



1995 SENATE BILL 422

November 14, 1995 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Judiciary.

1 **AN ACT** *to repeal* 767.25 (1m) (d) and 767.51 (5) (f); *to renumber* 303.08 (5) (a)
2 and 767.25 (1m) (a); *to renumber and amend* 767.25 (1m) (c); *to amend* 46.10
3 (14) (c) (intro.), 46.10 (14) (d), 303.08 (5) (c), 767.25 (1m) (intro.), 767.25 (1m) (e),
4 767.25 (1n) and (2), 767.265 (3h), (4) and (6) (a), (b) and (c), 767.51 (5) (intro.),
5 767.51 (5) (i) and 767.51 (5d); *to repeal and recreate* 46.10 (14) (c) 7.; and *to*
6 **create** 46.25 (9m), 303.08 (5) (a), 767.23 (1) (m), 767.25 (1r), 767.25 (4g), 767.25
7 (4r), 767.32 (2p), 767.465 (1m), 767.48 (5) (c), 767.51 (3g), 767.51 (3r), 767.51 (5)
8 (cm) and 767.51 (5j) of the statutes; **relating to:** considering certain statutory
9 factors in deviating from the child support percentage standard, treatment of
10 child care expenses, ordering trusts for the support of children, order of
11 disbursement of wages for Huber law inmates, reducing a payer's child support
12 obligation if the child receives a federal benefit, a study of county child support
13 agency staffing, ordering payment of postmajority support for a child with

1 exceptional educational needs, requiring a report evaluating the adequacy of
2 child support orders and paternity judgments and blood test costs.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the joint legislative council in the bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

PREFATORY NOTE: This bill was prepared at the direction of the joint legislative council's special committee on child custody, support and visitation laws.

The bill includes provisions on the following subjects:

Deviation From the Percentage Standard

The bill modifies current laws relating to deviating from use of the percentage standard in setting child support in substitute care, divorce and paternity cases. Under current law, a court must in general determine child support payments by using the percentage standard established by the department of health and social services (DHSS) in s. 46.25 (9) (a). Upon request of a party, the court may modify the amount of child support payments arrived at using the percentage standard if, after considering a number of factors delineated in the statutes relating to each of the 3 types of cases, the court finds by the greater weight of the credible evidence that use of the percentage standard is unfair to the child or to any of the parties.

Under this bill, the court would be required to modify the amount of child support determined under the percentage standard if, after considering all of the delineated factors that the court considers relevant, the court finds by the greater weight of the credible evidence that the amount of child support determined using the percentage standard is unfair to the child or any of the parties. If the court so finds, the court must then modify the child support award as currently provided in the statutes governing each of the 3 types of cases.

The bill also makes certain changes in the deviation factors to be considered in substitute care, divorce and paternity cases, in order to make the factors more uniform among the 3 types of cases, except where a factor is inapplicable to a particular type of case. The changes made in the factors for each type of case are explained in the NOTES following the affected statutory sections.

Treatment of Child Care Expenses

Under this bill, in both divorce and paternity cases, child day care expenses would be treated in a manner similar, though not identical, to the way health care expenses will be treated as a result of provisions of 1993 Wisconsin Act 481 which take effect on January 1, 1996. The bill provides that, when ordering child support, the court must consider and may specifically assign responsibility to one or both parents for, and direct the manner of payment of, the child's day care expenses which are necessary to permit either parent to work. If the court assigns responsibility for day care expenses, the court is required, in directing the manner of payment, to order payment either to the other parent, to the day care provider or to the clerk of court for distribution to the parent or day care provider. If a person who is ordered to pay child care fails to do so within 10 days after a payment is due, the court may order that payment be withheld from the person's income and assigned for the payment of day care expenses. If the court orders income withholding, the court must send the person notice of the withholding and of the opportunity to request

a hearing on whether the assignment should remain in effect. Because they are keyed to provisions of Act 481 which take effect on January 1, 1996, the day care provisions of this bill would also take effect on January 1, 1996, or the day after publication, whichever is later.

Ordering Trusts for the Support of Children

The bill amends current law to provide that a court may, upon request of any party, set aside a portion of the child support which a party is ordered to pay in a separate fund or trust for the support, education and welfare of the parties' minor children. Currently, s. 767.25 (2) provides that a court may protect and promote the best interests of minor children by setting aside in a separate fund or trust a portion of the child support which either party is ordered to pay, but does not specify which parent or parents may request establishment of such a trust. However, in *Resong v. Vier*, 157 Wis. 2d 382, 459 N.W. 2d 591 (Ct. App. 1990), the court of appeals, district III, noted that while s. 767.25 (2) permits the establishment of a trust when doing so would be in the best interests of the child, the custodial parent should not lightly be stripped of his or her ability to make decisions concerning rearing his or her child. The court held that, once support has been awarded without a trust, the trial court must apply the "necessary to the best interest" standard used in modifying custody determinations if it wishes to establish a trust.

Order of Disbursement of Huber Prisoner Wages

The bill amends current law to change the order of disbursement of wages of a county jail prisoner with "Huber law" privileges.

Under current law, the wages, salary and unemployment compensation and employment training benefits received by the prisoner must be turned over in full to the sheriff and be disbursed by the sheriff in the following order for the following purposes: (1) for the board of the prisoner; (2) for the necessary travel expense to and from work and any other incidental expenses of the prisoner; (3) for the support of the prisoner's dependents, if any; (4) for payment of the prisoner's obligations acknowledged by the prisoner in writing or which have been reduced to judgment; and (5) for the prisoner upon the prisoner's release [s. 303.08 (3) and (5)].

The bill would make child support payments ordered under ch. 767 the first item disbursed under s. 303.08 (5). Board of the prisoner would become the 2nd item disbursed and necessary work-related travel expenses and other incidental expenses of the prisoner would become the 3rd item disbursed. Support of the prisoner's dependents other than child support ordered under ch. 767 would be the 4th item disbursed, followed by payment of the prisoner's obligations acknowledged or reduced to judgment and the balance to the prisoner upon discharge.

Reduction in Child Support Obligation for Receipt of Federal Benefit

Under current law, in an action affecting the family, including actions to revise child support, the court must determine child support payments by using the percentage standard established by the DHSS. The court is authorized, however, to modify the amount of child support that would be ordered by using the percentage standard, upon the request of a party, if the court finds that using the percentage standard is unfair to the child or either of the parties after considering a number of factors. Under current case law, the court has the authority to reduce the amount of child support to be paid by a payer, if the payer's child receives a social security benefit based on the payer's eligibility for old-age or disability benefits under 42 USC 401 to 433.

This bill requires a court to reduce the amount of child support to be paid by a payer as determined under ss. 767.25 and 767.51 and the amount of revised child support determined under s. 767.32 if the payer's child for whom support is to be paid receives a social security benefit based on the payer's eligibility for old-age or disability benefits under 42 USC 401 to 433. The amount of the reduction would equal the amount of the social security benefit that the child receives.

Study of County Child Support Agency Staffing

The bill directs the DHSS to study the staffing levels of all county child support agencies in the state to determine an appropriate level of staffing for those agencies. The bill directs DHSS to submit a report to appropriate standing committees of the legislature by January 1, 1997. The purpose of not requiring the report until January 1, 1997 is to ensure that the kids information data system (KIDS) is fully operational so that data expected to be available through KIDS can be utilized in the report.

Postmajority Support

Under current law, in an action affecting the family in which child support is ordered, the court must order either party or both to pay for the support of any child of the parties who is less than 19 years old and is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent. Under current law, a person who is under the age of 21 years and any person who becomes 21 years old during a school year may be enrolled in a special education program if they are determined to be a "child with exceptional educational needs". A child with exceptional educational needs is a child who may require special educational services to supplement or replace regular education because he or she has certain statutorily specified conditions, or other conditions specified by the state superintendent of public instruction, including an orthopedic impairment; a cognitive disability or other developmental disability; a hearing handicap; autism; or other health impairments.

This bill authorizes a court to order either party or both parties to pay for the support of a child of the parties who is 19 years of age or older but under age 21 or becomes age 21 during a school year, and who is identified as a child with exceptional educational needs and is participating in a special education program.

Report on Adequacy of Child Support Orders

Currently, federal law requires that states review and revise, if appropriate, their child support guidelines at least once every 4 years to ensure that the application of those guidelines results in the determination of appropriate child support award amounts. As part of the review of a state's guidelines, a state must consider economic data on the cost of raising children and analyze case data gathered through sampling or other methods on the application of and deviation from the guidelines. The DHSS conducts the review of Wisconsin's child support guidelines, which are known as the percentage standard. There is no state law requirement, however, addressing the scope of the review or requiring that the results of the review be submitted to the legislature.

This bill creates a requirement that the DHSS report to the legislature an evaluation of the adequacy of child support orders determined using the percentage standard. The report must include consideration of the following factors:

1. Economic data on the cost of raising children in households consisting of one parent and households consisting of 2 parents.
2. Economic data on the cost of raising children in 2 households under shared physical placement conditions.
3. Case data on the application of and deviation from the percentage standards, and case data, to the extent that it is available, on the costs incurred for the provision of health care and day care for children for whom child support has been ordered.

Under this bill, the department must report by January 1, 1997, and every 4 years thereafter.

Paternity Judgments and Blood Test Costs

Under current law, in an action to establish the paternity of a child, if a petitioner, other than the state, fails to appear on the date set for the pretrial hearing or the date set for the trial or if the state is the petitioner and is unable to proceed on the date set for the pretrial hearing or the trial, the court may enter a judgment for the respondent dismissing the action.

In addition, under current law, the fees and costs of blood tests ordered by the court in actions to establish paternity must be paid by the county, except that when a paternity judgment is entered, the court may order either or both parties to reimburse the county

if they have sufficient resources to do so or, if 2 or more identical series of blood tests are performed upon the same person, the court may require the person requesting the 2nd or subsequent series of tests to pay in advance.

This bill provides that a court may adjudicate the alleged father to be the father if the mother of the child fails to appear at the first appearance, unless the first appearance is not required, scheduled blood test, pretrial hearing or trial if sufficient evidence exists to establish the alleged father as the father of the child.

The bill also provides that if the state is not a petitioner in an action to establish paternity of a child, the court may order any or all of the parties to pay for the fees and costs for the blood tests in advance if the court finds that the parties have sufficient resources to pay the costs of the blood tests.

1 **SECTION 1.** 46.10 (14) (c) (intro.) of the statutes is amended to read:

2 46.10 (14) (c) (intro.) ~~Upon request by a parent, the~~ The court may shall modify
3 the amount of child support payments determined under par. (b), ~~subject to par. (em),~~
4 if, after considering all of the following factors that the court determines are relevant,
5 the court finds by the greater weight of the credible evidence that the ~~use of the~~
6 ~~percentage standard~~ amount of child support determined under par. (b) is unfair to
7 the child or to either of the parents:

8 **SECTION 2.** 46.10 (14) (c) 7. of the statutes is repealed and recreated to read:

9 46.10 (14) (c) 7. Extraordinary travel expenses incurred in exercising parental
10 visitation with the child.

NOTE: Amends a provision and repeals and recreates a provision relating to setting child support in substitute care cases. First, modifies s. 46.10 (14) (c) (intro.) to provide that a court must modify the amount of support determined under the percentage standard if, after considering all of the factors delineated in sub. (14) (c) that the court deems relevant, the court finds by the greater weight of the credible evidence that the amount of child support determined using the percentage standard is unfair to the child or either of the parents. Under current law, a court may, on request of a parent, modify the amount of child support determined using the percentage standard. Second, eliminates one of the delineated factors, "the age of the child", and adds a new factor, "the extraordinary travel expenses incurred in exercising parental visitation with the child", in order to achieve greater consistency with factors considered in divorce and paternity cases.

11 **SECTION 3.** 46.10 (14) (d) of the statutes is amended to read:

12 46.10 (14) (d) If the court finds under par. (c) that ~~use of the percentage~~
13 ~~standard~~ the amount of child support determined under par. (b) is unfair to the minor
14 child or either of the parents, the court shall state in writing or on the record the

1 amount of support that would be required by using the percentage standard, the
2 amount by which the court's order deviates from that amount, its reasons for finding
3 that ~~use of the percentage standard~~ the amount of child support determined under
4 par. (b) is unfair to the child or the parent, its reasons for the amount of the
5 modification and the basis for the modification.

NOTE: For consistency with SECTION 1, modifies language relating to a court's required findings in deviating from the percentage standard in substitute care cases, to refer to the court finding the *amount* of child support determined by using the percentage standard unfair, rather than finding the use of the percentage standard unfair.

6 **SECTION 4.** 46.25 (9m) of the statutes is created to read:

7 46.25 **(9m)** The department shall, by January 1, 1997, and by January 1 every
8 4 years thereafter, submit a report to the legislature under s. 13.172 (2) on the use
9 of the child support percentage standard under sub. (9) (a). The report shall evaluate
10 the adequacy of child support orders determined by using the percentage standard
11 and shall include consideration of the following factors:

12 (a) Economic data on the cost of raising children in households with only one
13 parent and households with 2 parents.

14 (b) Economic data on the cost of raising children in 2 households under shared
15 physical placement conditions.

16 (c) Case data on the application of and deviation from the percentage standards
17 and case data, to the extent that it is available, on the costs incurred for the provision
18 of health care and day care for children for whom child support has been ordered.

NOTE: Directs the DHSS to report to the legislature every 4 years, beginning January 1, 1997, on use of the percentage standard and the adequacy of child support orders determined using the standard.

19 **SECTION 5.** 303.08 (5) (a) of the statutes is renumbered 303.08 (5) (am).

20 **SECTION 6.** 303.08 (5) (a) of the statutes is created to read:

21 303.08 **(5)** (a) Payment of child support ordered under ch. 767;

1 **SECTION 7.** 303.08 (5) (c) of the statutes is amended to read:

2 303.08 **(5)** (c) Support of the prisoner's dependents, if any, other than child
3 support ordered under ch. 767;

NOTE: Makes court-ordered child support payments the first item disbursed from Huber prisoner wages, moves down to 2nd and 3rd priority, respectively, board of the prisoner and necessary travel expenses, makes support of dependents other than court-ordered child support the 4th item, followed by payment of the prisoner's obligations either acknowledged or reduced to judgment and, lastly, the balance, if any, to the prisoner upon release.

4 **SECTION 8.** 767.23 (1) (m) of the statutes is created to read:

5 767.23 **(1)** (m) Requiring either party or both parties to execute an assignment
6 of income for payment of a minor child's day care expenses.

NOTE: Permits a court or family court commissioner, in an action affecting the family, to issue a temporary order requiring either or both parties to execute an income assignment for payment of day care expenses.

7 **SECTION 9.** 767.25 (1m) (intro.) of the statutes is amended to read:

8 767.25 **(1m)** (intro.) ~~Upon request by a party, the~~ The court may shall modify
9 the amount of child support ~~payments~~ determined under sub. (1j) if, after
10 considering all of the following factors that the court determines are relevant, the
11 court finds by the greater weight of the credible evidence that ~~use of the percentage~~
12 ~~standard~~ the amount of child support determined under sub. (1j) is unfair to the child
13 or to any of the parties:

14 **SECTION 10.** 767.25 (1m) (a) of the statutes is renumbered 767.25 (1m) (am).

15 **SECTION 11.** 767.25 (1m) (c) of the statutes is renumbered 767.25 (1m) (ac) and
16 amended to read:

17 767.25 **(1m)** (ac) The needs of the child and the standard of living the child
18 would have enjoyed had the marriage not ended in annulment, divorce or legal
19 separation.

20 **SECTION 12.** 767.25 (1m) (d) of the statutes is repealed.

1 **SECTION 13.** 767.25 (1m) (e) of the statutes is amended to read:

2 767.25 **(1m)** (e) The cost of day care if the custodian works outside the home,
3 or the value of custodial services performed by the custodian if it is appropriate for
4 the custodian remains to remain in the home as a full-time parent.

NOTE: Makes the following changes in current s. 767.25 (1m), relating to deviating from use of the percentage standard in a case of divorce, annulment or legal separation:

1. Modifies current law to provide that the court must modify the amount of child support determined using the percentage standard if, after considering all of the factors delineated in s. 767.25 (1m) which it deems relevant, the court finds by the greater weight of the credible evidence that the amount of child support determined using the percentage standard is unfair to the child or any party. Current law provides that a court may, upon request by a party, modify the amount determined using the percentage standard if, after considering the delineated factors, the court finds such use would be unfair.

2. Modifies certain current factors to be considered in determining whether the amount determined using the percentage standard is unfair, in order to achieve greater consistency with factors considered in substitute care and paternity cases. Specifically, in this bill:

a. A new factor, "needs of the child", is added and combined with the current factor "standard of living the child would have enjoyed had the marriage not ended in annulment, divorce or legal separation".

b. The current factors, "the desirability that the custodian remain in the home as a full-time parent" and "the cost of day care if the custodian works outside the home, or the value of custodial services performed by the custodian if the custodian remains in the home", are combined and modified to read: "The cost of day care if the custodian works outside the home or the value of custodial services performed by the custodian if it is appropriate for the custodian to remain in the home as a full-time parent."

5 **SECTION 14.** 767.25 (1n) and (2) of the statutes are amended to read:

6 767.25 **(1n)** If the court finds under sub. (1m) that ~~use of the percentage~~
7 ~~standard~~ the amount of child support determined under sub. (1j) is unfair to the child
8 or the requesting any party, the court shall state in writing or on the record the
9 amount of support that would be required by using the percentage standard, the
10 amount by which the court's order deviates from that amount, its reasons for finding
11 that ~~use of the percentage standard~~ the amount of child support determined under
12 sub. (1j) is unfair to the child or ~~the~~ any party, its reasons for the amount of the
13 modification and the basis for the modification.

1 **(2)** The court may, upon request by any party, protect and promote the best
2 interests of the minor children by setting aside a portion of the child support which
3 either any party is ordered to pay in a separate fund or trust for the support,
4 education and welfare of such children.

NOTE: For consistency with SECTION 9, modifies language relating to a court's required findings in deviating from the percentage standard in divorce cases, to refer to the court finding the *amount* of child support determined by using the percentage standard unfair, rather than finding the use of the percentage standard unfair. Also, eliminates reference to "the requesting party", since, under SECTION 9, a party no longer has to request that a court consider modifying the child support amount. Also amends the current provision which permits a court to order a portion of child support to be put in a separate fund or trust, to provide that any party may so request.

5 **SECTION 15.** 767.25 (1r) of the statutes is created to read:

6 767.25 **(1r)** The court shall reduce the amount of a parent's child support
7 payments determined under sub. (1j) or (1m), if the court finds that the child receives
8 benefits under 42 USC 402 (d) based on the parent's entitlement to federal old-age
9 or disability insurance benefits under 42 USC 401 to 433. The parent's child support
10 payments shall be reduced by the amount of the benefit under 42 USC 402 (d)
11 received by the child.

NOTE: Requires a court in a divorce, annulment or legal separation case to reduce the amount of child support to be paid by a payer if the payer's child for whom support is to be paid receives a social security benefit based on the payer's eligibility for old-age or disability benefits. The amount of the reduction would be equal to the amount of the social security benefit the child receives.

12 **SECTION 16.** 767.25 (4g) of the statutes is created to read:

13 767.25 **(4g)** The court may order either party or both parties to pay for the
14 support of any child of the parties who is 19 years of age or older and who satisfies
15 all of the following:

- 16 (a) Is a child with exceptional educational needs, as defined in s. 115.76 (3).
17 (b) Is participating in a special education program under subch. V of ch. 115.

NOTE: Permits a court in a divorce, annulment or legal separation action to order one or both parties to pay for the support of a child of the parties who is 19 years of age or older but under age 21 or becomes age 21 during a school year and who is identified

as a child with exceptional educational needs and is participating in a special education program.

1 **SECTION 17.** 767.25 (4r) of the statutes is created to read:

2 767.25 (4r) (a) When ordering child support for a child under sub. (1), the court
3 shall consider and may specifically assign responsibility to one or both parents for
4 and direct the manner of payment of the child's day care expenses that are necessary
5 to permit either parent to work. A parent may be required to initiate or continue
6 payment of day care expenses for a child under this subsection.

7 (b) In directing the manner of payment of a child's day care expenses, the court
8 shall order that payment be made to one of the following:

9 1. The other parent.

10 2. The day care provider.

11 3. The clerk of court for disbursement to the person for whom the payment has
12 been awarded.

13 (c) If a parent who is ordered to pay child care expenses under this subsection
14 fails to make a required payment within 10 days after its due date, the court may
15 order that payment be withheld from the person's income and assigned for the
16 payment of day care expenses. If the court orders income withholding and
17 assignment for the payment of day care expenses, the court shall direct that payment
18 under the assignment be made to the clerk of court for disbursement to the other
19 parent as provided in s. 767.29 and shall send notice of the assignment and of the
20 opportunity to request a hearing in the manner provided under s. 767.265 (2h). The
21 clerk of court shall keep a record of all moneys received and disbursed by the clerk
22 for day care expenses that are directed to be paid to the clerk.

NOTE: Provides that when ordering child support in a divorce, annulment or legal separation case, the court must consider and may specifically assign responsibility to one or both parents for, and direct the manner of payment of, the child's day care expenses

which are necessary to permit either parent to work. If the court assigns responsibility for day care, it must, in directing the manner of payment, order payment either to the other parent, to the day care provider or to the clerk of courts for distribution to the other parent or day care provider. If a person fails to make an ordered child care payment within 10 days after a payment is due, the court may then order the payment withheld from the person's income.

1 **SECTION 18.** 767.265 (3h), (4) and (6) (a), (b) and (c) of the statutes, as affected
2 by 1993 Wisconsin Act 481, are amended to read:

3 767.265 **(3h)** A person who receives notice of assignment under this section or
4 s. 767.23 (1) (L) or (m), 767.25 (4m) (c) or (4r) (c) or 767.51 (3m) (c) or (3r) (c) or similar
5 laws of another state shall withhold the amount specified in the notice from any
6 money that person pays to the payer later than one week after receipt of notice of
7 assignment. Within 5 days after the day the person pays money to the payer, the
8 person shall send the amount withheld to the clerk of court of the jurisdiction
9 providing notice or, in the case of an amount ordered withheld for health care
10 expenses, to the appropriate health care insurer, provider or plan. Except as
11 provided in sub. (3m), for each payment sent to the clerk of court, the person from
12 whom the payer receives money shall receive an amount equal to the person's
13 necessary disbursements, not to exceed \$3, which shall be deducted from the money
14 to be paid to the payer. Section 241.09 does not apply to assignments under this
15 section.

16 **(4)** A withholding assignment or order under this section or s. 767.23 (1) (L) or
17 (m), 767.25 (4m) (c) or (4r) (c) or 767.51 (3m) (c) or (3r) (c) has priority over any other
18 assignment, garnishment or similar legal process under state law.

19 **(6)** (a) Except as provided in sub. (3m), if after receipt of notice of assignment
20 the person from whom the payer receives money fails to withhold the money or send
21 the money to the clerk of court or the appropriate health care insurer, provider or
22 plan as provided in this section or s. 767.23 (1) (L) or (m), 767.25 (4m) (c) or (4r) (c)

1 or 767.51 (3m) (c) or (3r) (c), the person may be proceeded against under the principal
2 action under ch. 785 for contempt of court or may be proceeded against under ch. 778
3 and be required to forfeit not less than \$50 nor more than an amount, if the amount
4 exceeds \$50, that is equal to 1% of the amount not withheld or sent.

5 (b) If an employer who receives an assignment under this section or s. 767.23
6 (1) (L) or (m), 767.25 (4m) (c) or (4r) (c) or 767.51 (3m) (c) or (3r) (c) fails to notify the
7 clerk of court within 10 days after an employe is terminated or otherwise temporarily
8 or permanently leaves employment, the employer may be proceeded against under
9 the principal action under ch. 785 for contempt of court.

10 (c) No employer may use an assignment under this section or s. 767.23 (1) (L)
11 or (m), 767.25 (4m) (c) or (4r) (c) or 767.51 (3m) (c) or (3r) (c) as a basis for the denial
12 of employment to a person, the discharge of an employe or any disciplinary action
13 against an employe. An employer who denies employment or discharges or
14 disciplines an employe in violation of this paragraph may be fined not more than
15 \$500 and may be required to make full restitution to the aggrieved person, including
16 reinstatement and back pay. Except as provided in this paragraph, restitution shall
17 be in accordance with s. 973.20. An aggrieved person may apply to the district
18 attorney or to the department of industry, labor and human relations for enforcement
19 of this paragraph.

NOTE: Amends current provisions which implement wage withholding for payment
of a child's health care expenses, effective January 1, 1996, to also include references to
wage withholding for payment of a child's day care expenses, as provided in SECTIONS 8
and 17 of the bill for divorce cases and in SECTIONS 8 and 23 of the bill for paternity cases.

20 **SECTION 19.** 767.32 (2p) of the statutes is created to read:

21 767.32 (2p) The court shall reduce the amount of a parent's revised child
22 support payments determined under sub. (2) or (2m), if the court finds that the child
23 receives benefits under 42 USC 402 (d) based on the parent's entitlement to federal

1 old-age or disability insurance benefits under 42 USC 401 to 433. The parent's child
2 support payments shall be reduced by the amount of the benefit under 42 USC 402
3 (d) received by the child.

NOTE: Requires a court to reduce the amount of revised child support to be paid by a payer in a revision action if the payer's child for whom support is to be paid receives a social security benefit based on the payer's eligibility for old-age or disability benefits. The child support is to be reduced by the amount of the benefit paid to the child.

4 **SECTION 20.** 767.465 (1m) of the statutes is created to read:

5 767.465 (1m) JUDGMENT WHEN MOTHER FAILS TO APPEAR. Notwithstanding sub.
6 (1), a court may enter an order adjudicating the alleged father to be the father of the
7 child under s. 767.51 if the mother of the child fails to appear at the first appearance,
8 unless the first appearance is not required under s. 767.457 (2), scheduled blood test,
9 pretrial hearing or trial if sufficient evidence exists to establish the alleged father as
10 the father of the child.

NOTE: Permits a court in a paternity action to adjudicate the alleged father to be the father if the mother of the child fails to appear at various stages, if sufficient evidence exists to establish the alleged father as the father of the child.

11 **SECTION 21.** 767.48 (5) (c) of the statutes is created to read:

12 767.48 (5) (c) If the state, including its delegate under s. 767.45 (6) or (6m), is
13 not a petitioner in the action, the court may order any or all of the parties to pay for
14 the fees and costs of the blood tests in advance if the court finds that the parties have
15 sufficient resources to pay the costs of the tests.

NOTE: Provides that if the state is not a petitioner in a paternity action, the court may order any or all parties to pay the fees and costs of blood tests in advance, if the court finds that the parties have sufficient resources to do so.

16 **SECTION 22.** 767.51 (3g) of the statutes is created to read:

17 767.51 (3g) The court may order either party or both parties to pay for the
18 support of any child of the parties who is 19 years of age or older and who satisfies
19 all of the following:

1 (a) Is a child with exceptional educational needs, as defined in s. 115.76 (3).

2 (b) Is participating in a special education program under subch. V of ch. 115.

NOTE: Permits a court, in a paternity action, to order one or both parties to pay child support for a child of the parties who is age 19 or older but under age 21 or becomes age 21 during a school year and who is identified as a child with exceptional educational needs and is participating in a special education program.

3 **SECTION 23.** 767.51 (3r) of the statutes is created to read:

4 767.51 (3r) (a) When ordering child support for a child under sub. (3), the court
5 shall consider and may specifically assign responsibility to one or both parents for
6 and direct the manner of payment of the child's day care expenses that are necessary
7 to permit either parent to work. A parent may be required to initiate or continue
8 payment of day care expenses for a child under this subsection.

9 (b) In directing the manner of payment of a child's day care expenses, the court
10 shall order that payment be made to one of the following:

11 1. The other parent.

12 2. The day care provider.

13 3. The clerk of court for disbursement to the person for whom the payment has
14 been awarded.

15 (c) If a parent who is ordered to pay child care expenses under this subsection
16 fails to make a required payment within 10 days after its due date, the court may
17 order that payment be withheld from the person's income and assigned for the
18 payment of day care expenses. If the court orders income withholding and
19 assignment for the payment of day care expenses, the court shall direct that payment
20 under the assignment be made to the clerk of court for disbursement to the other
21 parent as provided in s. 767.29 and shall send notice of assignment and of the
22 opportunity to request a hearing in the manner provided under s. 767.265 (2h). The

1 clerk of court shall keep a record of all moneys received and disbursed by the clerk
2 for day care expenses that are directed to be paid to the clerk.

NOTE: Contains same provisions relating to day care expenses in paternity cases
as are found in SECTION 17 of the bill relating to day care expenses in divorce cases.

3 **SECTION 24.** 767.51 (5) (intro.) of the statutes is amended to read:

4 767.51 (5) (intro.) ~~Upon request by a party, the~~ The court may shall modify the
5 amount of child support ~~payments~~ determined under sub. (4m) if, after considering
6 all of the following factors that the court determines are relevant, the court finds by
7 the greater weight of the credible evidence that ~~use of the percentage standard~~ the
8 amount of child support determined under sub. (4m) is unfair to the child or to the
9 ~~requesting party~~ any of the parties:

10 **SECTION 25.** 767.51 (5) (cm) of the statutes is created to read:

11 767.51 (5) (cm) The tax consequences to each party.

12 **SECTION 26.** 767.51 (5) (f) of the statutes is repealed.

13 **SECTION 27.** 767.51 (5) (i) of the statutes is amended to read:

14 767.51 (5) (i) The cost of day care if the custodian works outside the home or
15 the value of custodial services contributed by the custodial performed by the
16 custodian if it is appropriate for the custodian to remain in the home as a full-time
17 parent.

NOTE: Makes the following changes in current s. 767.51 (5), relating to deviating
from use of the percentage standard in a paternity case:

1. Modifies current law to provide that the court must modify the amount of child
support determined using the percentage standard if, after considering all of the factors
delineated in s. 767.51 (5) which it deems relevant, the court finds by the greater weight
of the credible evidence that the amount of child support determined using the percentage
standard is unfair to the child or any party. Current law provides that a court may, upon
request of a party, modify the amount determined using the percentage standard if, after
considering the delineated factors, the court finds such use would be unfair.

2. Modifies certain current factors to be considered in determining whether use of
the percentage standard is unfair, in order to achieve greater consistency with factors
considered in substitute care and divorce cases. Specifically, in this bill:

- a. A new factor, "the tax consequences to each party" is added.
- b. The current factor, "age of the child", is eliminated.

c. The current factor, “the value of services contributed by the custodial parent”, is replaced by a new factor, “the cost of day care if the custodian works outside the home, or the value of custodial services performed by the custodian if it is appropriate for the custodian to remain in the home as a full-time parent”.

1 **SECTION 28.** 767.51 (5d) of the statutes is amended to read:

2 767.51 **(5d)** If the court finds under sub. (5) that ~~use of the percentage standard~~
3 the amount of child support determined under sub. (4m) is unfair to the child or the
4 requesting any party, the court shall state in writing or on the record the amount of
5 support that would be required by using the percentage standard, the amount by
6 which the court’s order deviates from that amount, its reasons for finding that use
7 ~~of the percentage standard~~ the amount of child support determined under sub. (4m)
8 is unfair to the child or the any party, its reasons for the amount of the modification
9 and the basis for the modification.

NOTE: For consistency with SECTION 24, modifies language relating to a court’s required findings in deviating from the percentage standard in paternity cases, to refer to the court finding the *amount* of child support determined by using the percentage standard unfair, rather than finding the use of the percentage standard unfair. Also, eliminates reference to “the requesting party” since, under SECTION 24, a party no longer has to request that a court consider modifying the child support amount.

10 **SECTION 29.** 767.51 (5j) of the statutes is created to read:

11 767.51 **(5j)** The court shall reduce the amount of a parent’s child support
12 payments determined under sub. (4m) or (5), if the court finds that the child receives
13 benefits under 42 USC 402 (d) based on the parent’s entitlement to federal old-age
14 or disability insurance benefits under 42 USC 401 to 433. The parent’s child support
15 payments shall be reduced by the amount of the benefit under 42 USC 402 (d)
16 received by the child.

NOTE: Requires a court in a paternity case to reduce the amount of child support a payer is ordered to pay if the child for whom support is ordered receives a social security benefit based on the payer’s eligibility for old-age or disability benefits. The amount of the reduction would be equal to the amount of the benefit the child receives.

17 **SECTION 30. Nonstatutory provisions.**

1 (1) The department of health and social services shall study the staffing levels
2 of all county child and spousal support agencies in the state and determine an
3 appropriate staffing level. The department shall submit a report on county child and
4 spousal support agency staffing no later than January 1, 1997, to the appropriate
5 standing committees under section 13.172 (3) of the statutes.

NOTE: Directs the DHSS to study the staffing levels of all county child support agencies, determine an appropriate staffing level and report on county agency staffing to the legislature by January 1, 1997.

6 **SECTION 31. Effective dates.** This act takes effect on the day after
7 publication, except as follows:

8 (1) The treatment of sections 767.23 (1) (m), 767.25 (4r), 767.265 (3h), (4) and
9 (6) (a), (b) and (c) and 767.51 (3r) takes effect on January 1, 1996, or on the day after
10 publication, whichever is later.

NOTE: Provides that the provisions relating to treatment of child day care expenses in SECTIONS 8, 17, 18 and 23 of the bill take effect on January 1, 1996, or the day after publication, whichever is later. January 1, 1996, is the date on which the 1993 Wisconsin Act 481 provisions on treatment of a child's health care expenses take effect. The day care provisions of this bill are modeled after the Act 481 provisions and, in some instances, key into those provisions, necessitating the same or a later effective date.

11

(END)