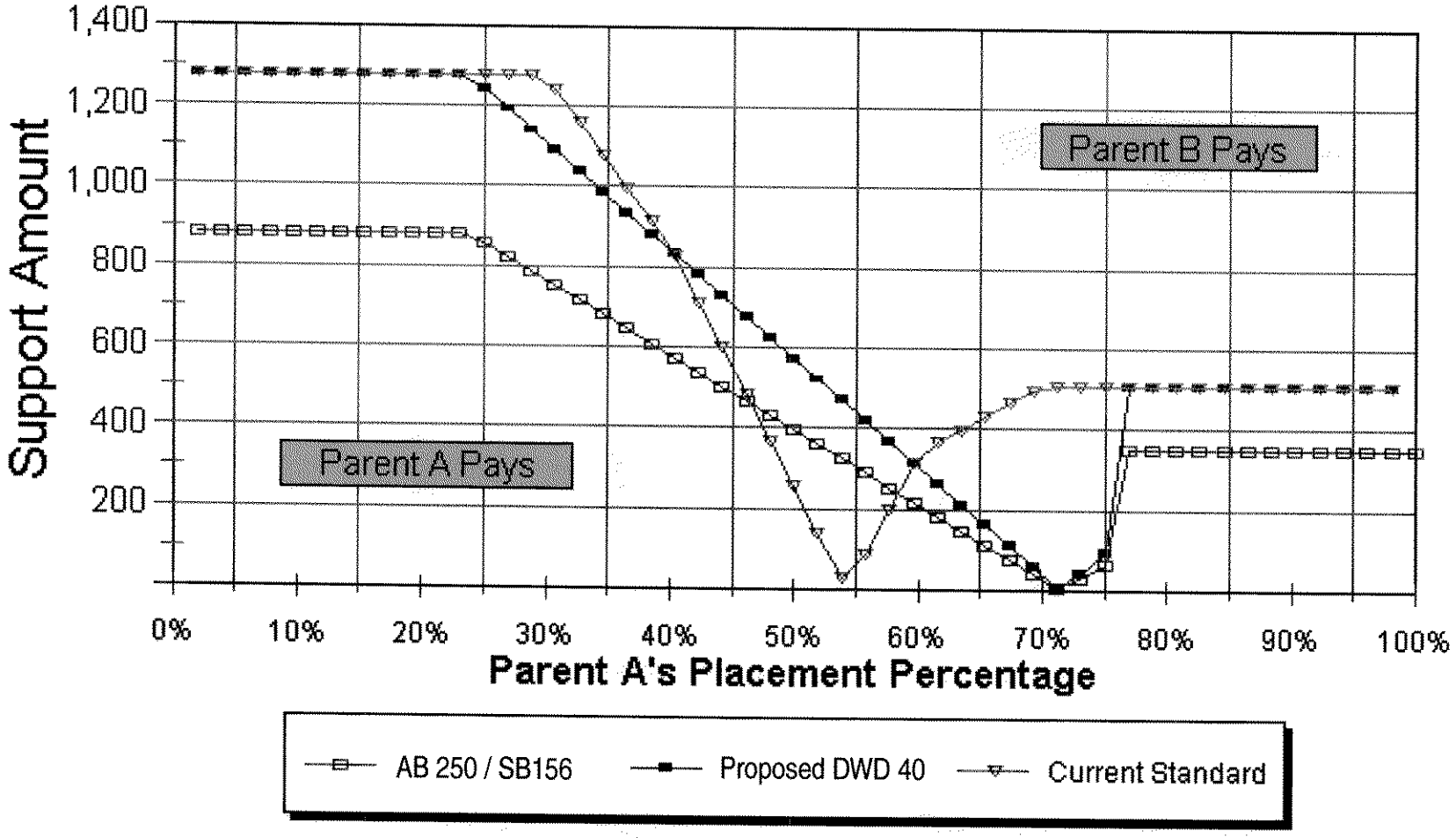
Child Support Comparison



Produced by the Family Law Section of the State Bar of Wisconsin

#7 **Parent A: $7,500 Monthly Income** **Parent B: $3,000 Monthly Income**

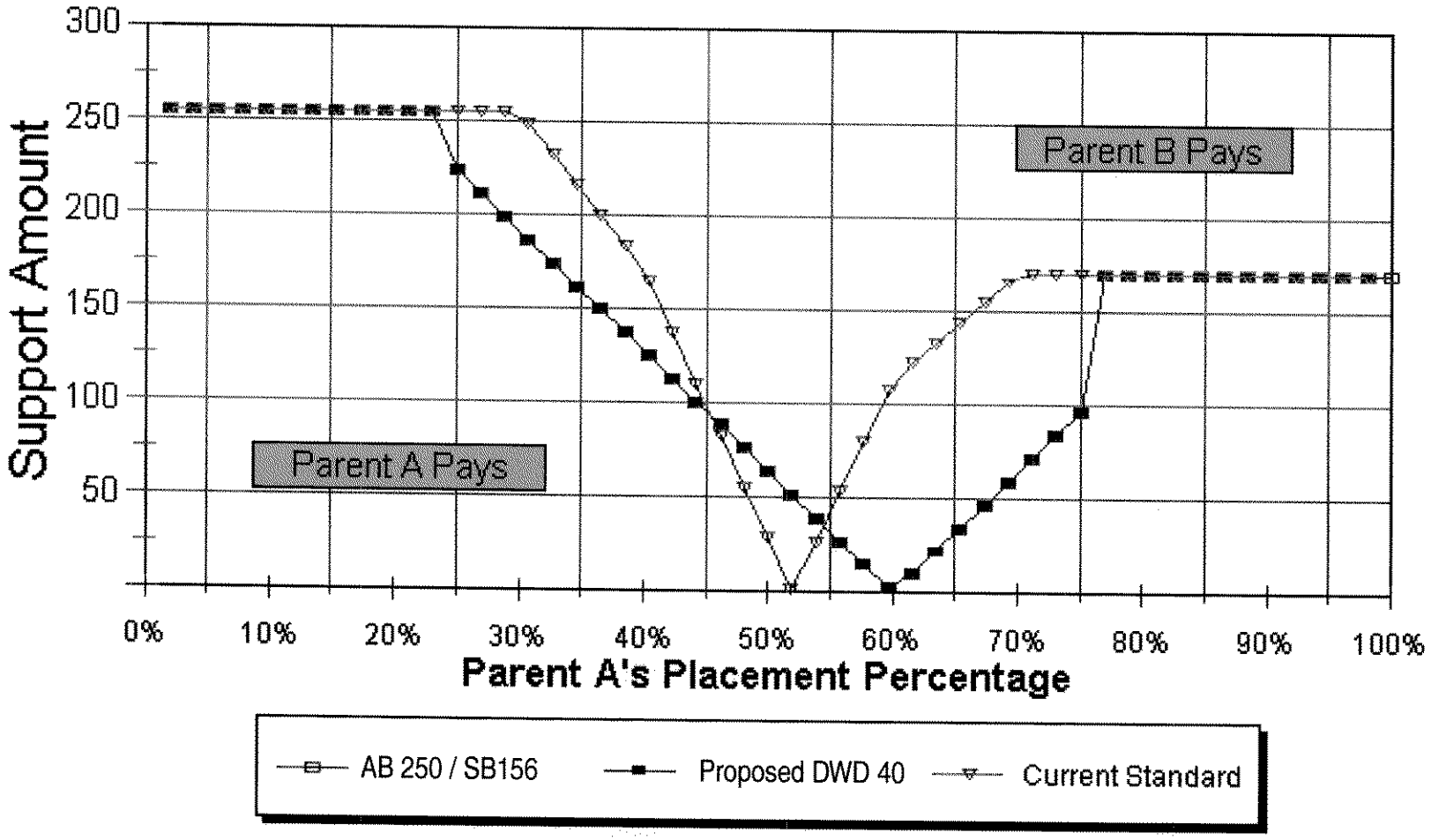
Child Support Comparison



Produced by the Family Law Section of the State Bar of Wisconsin

#8 **Parent A: $1,500 Monthly Income** **Parent B: $1,000 Monthly Income**

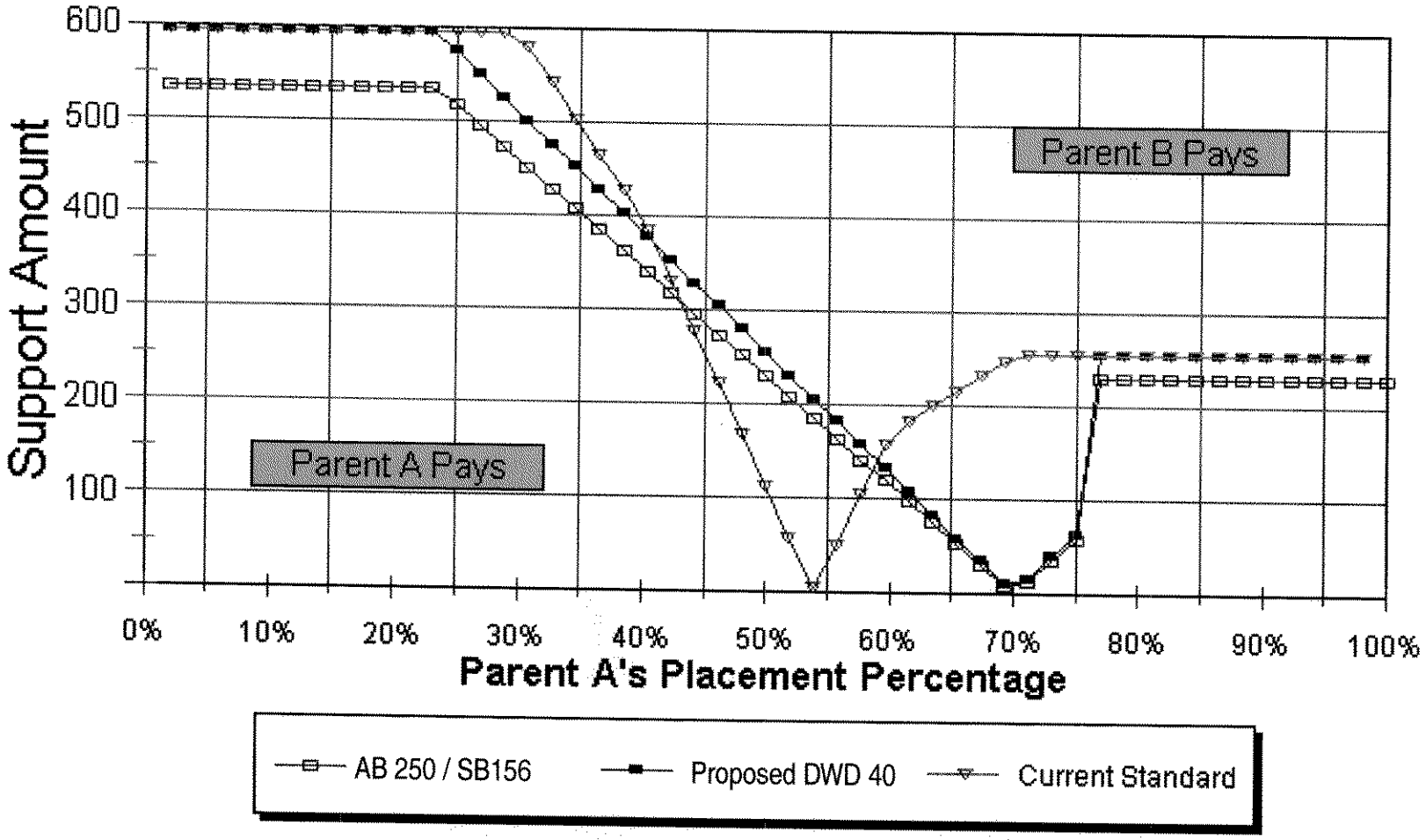
Child Support Comparison



Produced by the Family Law Section of the State Bar of Wisconsin

#9 **Parent A: $3,500 Monthly Income** **Parent B: $1,500 Monthly Income**

Child Support Comparison



Produced by the Family Law Section of the State Bar of Wisconsin

WISCONSIN CHILD SUPPORT ENFORCEMENT ASSOCIATION

Memorandum

TO : Senate Committee on Judiciary, Corrections and Privacy

FROM : Janet Nelson, Chair, Legislative Committee,
Wisconsin Child Support Enforcement Association

DATE : August 26, 2003

SUBJECT : Testimony on Senate Bill 156

The Wisconsin Child Support Enforcement Association represents Wisconsin's county and tribal child support agencies. These public agencies establish paternity, establish and enforce child support orders, and receive and disburse support payments for Wisconsin's family courts. Our members manage approximately 340,000 support cases each year for the State of Wisconsin. The WCSEA opposes the child support provisions of SB 156.

Wisconsin has a history of establishing child support orders based upon the philosophy that children of parents who do not live together deserve no less support than children of parents in an intact family. This protects the innocent bystanders - the children - when parents' relationships break down. SB 156 shifts the focus in setting support from trying to maintain children's standard of living, as much as this is possible when parents split up, to accommodating only the children's basic needs. This is not good for Wisconsin's children. The fiscal notes to this bill recognize that support orders under SB 156 are likely to result in lower child support orders. This is the WCSEA's primary concern with the legislation.

This shift is also detrimental to taxpayers when children are placed outside of the homes of either of the parents. Support orders for children who are in foster homes or State residential facilities will be set using these same calculations. Orders in these cases are already generally well below the cost to the public for the care of these children. Lower orders for parental support will increase the burden on taxpayers.

The WCSEA is also concerned about the complexity of the child support calculations under SB 156. The bill requires DWD to generate computer software and instruction manuals to help courts calculate support orders under its provisions. This provides little assistance to the vast majority of unrepresented parents who need to have some idea what their support obligations may be. With the volume of cases handled by our member agencies, we have serious concerns about the ability of the courts to efficiently administer the provisions of SB 156.

Setting appropriate support orders in low-income cases has proven to be of great concern to the committees that have held hearings on the DWD rule revisions, both in the Senate and the Assembly. While SB 156 addresses the shared time placement issues in the rule revisions, it does nothing to assist courts in dealing with the vast number of low-income cases that the child support agencies see.

The advisory committee that assisted DWD in generating the rule revisions to the child support regulations represented a wide variety of interests in the state's child support system, including the courts, the Wisconsin Bar, the child support agencies and a number of community–based organizations, representing both payers and payees. The Wisconsin Child Support Enforcement Association urges this committee to allow the Department of Workforce Development to pursue the very sound child support rule revisions in DWD 40, instead of promoting SB 156.

Thank you for your time and attention.

Janet Nelson
Chief Legal Counsel
Milwaukee County
Department of Child Support Enforcement
901 N. 9th Street
Milwaukee WI 53233

Telephone: (414) 278-5269
E-mail: jntnlsn@yahoo.com

August 26, 2003

Dear Legislator,

I'm a small organic dairy/produce farmer who is being destroyed by the divorce industry. I've had to resort to being a hired hand on a large dairy, while trying to revive my farm.

My daughter has been harmed by the expense of six years of litigation. Money that could have been available for vacations, bills, or other family needs has been diverted to lawyers, psychologists, and social workers. Bankruptcy is my only option.

My farm has now been reduced to 3 rented acres producing vegetable and strawberries. I have one bred heifer, and hope to begin direct marketing her milk to friends next summer. I've lost the real estate I owned prior to meeting my wife. I've sold my personal belongings including power tools needed for farming. I have even had to sell the herd of cows I started post-divorce to pay for a Psychologist, GAL fees, and other litigation expenses.

My daughter's mother and her husband earn FIVE times my income, and can afford lawyers, while I have to handle my own case.

PLEASE SUPPORT AB 250 and SB 156.
Please SUPPORT **amendment 1** regarding using **ACTUAL income v. imputed income** and removing interest penalties for parents who are unable to pay for reasons beyond their control.

1. The goal of the OCSE of providing a "standard of living comparable to that the child would have enjoyed had divorce not occurred" is **mathematically impossible** for low/middle income parents.
2. Child support is "hidden alimony" for high/middle income payers.
3. Both parents should directly support their children.
4. Child Support "AWARDS" promote custody litigation.
5. State dollars have been wasted due do my receiving food stamp monies and Badger care which would not have arisen if not for the litigation.
6. Divorce industry "professionals" have a biased financial stake in family law.

At the AB 250 hearing, the lawyer from the state bar family law committee testified that child support was needed because he felt it was fair "MOTHER SHOULD BE FINACIALLY REWARDED FOR GETTING UP WITH SICK CHILDREN IN THE MIDDLE OF THE NIGHT!"
Why not let BOTH MOTHER AND FATHER GET UP WITH SICK CHILDREN?
In my case, two of my daughter's three ear infections happened while with dad, and I gladly got up and took care of our dauther. Our state laws drastically limit fathers from enjoying the hardships and joys of parenting.

My daughter is doing well, I managed to home school her while still farming. She will soon be 12 years old.
I REFUSED child support because it is unconstitutional and not moral, even though my net income was only 12,000 per year.
(parents are supposed to take care of children, not the government)
She tested 1-2 grades ahead of other kids, depending on the subject, and was active in 4-H, church, and neighbor friends, and private lessons. A judge decided 1-2 grades ahead of other children is not good enough-custody back to mother WITH child support.

In the last four years I've been the only person to have a custody decision reversed by the Court of Appeals. (PRO SE August 2000) I'm AGAIN in the Court of Appeals...with a stronger case than 2000.

After passing this legislation, please re-work the custody law to require shared parenting. Despite your good intentions, the reform of year 2000 is routinely ignored by MANY judges. The law must be changed to require biased/bad judges to provide TWO PARENTS for Wisconsin children. Children need more than "wallet dads."

PLEASE REMOVE JUDICIAL DISCRETION SO PARENTS DO NOT HAVE TO FIGHT FOR THE CONSTITUTIONAL RIGHT TO BE EQUAL PARENTS....AND CAN SUPPORT THEIR KIDS DIRECTLY THE WAY MARRIED PARENTS DO...

Attached please find a page from the internet: mafia-usa.com.
(MAFIA-Mothers Against Fathers In Arrears)

The web page shows the group acknowledges that studies show BOTH parents need to be involved in raising their child, and children with both parents involved are better adjusted and pay child support more regularly.

You will see the true battle is over mothers not wanting to share custody and desiring tax-free income (child support).

Please help save families...

Very Truly Yours,

Keith Trost

Keith Trost
Cornerstone Community Farm
S 2401 Haugh Road
LaFarge, WI 54639
608-489-3907

The Custodial Parent's Friend

Mothers Against Fathers In Arrears

bar.jpg (4551 bytes)

Comments from our

For the past two decades, custodial parents have been able to rely upon the Federal Office of Child Support Enforcement and the National Child Support Enforcement Association to protect their interests. Today, that is no longer the case.

Today, the emphasis is shifting and the goal of the Federal Office of Child Support Enforcement and the National Child Support Enforcement Association is to turn the taxpayer funded child support enforcement program into a "father friendly agency." While the public agency has long been accused of being "father friendly" it is going to become involved in issues that it believes are in the "best interests of the children". We recommend that you read the two following articles that appeared in ***The Child Support Quarterly*** - a publication of the National Child Support Enforcement Association.

- Deadbeats vs Turnips
- New Criminal Penalties
- In a hurry? Our Synopsis of both articles.

Why the change from an "enforcement agency" to an agency that is deciding what is in the best interests of your children without consulting you?

In three simple words: Non-custodial parents.

Today there are over 200 Father's Rights Groups that are bombarding legislators and public agencies with e-mail, letters, and telephone calls complaining about current child support laws and enforcement practices. They raise a number of issues - one of which is studies that show that both parents need to be equally involved in raising children, even if the parents are divorced.

These studies also show:

- That non-custodial parents who are involved with their children pay child support on a much more regular basis - which is very appealing to the public agency.
- That children who have both parents involved are better adjusted than children who do not have both parents involved in their lives - which is appealing to legislators who campaign on "family values" platforms.

The public agency is getting involved in visitation issues!

Their involvement in visitation issues will include:

- Reduction of the child support payments for low income fathers who become involved in the lives of their children. There is little doubt that this program will be expanded over time to include virtually all non-custodial parents who exercise their visitation rights.
- Requiring custodial parents to attend mediation programs that are designed to address visitation issues.
- Requiring custodial parents to possibly attend counseling sessions if

Hearing re SB156

August 26, 2003

Good morning! My name is Jan Raz, I am a father, and an electrical engineer from Senator Lazich's district. In my spare time I am also the president of Wisconsin Fathers for Children and Families.

I was divorced in 1991, and am the father of two daughters that are now 19 and almost 17. Two years ago, I was successful in getting a judge in Milwaukee county to modify an existing order in my case to equal placement of our children and according to the current DWD40 child support standard, I neither pay or receive child support, because my ex wife earns a similar income as I do. I pay for the children's expenses while they are with me, she pays the children's expenses while they are with her, and we share equally the larger common expenses such as school tuition.

Based on our equal placement and our similar incomes, child support under the existing standard, the proposed DWD rule change or under AB156 will yield the same result. I have nothing to gain or lose with any of the proposals before the legislature, especially since in a little more than year from now, my youngest daughter will be 18 and Wisconsin family court's will no longer have any jurisdiction over our case.

I am here because I had to fight for 10 years and spend approximately $100,000 in legal fees to achieve this result. My ex-wife also spent a similar and probably higher amount for legal fees over this period. Our children have gone through multiple psychological evaluations. In 1999, my youngest daughter needed psychological help to deal with the conflicts in our family.

It is absurd that state policies force fathers that live in the same community and want to continue to fully involved in the raising of our children to have to fight the mothers of our children and to endure the emotional and financial damage to the parents and children just to have their parental role treated the same as the mothers.

To a great degree the ongoing litigation in my case was fueled by the bias of the administrators responsible for this child support standard. While the application of this standard may yield reasonably fair results in typical one wage earner families, in many cases where both parents work and make a good income, the current standard can yield absurd and extremely unfair child support orders that provide a great incentive for angry parents to get back at their ex and promotes conflict in families.

More than 15 years ago, in the mid 1980's, the Wisconsin legislature delegated the responsibility for establishing Wisconsin's child support standard to the child support enforcement department, which is now in the Department of Workforce Development. While most states established a formula that recognized the different needs of children in families in different incomes, in Wisconsin the Department established a one size fit's all formula, that assumes that a child is entitled to 17% of both parents' gross income, regardless of their income level. Thus if parents earn $10,000 per year a child is entitled to $1,700 per year as child support. And if parents earn one million dollars, the child is entitled to $170,000 as child support.

Despite the fact that no other state in the entire country has agreed with this approach, Attorney Connie Chesnick, who was one of the architects of this approach, has spent most of the past 15 years convincing child support enforcement and legal professionals in Wisconsin that this is the correct amount of child support. When the Department then forms a review committee, she and the department makes sure the vast majority of the people on the committee are these very same people that she has spent 15 years convincing this is correct. This way she is assured that only minor changes are likely to result. Interestingly the chair of the child support committee of the National American Bar has recently suggested that the Wisconsin style child support standard should be abandoned.

The proposal by the Department to modify the current formula falls significantly short of the changes needed to give Wisconsin a good child support standard. The department has dragged it's feet for 15 years and failed to make needed changes. It is therefore time for the legislature to take the responsibility for this standard from the department and establish a better child support by statutes. This is what Senate Bill 156 does.

Senate Bill 156

- Is based on established economic data for raising KIDS.
- Considers the incomes of both parents
- Provides adequate funds to both parents to raise their KIDS.
- Provides similar treatment of KIDS regardless of their birth order.
- Eliminates unjustified economic incentives which encourage divorce and hurt KIDS.
- Treats KIDS as human beings instead of financial trophies to be won or lost in a custody and placement battle.

- Provides a fair, clearly defined, uniform and predictable method of defining child support orders, so all Wisconsin children in similar circumstances will be treated the same.

The four pages of tables that I have distributed to you demonstrate the problems of the current formula. For this purpose, I have prepared a table which summarizes the results of numerous economic studies on page 1 of the handout. While the Department claims that data on the cost of raising children is inconclusive, the vast majority of other states have reached the opposite conclusion. They had no problem finding this data conclusive and credible and are applying it as the basis of child support orders in their states. Every economic study which look at the cost of raising children in different income families show that families with different incomes spend a significantly different portion for their children, not the same amount as the Department continues to insist. While this data suggest's that the 25% defined in Wisconsin for two children is consistent with the economic data in families with a combined annual gross income of approximately $40,000, when you look at a family with a combined annual income of $126,000, the amount in Wisconsin is more than 50% higher that what the economic data says is being spent on children in these families.

The attached color chart on page 2 demonstrates this in a different way. The red bars indicate what the economic data and what the vast majority of other states say is needed to raise one child. The yellow bars are the amounts defined by the DWD40 standard to be the correct amount of child support. Thus this data suggests the disparity between these two values starts when the combined family income starts to exceed $50,000, not when one parent's income excess $102,000 as is included in the department's proposal.

The table on page 3 illustrates the impact of very high income cases. As you can see the Department's provision for high income families will continue to define absurd child support amounts, which court are required to presume are correct.

In fact, the department's proposal to start reducing the percentage of a parents income above $102,000 would have no or just a tiny impact on the 98% of the cases covered by these charts on page 4. The Department's proposal for higher income families, is a scherade, designed only to make you the legislators and the courts believe they fixed the problem. It is an arbitrary and inadequate solution that in my opinion does not correct the excesses in above average income families and will make the problem of very higher income families, worse, not better.

To help you understand the differences between these proposals, I have also prepared four additional pages that point out the differences between the current standard, the departments proposed changes and SB156.

Senate Bill 156 was intended to fix the problems with the current standard while still maintaining the current formula as much as possible.

- It maintains the current percentage of gross income method for calculating child support orders.
- It keeps the current percentages for in cases with a combined gross income less than $48,000.
- Earlier versions of the shared placement formulas were revised to be consistent with the Department's new proposal for shared placement cases.

The key differences is in the treatment of child support orders in above average income cases, serial family cases, and requiring the presumptive use of these provisions rater than allowing arbitrary discretion on a case by case basis.

Senate Bill 156, does not use arbitrary thresholds and reduced percentages. It is well thought out. As illustrated on the color chart on page 3, and the table on page 4 of this handout, the thresholds and reduced percentages are not arbitrary. They were chosen to be more consistent with the most widely accepted economic data and awards of other states for families with incomes between $48,000 to $240,000. It includes another provision for very high income cases above $240,000.

Since it more clearly defines income and makes the use of the special provisions mandatory, it will result in one value for all cases with the same circumstances. It will be predictable and uniform, but it keeps the current provisions for courts to deviate from this if the court finds this to be unfair.

You may be wondering why would the department has rejected these changes. Requiring 50% higher child support orders in a family with a $100,000 income, is easy credit for child support collections. Enforcement in these families is easy, requiring almost no resources of the Department. The excess amounts contributes significantly to the child support collection numbers. If Wisconsin was to properly correct the child support standard as SB 156 proposes, total collections may be reduced by 10-15%. If this happened, the performance of the Department's administrators would be questioned. So the Department position on this issue is not based on a concern for Wisconsin

children and families, but rather about protecting their bureaucratic self interest.

You should also not be surprised if the state bar supports the Department's position on this issue. Parents usually have a good idea of how much is being spent on the children in these families. Having a presumptive child support standard that defines excess child support amounts in higher income families provides an incentive for litigation, and a great business opportunity for attorneys, since these families are most the likely people to afford to pay $150-300/hr for attorney fees. The Wisconsin state bar is not here to look out for the interests of Wisconsin children or parents, it is here to make sure the great business opportunity for attorneys will continue.

The issue of making the use of the special provisions in this standard presumptive instead of discretionary appears to also primarily based on keeping the state bar happy since this make sure the great business opportunity for attorneys will continue. If the court has the discretion to arbitrarily choose in a case between a base monthly child support order of $2, 000 or $400 using a special case provision, parents will have an incentive to higher attorneys to help argue and sway the courts their way.

To reduce the conflicts in families dealing with this issue we need a fair, uniform and predictable child support standard. Senate Bill 156 achieves these goals. The DWD proposal, while providing some improvement over the current system, fails to achieve these goals in many families. SB 156 is a much more comprehensive solution that should be supported and passed into law.

If you have any questions about this handout, I can try to address them now or feel free to contact me after this hearing if you have any further questions.

Jan Raz
10120 W Forest Home Avenue
Hales Corners, WI
414 425-4866
jraz@wi.rr.com

PS. In light of the great concerns about lower income payers at the March DWD hearings and Senate hearing last month, Amendment 1 to AB250 was drafted to include a provision that promotes the use of actual income instead of imputed income, and allows the court to waive interest on arrears, in hardship cases. This will not reduce expectations in lower income families, but will provide a help to those that have trouble satisfying these responsibilities.

MEMORANDUM

August 26, 2003

TO: Members of Senate Judiciary, Corrections and Privacy Committee

FROM: Patti Seger, Wisconsin Coalition Against Domestic Violence, Policy Development Coordinator

RE: In Support of Senate Bill 156

The Wisconsin Coalition Against Domestic Violence (WCADV) is a statewide membership organization of domestic violence victims, domestic abuse programs and individuals committed to ending domestic violence.

I am here today in to express opposition to Senate Bill 156, which creates a new formula for the calculation of child support. There are a number of reasons which WCADV opposes this legislation. First of all, it is not necessary. WCADV and about 20 others participated on a DWD Child Support Advisory committee that met for about one year, nearly once per month, for the purpose of evaluating and making recommendations for changes to Wisconsin's child support law. Those recommendations have resulted in the introduction of Clearinghouse Rule 03-022. This proposed rule change is the culmination of very thoughtful discussion, research, and evaluation of many individuals and organizations that represent persons who might be subjected to child support policy. The proposed rule gives due consideration to circumstances surrounding low-income payers, high-income payers, shared placement formula, and imputation of income. It has the full or partial support of all of those that participated on the advisory committee save for one individual.

Second, Senate Bill 156 makes no provisions for low-income payers. One of the issues that became clearly of primary importance during the course of the Child Support Advisory Committee was that low-income payers were too often being strapped with too high child support orders, which subsequently resulted in non-payment, high arrearages, and in many cases, the eventual arrest low-income payers. Many custodial parents fail to receive any child support and may lose faith in the system. The Child Support Advisory committee made several key recommendations to address this issue. And while the recommendation eventually became somewhat controversial, the Department of Workforce Development has continued to work towards modification of the child support schedule to better address the complex issues that face low-income families in Wisconsin.

Third, Senate Bill 156 reduces child support orders by too much for too many families. Reductions for "high-income" payers begins as low as $48,000 ***combined*** income annually. This reduction could have a devastating impact on many families in Wisconsin. Many parents who are underemployed or who do not have access to high wage earning professions will be negatively impacted because they will be unable to adequately provide for their children. Most impacted will be those living in remote, rural

307 SOUTH PATERSON STREET | SUITE 1
MADISON, WISCONSIN 53703-3041
608-255-0539 | FAX: 608-255-3560

WISCONSIN COALITION AGAINST DOMESTIC VIOLENCE

300 THIRD STREET | P.O. BOX 6068
WAUSAU, WISCONSIN 54402-6068
715-849-3610 | FAX: 715-849-3810

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areas of Wisconsin and those living in economically depressed communities. If one parent has the ability to earn substantially more than the other, the other parent will suffer decreased child support (if their joint income rises to the $48,000 level) and the children will suffer the consequences. Very few other states define "high income" at this low a level. The Clearinghouse Rule addresses high income schedules beginning at $102,000 and again at $150,000. This recommendation is preferable and reflects the reality of high income families. Twenty-three of the 50 states address reduced percentages for high-income families when income is $100,000 per year or higher annually. I have attached a grid of State's Treatment of High Income in child support that was prepared by the National Conference of State Legislatures. I have made notations on the side whenever the amount at which high-income standards applied was ambiguously defined. I hope this will helpful to you in evaluating the high-income standards established throughout our country and will offer a comparison to the legislation that is being considered by the Judiciary Committee today.

WCADV strongly opposes Senate Bill 156 and urges you to do the same. The Clearinghouse Rule that has been developed by the Dept. of Workforce Development, based upon the recommendations of a large advisory committee, is currently under consideration by both the appropriate committees in the Senate and Assembly. The proposed clearinghouse rule makes thoughtful recommendations that address both the low-income and the high-income payers and will provide the best child support guidelines for the residents of Wisconsin.

Child Support Project

States' Treatment of High Income

Compiled by NCSL 11/99

State	High Income Guideline
Alabama	The court may use its discretion in determining child support in circumstances where combined adjusted gross income is below the lowermost levels or exceeds the uppermost levels of the schedule.
Alaska	In cases where the obligor parent's income is greater than $72,000 per year, the court should use the $72,000 as the parent's income, and increase the support above the amount calculated using the $72,000 per year figure only if it is just and proper.
Arizona	Child support awards based upon income of less than $650 per month or greater than $15,000 per month shall be based on the facts of the individual case and shall be consistent with the theory of the guidelines and the factors set forth in A.R.S. § 25-320. In no event, however, where combined income exceeds $15,000 shall support be less than the amount indicated on the schedule for $15,000.
Arkansas	When the payor's income exceeds that shown on the chart, the trial court shall disregard the chart and apply different percentages.
California	Where the parent being ordered to pay child support has an extraordinarily high income and the amount determined under the formula would exceed the needs of the children, the court may deviate from the formula provided. The high value of residence of children is also listed as a deviation factor.
Colorado	The judge may use his judicial discretion in cases where

$10,000/mo or $120,000/yr

* $5,000/mo or $60,000/yr

$6,667/mo or $80,000/yr.

	combined adjusted gross income exceeds the uppermost levels of the guideline. Ownership by parent of substantial non-income producing asset is also listed as a deviation factor.
Connecticut	Above $1,750 weekly income, the court is free to fashion an appropriate amount of support, provided the amount of support prescribed at the $1,750 level is presumed to be the minimum order. Financial resources available to parent, including non-income-producing assets, are also listed as a deviation factor.
Delaware	In cases of high income, a basic amount plus a particular percentage shall be applied.
District of Columbia	The guideline percentage shall not apply to a noncustodial parent with income that exceeds $75,000. The amount available to a child in such a case shall not be less than the amount that would have been ordered if the guideline had been applied to a noncustodial parent with income of $75,000.
Florida	For combined monthly available income greater than the amount in the chart, the obligation shall be the minimum amount of support provided by the guidelines, plus a percentage based on the number of children whose support is being determined.
Georgia	High income is listed as a deviation factor.
Hawaii	A monthly income that would result in a computation higher than the reasonable needs of the children is an exceptional circumstance warranting deviation.
Idaho	The guideline income schedules are not a limitation on the award of support for combined incomes over $70,000. In cases where combined income exceeds $70,000 per year, the court shall award support on a case-by-case basis.
Illinois	High income is listed as a deviation factor.
Indiana	For combined weekly adjusted income of $4,000, a special formula is applied as a presumptive amount.
Iowa	Where the noncustodial parent's income is $6,001 per month or higher, support is determined on a case-by-case basis, but not less than the dollar amount as provided for in the guidelines for a noncustodial parent with a monthly net income of $6,000.
Kansas	If the combined income exceeds the highest amount shown on the schedules, the court should exercise its discretion by considering what amount of child support should be set in addition to the highest amount on the schedule. A suggested formula is provided.

$10,000/mo

$72,012/yr

$10,600/mo or $127,200/yr

Kentucky	High income is listed as a deviation factor.
Louisiana	If the combined adjusted monthly gross income of the parties exceeds the highest level specified in the schedule, the court shall use its discretion in setting the amount of the basic obligation in accordance with the best interest of the child and the circumstances of each parent.
Maine	When the combined annual gross income exceeds $126,600, the child support table is inapplicable except that the basic weekly support entitlement shall not be less than that set forth in the table for a combined annual gross income of $126,600. Available income and financial contributions of the domestic associate or spouse of each party is listed as a deviation factor.
Maryland	If the combined income exceeds the highest level in the chart, the court may use its discretion in setting the amount of support.
Massachusetts	Where the combined gross income of the parties exceeds $100,000, or where the gross income of the noncustodial parent exceeds $75,000, the court should award support at the $75,000/$100,000 level as a minimum presumptive amount.
Michigan	In high-income cases, where total family income exceeds the income categories provided, support is calculated by the application of certain percentages.
Minnesota	Guidelines stipulate that an obligor with a monthly income in excess of the income limit provided in the chart shall pay the same dollar amount as provided in the guidelines for an obligor with a monthly income equal to the limit in effect. All earnings, income, and resources of parents is listed as a deviation factor.
Mississippi	In cases where the adjusted gross income is more than $50,000 or less than $5,000, the court shall make a written finding in the record as to whether or not the application of the guidelines established in this section is reasonable.
Missouri	No direct statutory provision. Case law, however, provides that the trial court is to presume that the highest figure provided in the chart at the highest income level is the correct amount of support, and the court may deviate upon good cause.
Montana	The guidelines do not apply to incomes greater than $39,500. Where income exceeds this amount, the award shall be at least the amount for income at $39,500, and shall be supplemented on a case-by-case basis.
Nebraska	If total net income exceeds $10,000 monthly, child support for amounts in excess of $10,000 monthly may be more but shall

$10,000/mo or $120,000/y

$10,000/mo

$6,751/mo or $81,012/y

	not be less than the amount that would be computed using the $10,000 monthly income unless other permissible deviations exist.
Nevada	High income is listed as a deviation factor.
New Hampshire	Significantly high or low income of the parents is a deviation factor.
New Jersey	For parents with a combined income of $150,800, the court shall apply the guidelines up to that amount, and supplement the award with a discretionary amount based on the remaining family income. Extrapolation is expressly forbidden.
New Mexico	For gross monthly income greater than $8,300, certain percentages shall be applied depending on the number of children.
New York	Where combined parental income exceeds the dollar amount set forth in the guidelines, the court shall determine the amount of support for the amount of the combined income in excess of such dollar amount by consideration of the factors set forth in the deviation paragraph and/or the support percentage.
North Carolina	Where combined parental income is above $150,000, child support is determined on a case-by-case basis, provided that the amount of support awarded may not be lower than the maximum basic child support obligation shown in the schedule.
North Dakota	The chart provides support in cases of net monthly income over $10,000. High income is a deviation factor.
Ohio	If the combined gross income of both parents is greater than $150,000 per year, the court shall determine support on a case-by-case basis, provided that the court shall compute a basic combined obligation that is no less than the same percentage of the parents' combined income that would have been computed under the schedule for a combined income of $150,000.
Oklahoma	In the event monthly income exceeds $15,000, the child support shall be that amount computed for a monthly income of $15,000 plus such additional amount as the court may determine.
Oregon	For combined adjusted gross income exceeding $10,000 per month, the presumed basic support obligations shall be as for parents with combined adjusted gross income of $10,000. A basic child support obligation in excess of this level may be demonstrated for those reasons set forth in the deviation criteria section.

$80,000/yr

Pennsylvania	When the parties' joint monthly net income exceeds $10,000, the amount of support awarded is determined on a case-by-case basis. Other income in the household is listed as a deviation factor.
Rhode Island	For cases with a higher combined monthly adjusted gross income level than $15,000 per month, child support shall be considered on a case-by-case basis.
South Carolina	Where the combined gross income is greater than $150,000 per year, courts should determine child support on a case-by-case basis.
South Dakota	For a combined net income above the schedule, the child support obligation shall be established at an appropriate level, taking into account the actual needs and standard of living of the child.
Tennessee	In cases where the obligor's income exceeds $10,000 per month, the application of the guidelines may be unjust. In such a case, the court may deviate. The court may establish a trust in such a case for the post-majority benefit of the child.
Texas	In situations where the obligor's net resources exceed $6,000 per month, the court shall presumptively apply the percentage guidelines to the first $6,000, and may order additional support. In no event may the obligor be required to pay more than an amount equal to 100% of the proven needs of the child.
Utah	If the combined adjusted gross income exceeds the highest level specified in the table, an appropriate and just support amount shall be ordered on a case-by-case basis, but the amount ordered may not be less than the highest level specified in the table for the number of children due support. The standard of living and situation of the parties is listed as a deviation factor.
Vermont	The court may use its discretion in determining child support in circumstances where combined available income exceeds the uppermost levels of support adopted in the guideline.
Virginia	Where combined gross monthly exceeds $10,000 per month, a special formula shall apply to the amount over $10,000 per month. Extraordinary capital gains is listed as a deviation factor.
Washington	When combined net income exceeds $7,000, the court may set support at an advisory amount of support set for combined monthly net incomes between $5,000 and $7,000 or the court may exceed the advisory amount of support set for combined monthly net incomes of $7,000 upon written findings of fact.

$10,001/mo

West Virginia	In the case of combined income over $15,000, the support award shall not be less than that provided at the $15,000 per month level, plus an amount determined by a formula applied to the excess over $15,000.
Wisconsin	High income is listed as a deviation factor from Percentage of Income calculation.
Wyoming	Where the combined income of the parents is greater than $5,885, a special formula applies.
Source: Morgan, Laura W., *Child Support Guidelines, 1998 Supplement*, Aspen Law & Business, New York, 1998.	

$70,620/

For additional information on state child support enforcement contact the Child Support Project at 303/364-7700.

National Conference of State Legislatures
INFO@NCSL.ORG (autoresponse directory)

Denver Office:
7700 East First Place
Denver, CO 80230
Tel: 303-364-7700
Fax: 303-364-7800

Washington Office:
444 North Capitol Street, N.W., Suite 515
Washington, D.C. 20001
Tel: 202-624-5400
Fax: 202-737-1069