

## Summary of Proposed Child Support Standard Bill

### The present standard:

Under current law, in an action affecting the family in which child support is ordered, the courts are required to presume the child support obligation defined by the DWD 40 (Old HSS 80) Child Support Percentage of Income Standard, promulgated by the DWD, is correct in all cases. Only after a showing by a requesting party of unfairness, by the greater weight of the credible evidence, the court may award a amount that is different from that defined by the standard.

The present method defines a parent's child support obligation as a percentage of the parent's gross income regardless of the income level of the family. These percentages are 17, 25, 29, 31, 34% for 1, 2, 3, 4, 5 children respectively.

A **shared-time payer adjustment** reduces the child support obligation of the payer if the payer is awarded placement periods above 30%. Between 30-40% the obligation is reduced from 100% to 67%. Between 40 and 60% placement this is reduced from 67% to 0% but the payer also gets a credit for the obligation owed by the other parent.

In **serial families** the standard deducts the first child support obligation in determining a obligation for the second child. It does not consider for additional children the payer may be supporting in a current family.

### The Problems:

While the DWD 40 standard defines a child support obligation by using the same percentage of gross income for all parents, national economic data on the cost of raising children indicates the portion of gross income families spend on children decreases as a families gross income increases. This data suggests in **above average income families** child support awards defined by this standard are much greater than the typical costs required to care for the children in these families and awards in the vast majority of other states, in these cases. Wisconsin courts in *Parrett v. Parrett* (Ct. App. 1988) and *Huber v Hubert* (CT. App. 1990), *Nelson v Candee* (CT. App. 1996) have found the presumptive application of the percentage standards in high income families to be irrational, absurd, and maintenance in the guise of support. While custodial parents in low income families in Wisconsin are expected, under W-2, to work to support themselves and contribute an equal portion of his or her income for the support of the same children, this standard allows similar custodial parents in above average income families to escape this same expectation.

The **shared time payer** provision does not correctly consider the economic needs of children during the placement times with both parents. In many cases, this method results in a great disparity in the amount each parent is allocated and does not allow each parent to provide, for the same children, a similar standard of living, as allowed by these funds. (A parent caring for children 30% of the time is not provided any child support funds to care for the children, while the parent caring for the children 70% of the time gets to spend 100% of the child support funds)

In **serial families**, later born children are provided a significantly lower child support entitlement than their earlier born brothers or sisters.

These problems exist because the department has failed to meet the requirements of the Code of Federal Regulations Title 45, Sec. 302.56 by not considering the economic data on the cost of raising children and

court findings in above average income and shared placement families. **The department has ignored the legislative directive of Wis. Stat. 49.22(9) which states "The rules shall provide for consideration of the income of each parent and the amount of physical placement with each parent in determining a child support obligation in cases in which a child has substantial periods of physical placement with each parent." ( It does not consider the income of both parents even if both a parent assumes as much as 40% physical placement of the child. ) Lastly the department has failed promulgate mechanics which achieve the fairness intent established by the legislature in Wisc Stats 765.001(2) and directive in Wisc 765.001(3) since in many cases it results in each parent contributing a significantly different portion of their income to support the same children. In the case of Luciani v. Montemurro-Luciani, (1996) the Wisconsin Supreme Court noted that " Future revisions to the mechanics of the support statutes and the shared-time payer formula in high-income cases is properly left to the province of the legislature."**

Since the department is not been responsive to Wisconsin courts, legislative directives or needs of children a new standard must be established by the legislature.

### **THIS BILL**

This bill is designed to correct the problems noted by the more current economic data and the courts and establish a method for determining child support awards, by statutes, which defines realistic child support awards for all families and allocates these awards between the parents in a more equitable manner. These provisions will replace the Department's DWD 40(Old HSS 80) standard.

The new provision maintains the same percentage of gross income method in most cases, but provides a reduced scale for the incremental income above the combined gross income of both parents of \$4,000 per month. This will act to define child support awards for **above average income families** which are more consistent with the economic needs of children in these cases and in line with awards of other states.

The **gross income** of the parents, to be used for defining child support awards, is clarified.

A **new shared placement adjustment** allocates the child support obligations of both parents, based on the percentage of placement each parent is awarded (ie a parent with 35% placement will receive 35% of the total child support funds owed by both parents.). A 1.4 factor is included in this calculation to consider the duplication of expenses in a dual household shared placement family. This method will more correctly allocate child support funds between the parents by providing each parent the same per diem child support amount to provide care for the children. This will act to maintain a sufficient child support award to parents with a significantly lower income and allow responsible parents who consistently share in the day to day effort of raising their children to provide, for the children, a similar standard of living during placement periods with each parent.

A **new serial family** provision assures each child of the same parent is entitled to a similar child support entitlement.

The new provisions should also act to eliminate the unjustified economic incentive for parents to fight for custody and placement of the children and allow parents to make placement decisions based on what is in the best interest of their children without being motivated by the potential excessive child support awards they may presently receive or be obligated to pay. Any additional economic needs of families will then be properly left to the discretion of the courts in awards of maintenance and division of property.

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**INSERT A**

Under current law, in divorces, paternity actions and other actions affecting the family in which child support is ordered, including actions to revise child support, the court must determine child support payments by using the percentage standard established by administrative rule by the department of workforce development. The percentage standard is a percentage of the payer's gross monthly income. The percentage of income that the child support payer must pay varies with the number of children to be supported. A payer must pay 17% of his or her gross income for one child, 25% for two children, 29% for three children, 31% for four children and 34% for five or more children. Except in certain situations, the calculation of child support does not take into account the income of the payee or the amount of time that the payer cares for the child during periods of physical placement ordered by the court.

The rules provide for a special way of calculating child support for a shared-time payer. If the payer has physical placement of a child between 31% and 40% of the time, based on the number of times per year that the parent provides overnight care for the child, the rules provide for a specified reduction in the amount of child support that the payer would be required to pay by using the percentage standard alone. (For example, a payer with physical placement of a child for 37% of the time pays 76.69% of the amount that he or she would pay by using the percentage standard alone.) Also under the rules, if one parent has physical placement of a child between 41% and 59% of the time and the other parent has physical placement of the child for the remainder of the time, based on the number of times that each provides overnight care, the amount of child support that each parent would pay by using the percentage standard alone is calculated, reduced by a specified percentage depending on the amount of time each parent has physical placement of the child and compared with the other parent's similarly calculated and reduced amount of child support. (For example, a parent with physical placement of a child for 46% of the time would be obligated to pay 46.72% of the amount of child support that he or she would be obligated to pay by using the percentage standard alone while the other parent with physical placement for 54% of the time would be obligated to pay 20.08% of the amount calculated by using the percentage standard alone.) The parent with the larger calculated and reduced amount must pay the difference as child support to the other parent.

The rules also provide for a special way of calculating child support for a serial-family payer and for the imputation of income to a payer if the court determines that the payer has unproductive assets or has diverted income into assets to avoid paying child support. If a person who is already obligated to pay child support is later ordered to pay support for another child, from a later marriage or a paternity adjudication, for example, the amount of support that the person must pay under the later order is calculated by first reducing the payer's gross income by the amount under the first child support order and then applying the percentage standard to that reduced income amount. The income imputation involves multiplying the net value of the assets by the current month treasury bill rate or any other reasonable rate.

Six

Under current law, a court is authorized, upon the request of a party, to modify the amount of child support that would be ordered by using the percentage standard. The court must find that use of the percentage standard is unfair to the child or either of the parties after considering a number of factors, such as the earning capacity of each parent, the desirability that the custodian remain in the home as a full-time parent and extraordinary travel expenses incurred in exercising physical placement rights.

This bill changes the method of determining the amount of child support to be paid in actions affecting the family, including actions to revise child support. Under the bill, the court must determine each parent's gross income and percentage of physical placement with the child. The bill specifies what the court must include in income, what the court must exclude from income and what the court must deduct from income in determining each parent's gross income. The bill allows the court to include in a parent's gross income wages that the court determines were paid to other family members for the purpose of diverting income. The court may impute income to a parent if the court determines that the parent has concealed or transferred assets for the purpose of avoiding child support; that the gross incomes of the parents will not adequately provide for the child and there are unproductive assets; or that a parent who is able to work is not working at least 40 hours per week and work is available in the parent's community. The court determines the percentage of physical placement that a parent has on the basis of the number of days, rather than overnights, that a parent cares for the child in a year. If both parents care for the child on the same day, the court determines the amount of time that each parent cares for the child on that day on a basis that reflects each parent's proportionate share of the total expenses incurred for the child by both parents on that day.

After the court determines each parent's gross income and percentage of physical placement, the court determines each parent's gross monthly child support obligation. How that is determined depends on the combined gross monthly income of the two parents. If the combined gross monthly income of the two parents is equal to or less than \$4,000, each parent's gross monthly child support obligation is equal to the percentage standard under current law. That is, if there is one child, each parent's gross monthly child support obligation is 17% of his or her gross monthly income. If the combined gross monthly income of the two parents is greater than \$4,000, determining a parent's gross monthly child support obligation is a multi-step process. The court must first determine the combined gross monthly child support obligation of the two parents. For combined gross monthly incomes that do not exceed \$20,000, the combined gross monthly child support obligation of the two parents equals a specified amount, depending on the number of children, plus a specified percentage of the combined gross monthly income of the two parents above \$4,000. For combined gross monthly incomes that exceed \$20,000, the combined gross monthly child support obligation of the two parents equals a specified amount, depending on the number of children, plus a specified percentage of the combined gross monthly income of the two parents above \$20,000. The court must then determine what percentage each parent's gross monthly income is of the parents' combined gross monthly income. Each parent's gross monthly child support

obligation  
than

obligation is the same percentage of the parents' combined gross monthly child support obligation as that parent's gross monthly income is of the parents' combined gross monthly income. Just as under current law, a parent's gross monthly child support obligation is reduced if the parent is subject to another child support order or is otherwise legally obligated to support one or more other children. Under the bill, however, a parent's gross monthly child support obligation is reduced by a specified percentage, depending on the number of other children being supported, rather than by the amount of support being paid for the other children.

After determining each parent's gross monthly child support obligation, the court determines which parent pays support to the other parent and the amount of support to be paid. If the court grants a parent fewer than 55 days of physical placement in a year, that parent pays the amount of his or her gross monthly child support obligation to the other parent. If the court grants at least 55 days of physical placement to each parent, the court multiplies each parent's gross monthly child support obligation by 1.4 and by the other parent's percentage of physical placement. The resulting amount is each parent's net monthly child support obligation. The parent with the larger net monthly child support obligation pays to the other parent the difference between the two net monthly child support obligations. As under current law, the court may upon request modify the amount of support that would be determined by using the method of calculating child support that is provided for in the bill, after considering the same factors as under current law and upon finding that use of the new method is unfair to the child or either of the parties.

The bill also makes a couple of changes related to revisions of child support orders. Under current law, the court may revise the amount of child support under an order only if the court finds that there has been a substantial change in circumstances. The court must use the percentage standard in revising the amount. The bill requires the new method of calculating child support to be used in a revision. Current law specifies a number of situations that constitute rebuttable presumptions of a substantial change in circumstances sufficient to justify a revision. Among those is the expiration of 33 months since the date of entry of the last support order, including a revision, unless the order is expressed as a percentage of income rather than as a specific amount. The bill changes this provision so that the expiration of 33 months since the date of entry of the last support order, including a revision, constitutes a rebuttable presumption of a substantial change in circumstances, regardless of how the order is expressed, if the amount of child support calculated by using the new method exceeds the amount under the last order by at least 10% of the amount under the last order or by at least \$40 per month. The bill also adds a new situation that constitutes a rebuttable presumption of a substantial change in circumstances: if the amount of child support last ordered was based on the amount of physical placement awarded to the parties, the payer has consistently failed to exercise his or her physical placement rights and the amount of child support under a revised order, using the new method and based on the actual amount of physical placement that the payer has in the past exercised, exceeds the amount under the last order by at least 15% of the amount under the last order or by at least \$60 per month.

Situations

The bill requires the department of workforce development to prepare and make available to judges and other court personnel computer software, as well as tables and instruction manuals, to help with the calculation of child support by the new method provided in the bill.

Finally, federal law requires each state to review, and revise if appropriate, its child support guidelines at least once every four years to ensure that they result in the determination of appropriate child support amounts. The bill requires the joint legislative council to create a child support review committee by April 1, 2002, and by April 1 every four years after that, to review the adequacy for supporting children of the new method of calculating child support provided in the bill. The committee must be composed of representatives of the judicial, executive and legislative branches of state government, of the state bar and of advocates for children, child support payers and child support payees. Each committee created must report its findings and legislative recommendations to the joint legislative council and to the federal department of health and human services.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

(END OF INSERT A)

INSERT 2-4

SECTION 1. 13.84 of the statutes is created to read:

13.84 Child support review committee. (1) By April 1, 2002, and by April 1 of every 4<sup>th</sup> year thereafter, the Y no fl

(END OF INSERT 2-4)

INSERT 19-1

SECTION 2. 767.32 (1) (b) 4. of the statutes is amended to read:

767.32 (1) (b) 4. <sup>✓</sup> If the action in which the court most recently ordered child support, including a revision of a child support order under this section, was commenced before the effective date of this subdivision ... [revisor inserts date], a difference between the amount of child support ordered by the court to be paid by the payer and the amount that the payer would have been required to pay based on the percentage standard established by the department under s. 49.22 (9) if the court did



not use the percentage standard in determining the child support payments and did not provide the information required under s. 46.10 (14) (d), 301.12 (14) (d), 767.25 (1n)<sup>q#</sup>, 767.51 (5d) or 767.62 (4) (f), whichever is appropriate.

History: 1971 c. 220; 1977 c. 105 ss. 38, 48, 49; 1977 c. 418; 1979 c. 32 ss. 50, 92 (4); Stats. 1979 s. 767.32; 1981 c. 20 s. 2202 (20) (m); 1981 c. 314 s. 146; 1983 a. 27; 1985 a. 176; 1987 a. 27, 355, 413; 1989 a. 212; 1991 a. 39; 1993 a. 16, 481, 491; 1995 a. 27 s. 9126 (19); 1995 a. 77, 201, 225, 279, 289, 404, 417; 1997 a. 27, 35, 105, 191, 237, 273.

~~END OF INSERT 1841~~

port under s. 767.458 (3), child support under s. 767.477, child support under s. 767.51, child support under s. 767.62 (4) (a), child support under ch. 769 or child support under s. 948.22 (7), the payment is 90 or more days past due and the court finds that the person has the ability to pay the amount ordered, the court may suspend the person's operating privilege, as defined in s. 340.01 (40), until the person pays all arrearages in full or makes payment arrangements that are satisfactory to the court, except that the suspension period may not exceed 2 years. If otherwise eligible, the person is eligible for an occupational license under s. 343.10 at any time.

SECTION 300.54 Sch. 767.32 (1) (b) 4. of the statutes is amended to read:

767.32 (1) (h) 4 - A difference between the amount of child support ordered by the court to be paid by the payer and the amount that the payer would have been required to pay based on the percentage standard established by the department under s. 49.22 (9) if the court did not use the percentage standard in determining the child support payments and did not provide the information required under s. 46.10 (14) (d), 301.12 (14) (d) or 767.25 (1n)<sup>q#</sup>, ~~767.51 (5d) or 767.62 (4) (f)~~, whichever is appropriate.

*create auto-reference "c"*  
*as affected by 1999 Wisconsin Act 9, RLB*

*WFO that frozen #*

767.32 (1) (b) 4 If the action in which the court most recently ordered child support, including a revision of a child support order under this section, was commenced before the effective date of this subdivision ... [revisor inserts date], a

*(end of ins 19-1)*

*Insert 19-19*

1 SECTION 26. 767.32 (1) (b) 4. of the statutes is repealed.

2 SECTION 27. 767.32 (1) (b) ~~4m~~<sup>lo</sup> of the statutes is created to read:

3 767.32 (1) (b) ~~4m~~<sup>lo</sup>. The amount of child support last ordered by the court was

4 based on the amount of physical placement awarded to the parties and the payer has

5 consistently failed to exercise his or her periods of physical placement, if the amount

6 of child support under the revised order, based on the actual amount of physical

7 placement that the payer has in the past exercised, will exceed the amount under the

8 last order by at least 15% of the amount under the last order or by at least \$60 per

9 month.

*as created by 1999 Wisconsin Act ... (this act),*

10 SECTION ~~28~~<sup>27</sup> 767.32 (1) (b) 5. of the statutes is ~~created~~<sup>amended</sup> to read:

11 767.32 (1) (b) 5. If the action in which the court most recently ordered child

12 support, including a revision of a child support order under this section, was

13 commenced on or after the effective date of this subdivision .... [revisor inserts date],

14 a difference between the amount of child support ordered by the court to be paid by

15 the payer and the amount that the payer would have been required to pay based on

16 the method of calculating child support under s. 767.251 if the court did not use that

17 method in determining the child support payments and did not provide the

18 information required under s. 46.10 (14) (d), 301.12 (14) (d), ~~767.25 (1n), 767.51 (5d)~~<sup>or</sup>

19 ~~or 767.32 (1) (f)~~<sup>or</sup> whichever is appropriate.

*w/o please fix component*

20 SECTION 29. 767.32 (2) of the statutes is renumbered 767.32 (2) (a) and

21 amended to read:

22 767.32 (2) (a) Except as provided in sub. (2m) or (2r), if the court revises a

23 judgment or order with respect to child support payments, it shall do so by using the

24 percentage standard established by the department under s. 49.22 (9) method under

25 s. 767.251.

*(end of ins 19-19)*



1999 Assembly Bill 133

1999 Wisconsin Act 9

SECTION 3065cf. 767.303 (1) of the statutes is amended to read:

767.303 (1) If a person fails to pay a payment ordered for support under s. 767.077, support under s. 767.08, child support or family support under s. 767.23, child support under s. 767.25, family support under s. 767.261, revised child or family support under s. 767.32, child support under s. 767.458 (3), child support under s. 767.458 (3), child support under s. 767.51, child support under s. 767.62 (4) (a), child support under ch. 769 or child support under s. 948.22 (7), the payment is 90 or more days past due and the court finds that the person has the ability to pay the amount ordered, the court may suspend the person's operating privilege, as defined in s. 340.01 (40), until the person pays all arrearages in full or makes payment arrangements that are satisfactory to the court, except that the suspension period may not exceed 5 years. If otherwise eligible, the person is eligible for an occupational license under s. 343.10 at any time.

SECTION 3065cg. 767.303 (1) of the statutes, as affected by 1997 Wisconsin Act 84, is amended to read:

767.303 (1) If a person fails to pay a payment ordered for support under s. 767.077, support under s. 767.08, child support or family support under s. 767.23, child support under s. 767.25, family support under s. 767.261, revised child or family support under s. 767.32, child support under s. 767.458 (3), child support under s. 767.477, child support under s. 767.51, child support under s. 767.62 (4) (a), child support under ch. 769 or child support under s. 948.22 (7), the payment is 90 or more days past due and the court finds that the person has the ability to pay the amount ordered, the court may suspend the person's operating privilege, as defined in s. 340.01 (40), until the person pays all arrearages in full or makes payment arrangements that are satisfactory to the court, except that the suspension period may not exceed 2 years. If otherwise eligible, the person is eligible for an occupational license under s. 343.10 at any time.

SECTION 3065ch. 767.32 (1) (b) 4. of the statutes is amended to read:

767.32 (1) (b) 4. A difference between the amount of child support ordered by the court to be paid by the payer and the amount that the payer would have been required to pay based on the percentage standard established by the department under s. 49.22 (9) if the court did not use the percentage standard in determining the child support payments and did not provide the information required under s. 46.10 (14) (d), 301.12 (14) (d), or 767.25 (1n); 767.51 (5d) or 767.62 (4) (f), whichever is appropriate.

SECTION 3065ci. 767.32 (2m) of the statutes is amended to read:

767.32 (2m) Upon request by a party, the court may modify the amount of revised child support payments determined under sub. (2) if, after considering the factors listed in s. 767.25 (1m) ~~and~~ the court finds, by the greater weight of the

credible evidence, that the use of the percentage standard is unfair to the child or to any of the parties.

SECTION 3065cj. 767.325 (2m) of the statutes is created to read:

767.325 (2m) MODIFICATION OF PERIODS OF PHYSICAL PLACEMENT FOR FAILURE TO EXERCISE PHYSICAL PLACEMENT. Notwithstanding subs. (1) and (2), upon petition, motion or order to show cause by a party, a court may modify an order of physical placement at any time with respect to periods of physical placement if it finds that a parent has repeatedly and unreasonably failed to exercise periods of physical placement awarded under an order of physical placement that allocates specific times for the exercise of periods of physical placement.

SECTION 3064cj. 767.325 (4m) of the statutes is created to read:

767.325 (4m) DENIAL OF PHYSICAL PLACEMENT FOR KILLING OTHER PARENT. (a) Notwithstanding subs. (1) to (4), upon petition, motion or order to show cause by a party or on its own motion, a court shall modify a physical placement order by denying a parent physical placement with a child if the parent has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the second-degree intentional homicide, of the child's other parent, and the conviction has not been reversed, set aside or vacated.

(b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that physical placement with the parent would be in the best interests of the child. The court shall consider the wishes of the child in making the determination.

SECTION 3065ck. 767.325 (5m) of the statutes is created to read:

767.325 (5m) FACTORS TO CONSIDER. In all actions to modify legal custody or physical placement orders, the court shall consider the factors under s. 767.24 (5) and shall make its determination in a manner consistent with s. 767.24.

SECTION 3065cl. 767.325 (6m) of the statutes is created to read:

767.325 (6m) PARENTING PLAN. In any action to modify a legal custody or physical placement order under sub. (1), the court may require the party seeking the modification to file with the court a parenting plan under s. 767.24 (1m) before any hearing is held.

SECTION 3065cm. 767.327 (4) of the statutes is amended to read:

767.327 (4) GUARDIAN AD LITEM; PROMPT HEARING. After a petition, motion or order to show cause is filed under sub. (3), the court shall appoint a guardian ad litem, unless s. 767.045 (1) (am) applies, and shall hold a hearing as soon as possible.

SECTION 3065cn. 767.327 (5m) of the statutes is created to read:

767.327 (5m) DISCRETIONARY FACTORS TO CONSIDER. In making a determination under sub. (3), the court may

method of calculating child support under A. 767.251

as affected by 1999 Wisconsin Act 9  
was created auto-reference "d"

(and of ins 20-13)

method of calculating child support under s. 767.251

1999 Wisconsin Act 9

consider the child's adjustment to the home, school, religion and community.

SECTION 3065cp. 767.45 (7) of the statutes is amended to read:

767.45 (7) The clerk of court shall provide without charge, to each person bringing an action under this section, except to the state under sub. (1) (g) or (6m), a document setting forth the percentage standard established by the department under s. 49.22 (9) and listing the factors which a court may consider under s. 767.25 (1m).

SECTION 3065cp. 767.455 (6) of the statutes is amended to read:

767.455 (6) DOCUMENT. The summons served on the respondent shall be accompanied by a document, provided without charge by the clerk of court, setting forth the percentage standard established by the department under s. 49.22 (9) and listing the factors which a court may consider under s. 767.51 (5) 767.25 (1m).

SECTION 3065cpm. 767.475 (2m) of the statutes is created to read:

767.475 (2m) If there is no presumption of paternity under s. 891.41 (1), the mother shall have sole legal custody of the child until the court orders otherwise.

Vetoed In Part

SECTION 3065cq. 767.477 (1) of the statutes is amended to read:

767.477 (1) At any time during the pendency of an action to establish the paternity of a child, if genetic tests show that the alleged father is not excluded and that the statistical probability of the alleged father's parentage is 99.0% or higher, on the motion of a party, the court shall make an appropriate temporary order orders for the payment of child support and may make a temporary order, assigning responsibility for and directing the manner of payment of the child's health care expenses and for the custody and physical placement of the child.

SECTION 3065cr. 767.477 (2) of the statutes is amended to read:

767.477 (2) Before making any temporary order under sub. (1), the court shall consider those factors that the court is required under s. 767.51 to consider when granting a final judgment on the same subject matter. If the court makes a temporary child support order that deviates from the amount of support that would be required by using the percentage standard established by the department under s. 49.22 (9), the court shall comply with the requirements of s. 767.51 (5d) 767.25 (1n).

SECTION 3065cs. 767.51 (3) of the statutes is repealed and recreated to read:

767.51 (3) A judgment or order determining paternity shall contain all of the following provisions:

- (a) An adjudication of the paternity of the child.
- (b) Orders for the legal custody of and periods of physical placement with the child, determined in accordance with s. 767.24

-638-

as affected by 1999 Wisconsin Act 9, 1999 Assembly Bill 133

(c) An order requiring either or both of the parents to contribute to the support of any child of the parties who is less than 18 years old, or any child of the parties who is less than 19 years old if the child is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent, determined in accordance with s. 767.25.

(d) A determination as to which parent, if eligible, shall have the right to claim the child as an exemption for federal tax purposes under 26 USC 151 (c) (1) (B), or as an exemption for state tax purposes under s. 71.07 (8) (b).

(e) An order requiring the father to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth, based on the father's ability to pay or contribute to those expenses.

(f) An order requiring either or both parties to pay or contribute to the costs of the guardian ad litem fees, genetic tests as provided in s. 767.48 (5) and other costs.

(g) An order requiring either party to pay or contribute to the attorney fees of the other party.

SECTION 3065ct. 767.51 (3m) of the statutes, as affected by 1997 Wisconsin Act 27, is repealed.

SECTION 3065cu. 767.51 (3r) of the statutes is repealed.

SECTION 3065cv. 767.51 (4) of the statutes is repealed and recreated to read:

767.51 (4) (a) Subject to par. (b), liability for past support of the child shall be limited to support for the period after the day on which the petition in the action under s. 767.45 is filed, unless a party shows, to the satisfaction of the court, all of the following:

1. That he or she was induced to delay commencing the action by any of the following:

- a. Duress or threats.
- b. Actions, promises or representations by the other party upon which the party relied.
- c. Actions taken by the other party to evade paternity proceedings.

2. That, after the inducement ceased to operate, he or she did not unreasonably delay in commencing the action.

(b) In no event may liability for past support of the child be imposed for any period before the birth of the child.

SECTION 3065cw. 767.51 (4g) of the statutes is repealed.

SECTION 3065cx. 767.51 (4m) of the statutes is repealed.

SECTION 3065cy. 767.51 (5) of the statutes is repealed.

SECTION 3065d. 767.51 (5d) of the statutes is repealed.

SECTION 3065dd. 767.51 (5p) of the statutes, as affected by 1997 Wisconsin Act 191, is repealed.

(end of ins 20-19)

as affected by 1999 Wisconsin Act 9,

Insert 20-25

1999 Wisconsin Act 9

1999 Assembly Bill 133

consider the child's adjustment to the home, school, religion and community.

SECTION 3065co. 767.45 (7) of the statutes is amended to read:

767.45 (7) The clerk of court shall provide without charge, to each person bringing an action under this section, except to the state under sub. (1) (g) or (6m), a document setting forth the percentage standard established by the department under s. 49.22 (9) and listing the factors which a court may consider under s. 767.51 (5) 767.25 (1m).

SECTION 3065cp. 767.455 (6) of the statutes is amended to read:

767.455 (6) DOCUMENT. The summons served on the respondent shall be accompanied by a document, provided without charge by the clerk of court, setting forth the percentage standard established by the department under s. 49.22 (9) and listing the factors which a court may consider under s. 767.25 (1m).

SECTION 3065cpm. 767.475 (2m) of the statutes is created to read:

767.475 (2m) If there is no presumption of paternity under s. 891.41 (1), the mother shall have sole legal custody of the child until the court orders otherwise.

SECTION 3065cq. 767.477 (1) of the statutes is amended to read:

767.477 (1) At any time during the pendency of an action to establish the paternity of a child, if genetic tests show that the alleged father is not excluded and that the statistical probability of the alleged father's parentage is 99.0% or higher, on the motion of a party, the court shall make an appropriate temporary order orders for the payment of child support and may make a temporary order, assigning responsibility for and directing the manner of payment of the child's health care expenses and for the custody and physical placement of the child.

SECTION 3065cr. 767.477 (2) of the statutes is amended to read:

767.477 (2) Before making any temporary order under sub. (1), the court shall consider those factors that the court is required under s. 767.51 to consider when granting a final judgment on the same subject matter. If the court makes a temporary child support order that deviates from the amount of support that would be required by using the percentage standard established by the department under s. 49.22 (9), the court shall comply with the requirements of s. 767.51 (5d) 767.25 (1n).

SECTION 3065cs. 767.51 (3) of the statutes is repealed and recreated to read:

767.51 (3) A judgment or order determining paternity shall contain all of the following provisions:

- (a) An adjudication of the paternity of the child.
(b) Orders for the legal custody of and periods of physical placement with the child, determined in accordance with s. 767.24.

method of calculating child support under A. 767.251

Vetoed In Part

(c) An order requiring either or both of the parents to contribute to the support of any child of the parties who is less than 18 years old, or any child of the parties who is less than 19 years old if the child is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent, determined in accordance with s. 767.25.

(d) A determination as to which parent, if eligible, shall have the right to claim the child as an exemption for federal tax purposes under 26 USC 151 (c) (1) (B), or as an exemption for state tax purposes under s. 71.07 (8) (b).

(e) An order requiring the father to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth, based on the father's ability to pay or contribute to those expenses.

(f) An order requiring either or both parties to pay or contribute to the costs of the guardian ad litem fees, genetic tests as provided in s. 767.48 (5) and other costs.

(g) An order requiring either party to pay or contribute to the attorney fees of the other party.

SECTION 3065ct. 767.51 (3m) of the statutes, as affected by 1997 Wisconsin Act 27, is repealed.

SECTION 3065cu. 767.51 (3r) of the statutes is repealed.

SECTION 3065cv. 767.51 (4) of the statutes is repealed and recreated to read:

767.51 (4) (a) Subject to par. (b), liability for past support of the child shall be limited to support for the period after the day on which the petition in the action under s. 767.45 is filed, unless a party shows, to the satisfaction of the court, all of the following:

- 1. That he or she was induced to delay commencing the action by any of the following:
a. Duress or threats.
b. Actions, promises or representations by the other party upon which the party relied.
c. Actions taken by the other party to evade paternity proceedings.
2. That, after the inducement ceased to operate, he or she did not unreasonably delay in commencing the action.

(b) In no event may liability for past support of the child be imposed for any period before the birth of the child.

SECTION 3065cw. 767.51 (4g) of the statutes is repealed.

SECTION 3065cx. 767.51 (4m) of the statutes is repealed.

SECTION 3065cy. 767.51 (5) of the statutes is repealed.

SECTION 3065d. 767.51 (5d) of the statutes is repealed.

SECTION 3065dd. 767.51 (5p) of the statutes, as affected by 1997 Wisconsin Act 191, is repealed.

(end of ins 20-25

1999 Wisconsin Act 9

1999 Assembly Bill 133

consider the child's adjustment to the home, school, religion and community.

SECTION 3065co. 767.45 (7) of the statutes is amended to read:

767.45 (7) The clerk of court shall provide without charge, to each person bringing an action under this section, except to the state under sub. (1)(g) or (6m), a document setting forth the percentage standard established by the department under s. 49.22 (9) and listing the factors which a court may consider under s. 767.51 (5) 767.25 (1m).

SECTION 3065cp. 767.455 (6) of the statutes is amended to read:

767.455 (6) DOCUMENT The summons served on the respondent shall be accompanied by a document, provided without charge by the clerk of court, setting forth the percentage standard established by the department under s. 49.22 (9) and listing the factors which a court may consider under s. 767.51 (5) 767.25 (1m).

SECTION 3065cpm. 767.475 (2m) of the statutes is created to read:

767.475 (2m) If there is no presumption of paternity under s. 891.41 (1), the mother shall have sole legal custody of the child until the court orders otherwise.

SECTION 3065cq. 767.477 (1) of the statutes is amended to read:

767.477 (1) At any time during the pendency of an action to establish the paternity of a child, if genetic tests show that the alleged father is not excluded and that the statistical probability of the alleged father's parentage is 99.0% or higher, on the motion of a party, the court shall make an appropriate temporary order orders for the payment of child support and may make a temporary order, assigning responsibility for and directing the manner of payment of the child's health care expenses and for the custody and physical placement of the child.

SECTION 3065cp. 767.477 (2) of the statutes is amended to read:

767.477 (2) Before making any temporary order under sub. (1), the court shall consider those factors that the court is required ~~to~~ to consider when granting a final judgment on the same subject matter. If the court makes a temporary child support order that deviates from the amount of support that would be required by using the percentage standard established by the department under s. 49.22 (9) the court shall comply with the requirements of s. ~~767.51 (5)~~ 767.25 (1p).

SECTION 3065cs. 767.51 (3) of the statutes is repealed and recreated to read:

767.51 (3) A judgment or order determining paternity shall contain all of the following provisions:

- (a) An adjudication of the paternity of the child.
- (b) Orders for the legal custody of and periods of physical placement with the child, determined in accordance with s. 767.24.

(c) An order requiring either or both of the parents to contribute to the support of any child of the parties who is less than 18 years old, or any child of the parties who is less than 19 years old if the child is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent, determined in accordance with s. 767.25.

(d) A determination as to which parent, if eligible, shall have the right to claim the child as an exemption for federal tax purposes under 26 USC 151 (c) (1) (B), or as an exemption for state tax purposes under s. 71.07 (8) (b).

(e) An order requiring the father to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth, based on the father's ability to pay or contribute to those expenses.

(f) An order requiring either or both parties to pay or contribute to the costs of the guardian ad litem fees, genetic tests as provided in s. 767.48 (5) and other costs.

(g) An order requiring either party to pay or contribute to the attorney fees of the other party.

SECTION 3065ct. 767.51 (3m) of the statutes, as affected by 1997 Wisconsin Act 27, is repealed.

SECTION 3065cu. 767.51 (3r) of the statutes is repealed.

SECTION 3065cv. 767.51 (4) of the statutes is repealed and recreated to read:

767.51 (4) (a) Subject to par. (b), liability for past support of the child shall be limited to support for the period after the day on which the petition in the action under s. 767.45 is filed, unless a party shows, to the satisfaction of the court, all of the following:

1. That he or she was induced to delay commencing the action by any of the following:

- a. Duress or threats.
- b. Actions, promises or representations by the other party upon which the party relied.
- c. Actions taken by the other party to evade paternity proceedings.

2. That, after the inducement ceased to operate, he or she did not unreasonably delay in commencing the action.

(b) In no event may liability for past support of the child be imposed for any period before the birth of the child.

SECTION 3065cw. 767.51 (4g) of the statutes is repealed.

SECTION 3065cx. 767.51 (4m) of the statutes is repealed.

SECTION 3065cy. 767.51 (5) of the statutes is repealed.

SECTION 3065d. 767.51 (5d) of the statutes is repealed.

SECTION 3065dd. 767.51 (5p) of the statutes, as affected by 1997 Wisconsin Act 191, is repealed.

as affected by 1999 Wisconsin Act 9

Vetoed In Part

creates auto reference "g"

method of calculating child support under s. 767.251

(end of ins 21-8)

1999 Assembly Bill 133

1999 Wisconsin Act 9

SECTION 3065de. 767.53 (intro.) of the statutes is amended to read:

767.53 Paternity hearings and records; confidentiality. (intro.) Any hearing, discovery proceeding or trial relating to paternity determination shall be closed to any person other than those necessary to the action or proceeding. Any record of the pending proceedings shall be placed in a closed file, except that:

SECTION 3065df. 767.53 (1) (intro.) of the statutes is amended to read:

767.53 (1) (intro.) Access to the record of any pending or past proceeding involving the paternity of the same child shall be allowed to all of the following:

SECTION 3065dg. 767.53 (3) of the statutes is created to read:

767.53 (3) Subject to s. 767.19, a record of a past proceeding is open to public inspection if all of the following apply:

- (a) Paternity was established in the proceeding.
- (b) The record is filed after the effective date of this paragraph .... [revisor inserts date].
- (c) The record relates to a post-adjudication issue.

SECTION 3065dh. 767.62 (4) of the statutes, as affected by ~~Wisconsin Act 9~~ is repealed and recreated to read:

767.62 (4) ORDERS WHEN PATERNITY ACKNOWLEDGED. In an action under sub. (3) (a), if the persons who signed and filed the statement acknowledging paternity as parents of the child had notice of the hearing, the court or family court commissioner shall make an order that contains all of the following provisions:

(a) Orders for the legal custody of and periods of physical placement with the child, determined in accordance with s. 767.24.

(b) An order requiring either or both of the parents to contribute to the support of any child of the parties who is less than 18 years old, or any child of the parties who is less than 19 years old if the child is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent, determined in accordance with s. 767.25.

(c) A determination as to which parent, if eligible, shall have the right to claim the child as an exemption for federal tax purposes under 26 USC 151 (c) (1) (B), or as an exemption for state tax purposes under s. 71.07 (8) (b).

(d) An order requiring the father to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth, based on the father's ability to pay or contribute to those expenses.

(e) An order requiring either or both parties to pay or contribute to the costs of the guardian ad litem fees and other costs.

(f) An order requiring either party to pay or contribute to the attorney fees of the other party.

SECTION 3065di. 767.62 (4m) of the statutes is created to read:

767.62 (4m) LIABILITY FOR PAST SUPPORT. (a) Subject to par. (b), liability for past support of the child shall be limited to support for the period after the day on which the petition, motion or order to show cause requesting support is filed in the action for support under sub. (3) (a), unless a party shows, to the satisfaction of the court, all of the following:

1. That he or she was induced to delay commencing the action by any of the following:

- a. Duress or threats.
- b. Actions, promises or representations by the other party upon which the party relied.
- c. Actions taken by the other party to evade proceedings under sub. (3) (a).

2. That, after the inducement ceased to operate, he or she did not unreasonably delay in commencing the action.

(b) In no event may liability for past support of the child be imposed for any period before the birth of the child.

SECTION 3066. 778.02 of the statutes is amended to read:

778.02 Action in name of state; complaint; attachment. Every such forfeiture action shall be in the name of the state of Wisconsin, and it is sufficient to allege in the complaint that the defendant is indebted to the plaintiff in the amount of the forfeiture claimed, according to the provisions of the statute that imposes it, specifying the statute and for the penalty assessment imposed by s. 165.87 757.05, the jail assessment imposed by s. 302.46 (1), the crime laboratories and drug law enforcement assessment imposed by s. 165.755, the enforcement assessment imposed under s. 253.06 (4) (c) or (5) (c), any applicable consumer information assessment imposed by s. 100.261 and any applicable domestic abuse assessment imposed by s. 973.055 (1). If the statute imposes a forfeiture for several offenses or delinquencies the complaint shall specify the particular offense or delinquency for which the action is brought, with a demand for judgment for the amount of the forfeiture, penalty assessment, jail assessment, crime laboratories and drug law enforcement assessment, any applicable enforcement assessment, any applicable consumer information assessment and any applicable domestic abuse assessment. If the defendant is a nonresident of the state, an attachment may issue.

SECTION 3067. 778.03 of the statutes is amended to read:

778.03 Complaint to recover forfeited goods. In an action to recover property forfeited by any statute it shall be sufficient to allege in the complaint that the property has been forfeited, specifying the statute, with a demand of judgment for the delivery of the property, or the value thereof and for payment of the penalty assessment imposed by s. 165.87 757.05, the jail assessment imposed by s. 302.46 (1), the crime laboratories and drug law enforcement assessment imposed by s. 165.755, the

1999 Wisconsin Act 9 and ... (this act)

(and of ins 22-3)

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946.65, 946.72, 946.76, 947.015, 948.05, 948.08, 948.12 and 948.30.

SECTION 3197. 948.11 (4) (b) 3. a. of the statutes is amended to read:

948.11 (4) (b) 3. a. Is a technical college, is a school approved by the educational approval board under s. 39.51, 45.54 or is a school described in s. 39.51 (9) (f), (g) or (h) 45.54 (1) (e) 6., 7. or 8.; and

SECTION 3197c. 948.22 (7) (bm) of the statutes is amended to read:

948.22 (7) (bm) Upon request, the court may modify the amount of child or spousal support payments determined under par. (b) 2. if, after considering the factors listed in s. 767.25 (1m) ~~767.25 (1m)~~, regardless of the fact that the action is not one for a determination of paternity or an action specified in s. 767.25 (1), the court finds, by the greater weight of the credible evidence, that the use of the percentage standard is unfair to the child or to either of the child's parents.

SECTION 3197j. 948.24 (1) (b) of the statutes is amended to read:

948.24 (1) (b) For anything of value, solicits, negotiates or arranges the placement of a child for adoption except under s. 48.833 (1).

SECTION 3198. 949.08 (2) (g) of the statutes is repealed and recreated to read:

949.08 (2) (g) Is included on the statewide support lien docket under s. 49.854 (2) (b), unless the victim provides to the department a payment agreement that has been approved by the county child support agency under s. 59.53 (5) and that is consistent with rules promulgated under s. 49.858 (2) (a).

SECTION 3198m. 950.04 (1v) (xm) of the statutes is amended to read:

950.04 (1v) (xm) To have the department of health and family services make a reasonable attempt to notify the victim under s. 980.11 regarding supervised release under s. 980.06 980.08 and discharge under s. 980.09 or 980.10.

SECTION 3199. 950.06 (2) of the statutes is amended to read:

950.06 (2) The costs of providing services under sub. (1m) shall be paid for by the county, but the county is eligible to receive reimbursement from the state for not more than 90% of the costs incurred in providing those services. The department shall determine the level of services for which a county may be reimbursed. The county board shall file a claim for reimbursement with the department. The department shall reimburse counties under this subsection from the appropriation under s. 20.455 (5) (k), (kk) and (kp) and, on a semiannual basis, from the appropriations under s. 20.455 (5) (c) and (g).

SECTION 3200. 950.06 (5) of the statutes is amended to read:

950.06 (5) The department shall review and approve the implementation and operation of programs and the

annual reports under this section. The department may suspend or terminate reimbursement under s. 20.455 (5) (e) and (g) sub. (2) if the county fails to comply with its duties under this section. The department shall promulgate rules under ch. 227 for implementing and administering county programs approved under this section.

SECTION 3201d. 968.255 (7) (b) of the statutes is amended to read:

968.255 (7) (b) Is placed in or transferred to a secured correctional facility, as defined in s. 938.02 (15m), or a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p).

SECTION 3202c. 973.032 (2) (b) of the statutes is amended to read:

973.032 (2) (b) Notwithstanding par. (a), a court may not sentence a person under sub. (1) if he or she is convicted of a felony punishable by life imprisonment or has at any time been convicted, adjudicated delinquent or found not guilty or not responsible by reason of insanity or mental disease, defect or illness for committing a violent offense, as defined in s. 301.048 (2) (bm).

SECTION 3202e. 973.046 (1) (intro.) of the statutes is renumbered 973.046 (1r) and amended to read:

973.046 (1r) If a court imposes a sentence or places a person on probation under any of the following circumstances for a violation of s. 940.225, 948.02 (1) or (2) or 948.025, the court shall impose a deoxyribonucleic acid analysis surcharge of \$250.

SECTION 3202f. 973.046 (1) (a) of the statutes is repealed.

SECTION 3202g. 973.046 (1) (b) of the statutes is repealed.

SECTION 3202h. 973.046 (1g) of the statutes is created to read:

973.046 (1g) Except as provided in sub. (1r), if a court imposes a sentence or places a person on probation for a felony conviction, the court may impose a deoxyribonucleic acid analysis surcharge of \$250.

SECTION 3202k. 973.047 (1) (a) of the statutes is renumbered 973.047 (1f) and amended to read:

973.047 (1f) If a court imposes a sentence or places a person on probation for a violation of s. 940.225, 948.02 (1) or (2) or 948.025 felony conviction, the court shall require the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

SECTION 3202L. 973.047 (1) (b) of the statutes is repealed.

SECTION 3202m. 973.047 (1) (c) of the statutes is renumbered 973.047 (1m) and amended to read:

973.047 (1m) The results from deoxyribonucleic acid analysis of a specimen provided under par. (a) or (b) this section may be used only as authorized under s. 165.77 (3). The state crime laboratories shall destroy any such specimen in accordance with s. 165.77 (3).

as affected by 1999 Wisconsin Act 9

create an auto-referenc "h" b.

Vetoed In Part method of calculating child support under A. 767.251

Insert 10-21

WFO show proper numbers

WFO create auto-reference "a"

1999 Wisconsin Act 9

1999 Assembly Bill 133

physical placement. If the parties return to mediation, the county shall collect any applicable fee under s. 814.615.

SECTION 3054ce. 767.115 (title) of the statutes is amended to read:

767.115 (title) Educational program in action programs and classes in actions affecting the family.

SECTION 3054cf. 767.115 (4) of the statutes is created to read:

767.115 (4) (a) At any time during the pendency of a divorce or paternity action, the court or family court commissioner may order the parties to attend a class that is approved by the court or family court commissioner and that addresses such issues as child development, family dynamics, how parental separation affects a child's development and what parents can do to make raising a child in a separated situation less stressful for the child.

(b) The court or family court commissioner may not require the parties to attend a class under this subsection as a condition to the granting of the final judgment or order in the divorce or paternity action, however, the court or family court commissioner may refuse to hear a custody or physical placement motion of a party who refuses to attend a class ordered under this subsection.

(c) 1. Except as provided in subd. 2., the parties shall be responsible for any cost of attending the class.

2. If the court or family court commissioner finds that a party is indigent, any costs that would be the responsibility of that party shall be paid by the county.

SECTION 3054cg. 767.23 (1) (a) of the statutes is amended to read:

767.23 (1) (a) Upon Subject to s. 767.477, upon request of one party, granting legal custody of the minor children to the parties jointly, to one party solely or to a relative or agency specified under s. 767.24 (3). The, in a manner consistent with s. 767.24, except that the court or family court commissioner may order joint sole legal custody without the agreement of the other party and without the findings required under s. 767.24 (2) (b) 2. This order may not have a binding effect on a final custody determination.

Vetoed In Part

SECTION 3054ch. 767.23 (1) (am) of the statutes is amended to read:

767.23 (1) (am) Upon Subject to s. 767.477, upon the request of a party, granting periods of physical placement to a party in a manner consistent with s. 767.24. The court or family court commissioner shall make a determination under this paragraph within 30 days after the request for a temporary order regarding periods of physical placement is filed.

Vetoed In Part

SECTION 3054ci. 767.23 (1) (c) of the statutes is amended to read:

767.23 (1) (c) Requiring Subject to s. 767.477, requiring either party or both parties to make payments for the support of minor children, which payment amounts may be expressed as a percentage of parental income or as a fixed sum, or as a combination of both in

the alternative by requiring payment of the greater or lesser of either a percentage of parental income or a fixed sum.

SECTION 3054cj. 767.23 (1) (k) of the statutes is amended to read:

767.23 (1) (k) Requiring Subject to s. 767.477, requiring either party or both parties to maintain minor children as beneficiaries on a health insurance policy or plan.

SECTION 3054ck. 767.23 (1n) of the statutes is amended to read:

767.23 (1n) Before making any temporary order under sub. (1), the court or family court commissioner shall consider those factors ~~that~~ that the court is required by this chapter to consider before entering a final judgment on the same subject matter. In making a determination under sub. (1) (a) or (am) the court or family court commissioner shall consider the factors under s. 767.24 (5). If the court or family court commissioner makes a temporary child support order that deviates from the amount of support that would be required by using the percentage standard established by the department under s. 49.22 (9), the court or family court commissioner shall comply with the requirements of s. 767.25 (1n). A temporary order under sub. (1) may be based upon the written stipulation of the parties, subject to the approval of the court or the family court commissioner. Temporary orders made by the family court commissioner may be reviewed by the court as provided in s. 767.13 (6).

SECTION 3054cl. 767.24 (1) of the statutes is amended to read:

767.24 (1) GENERAL PROVISIONS. In rendering a judgment of annulment, divorce or, legal separation or paternity, or in rendering a judgment in an action under s. 767.02 (1) (e) or 767.62 (3), the court shall make such provisions as it deems just and reasonable concerning the legal custody and physical placement of any minor child of the parties, as provided in this section.

SECTION 3054cm. 767.24 (1m) of the statutes is created to read:

767.24 (1m) PARENTING PLAN. In an action for annulment, divorce or legal separation, an action to determine paternity or an action under s. 767.02 (1) (e) or 767.62 (3) in which legal custody or physical placement is contested, a party seeking sole or joint legal custody or periods of physical placement shall file a parenting plan with the court before any pretrial conference. Except for cause shown, a party required to file a parenting plan under this subsection who does not timely file a parenting plan waives the right to object to the other party's parenting plan. A parenting plan shall provide information about the following questions:

(a) What legal custody or physical placement the parent is seeking.

(b) Where the parent lives currently and where the parent intends to live during the next 2 years. If there is

is affected by 1999 Wisconsin Act 9

method of calculating child support under

A. 767.251

(cont'd in 10-21)

1999 Wisconsin Act 9

1999 Assembly Bill 133

s. 59.53 (5), department or department's designee regarding the account for which the payer has executed the authorization for transfer.

SECTION 3062. 767.29 (1) (d) (intro.) and 1. of the statutes, as created by 1997 Wisconsin Act 27, are consolidated, renumbered 767.29 (1) (d) and amended to read:

767.29 (1) (d) For receiving and disbursing maintenance, child support or family support payments, and for maintaining the records required under par. (c), the department or its designee shall collect an annual fee of \$25 to be paid by each party ordered to make payments. The court or family court commissioner shall order each party ordered to make payments to pay the annual fee under this paragraph at the time of, and in addition to, the first payment to the department or its designee in each year for which payments are ordered. In directing the manner of payment of the annual fee, the court or family court commissioner shall order that the annual fee be withheld from income and sent to the department or its designee, as provided under s. 767.265. All fees collected under this paragraph shall be deposited in the appropriation account under s. 20.445 (3) (ja). At the time of ordering the payment of an annual fee under this paragraph, the court or family court commissioner shall notify each party ordered to make payments of the requirement to pay the annual fee and of the amount of the annual fee. If the annual fee under this section paragraph is not paid when due, the department or its designee may not deduct the annual fee from the maintenance or child or family support payment, but may do any of the following: 1. Move the court for a remedial sanction under ch. 785.

SECTION 3063. 767.29 (1) (d) 2. of the statutes, as created by 1997 Wisconsin Act 27, is repealed.

SECTION 3064. 767.29 (1) (dm) of the statutes is created to read:

767.29 (1) (dm) 1m. The department or its designee may collect any unpaid fees under s. 814.61 (12) (b), 1997 stats., that are shown on the department's automated payment and collection system on December 31, 1998, and shall deposit all fees collected under this subdivision in the appropriation account under s. 20.445 (3) (ja). The department or its designee may collect unpaid fees under this subdivision through income withholding under s. 767.265 (2m). If the department or its designee determines that income withholding is inapplicable, ineffective or insufficient for the collection of any unpaid fees under this subdivision, the department or its designee may move the court for a remedial sanction under ch. 785. The department or its designee may contract with or employ a collection agency or other person for the collection of any unpaid fees under this subdivision and, notwithstanding s. 20.930, may contract with or employ an attorney to appear in any action in state or federal court to enforce the payment obligation. The depart-

ment or its designee may not deduct the amount of unpaid fees from any maintenance or child or family support payment.

2m. A clerk of court may collect any unpaid fees under s. 814.61 (12) (b), 1997 stats., that are owed to the clerk of court, or to his or her predecessor, and that were not shown on the department's automated payment and collection system on December 31, 1998, through income withholding under s. 767.265 (2m). If the clerk of court determines that income withholding is inapplicable, ineffective or insufficient for the collection of any unpaid fees under this subdivision, the clerk of court may move the court for a remedial sanction under ch. 785.

SECTION 3065c. 767.29 (1m) (intro.) of the statutes, as affected by 1997 Wisconsin Act 191, section 427, is amended to read:

767.29 (1m) (intro.) Notwithstanding ss. 767.25 (6), and 767.261, 767.51 (5p) and 767.62 (4) (g), if the department or its designee receives support or maintenance money that exceeds the amount due in the month in which it is received and that the department or its designee determines is for support or maintenance due in a succeeding month, the department or its designee may hold the amount of overpayment that does not exceed the amount due in the next month for disbursement in the next month if any of the following applies:

SECTION 3065cd. 767.295 (2) (a) (intro.) of the statutes is amended to read:

767.295 (2) (a) (intro.) In an action for modification of a child support order under s. 767.32, an action in which an order for child support is required under s. 767.25 (1), 767.51 (3) or 767.62 (4) (a) or a contempt of court proceeding to enforce a child support or family support order in a county that contracts under s. 49.36 (2), the court may order a parent who is not a custodial parent to register for a work experience and job training program under s. 49.36 if all of the following conditions are met:

SECTION 3065ce. 767.295 (2) (c) of the statutes is amended to read:

767.295 (2) (c) If the court enters an order under par. (a), it shall order the parent to pay child support equal to the amount determined by applying the percentage standard established under s. 49.22 (9) to the income a person would earn by working 40 hours per week for the federal minimum hourly wage under 29 USC 206 (a) (1) or equal to the amount of child support that the parent was ordered to pay in the most recent determination of support under this chapter. The child support obligation ordered under this paragraph continues until the parent makes timely payment in full for 3 consecutive months or until the person participates in the program under s. 49.36 for 16 weeks, whichever comes first. The court shall provide in its order that the parent must make child support payments calculated under s. 767.25 (1) or (1m) after the obligation to make payments ordered under this paragraph ceases.

WFO please create auto-reference 'b'

as affected by 1999 Wisconsin Act 9

method under A. 767.251

or 767.251

(and fins 18-18)



**Kahler, Pam**

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**From:** Jan Raz [jraz@execpc.com]  
**Sent:** Thursday, January 27, 2000 9:55 AM  
**To:** Pam.Kahlor@legis.state.wi.us  
**Cc:** James.Emerson@legis.state.wi.us  
**Subject:** LRB-2022/1 Child Support Standard

Pam Kahler, Jim Emerson;

Can you please make the following modifications to the LRB-2022/1 draft:

1. On page 23, line 5/6; and page 25, line 5; change the words "will exceed" to "differs from"
2. Add a provision to 767.32 which will prohibit a court from hearing a motion to modify placement in response to a motion to modify child support based on the existing placement circumstances. This is intended to discourage retaliatory motions which often arise after a motion to modify child support is filed.

It could read something like

"If a party has filed a motion to modify child support based on the exiting child placement circumstances of the case, the court may not hear a motion from the respondent to modify placement until 30 days after an order has been signed by the court in regard to the modification of child support motion, unless there is credible evidence that the existing placement circumstances would irreparable harm the child and need to be dealt with immediately."

Can you define the proper language for this provision and review this with me before formally incorporating this into this draft?

If you have questions regarding this please call or email me.

Jan Raz  
10120 West Forest Home Ave.  
Hales Corners, WI 53130  
414 425-4866 fax 425-8405  
e-mail [jraz@execpc.com](mailto:jraz@execpc.com)



State of Wisconsin  
1999 - 2000 LEGISLATURE

4519/1  
LRB-2022-1  
PJK:cmh:ash  
cmk

1999 BILL

D-note  
(see pp 23, 25, 26+35  
for changes/additions)

regenerate ↓

1 AN ACT to repeal 767.51 (4m), 767.51 (5) (intro.) and 767.51 (5d); to renumber  
2 and amend 767.32 (2); to amend 46.10 (14) (b), 46.10 (14) (c) (intro.), 46.10  
3 (14) (d), 46.247, 48.30 (6), 48.31 (7), 48.33 (4m) (intro.), 48.357 (5m), 48.363 (1),  
4 301.12 (14) (b), 301.12 (14) (c) (intro.), 301.12 (14) (d), 301.12 (14) (g), 767.085  
5 (2) (b), 767.085 (2m) (a) 2., 767.085 (2m) (b), 767.23 (1n), 767.23 (1n), 767.25 (1j),  
6 767.25 (1m) (intro.), 767.25 (1n), 767.295 (2) (c), 767.295 (2) (c), 767.32 (1) (b)  
7 2., 767.32 (1) (b) 4., 767.32 (1) (b) 4., 767.32 (1) (b) 5., 767.32 (2m), 767.32 (2m),  
8 767.45 (7), 767.45 (7), 767.455 (6), 767.455 (6), 767.477 (2), 767.477 (2), 767.51  
9 (4m), 767.51 (5) (intro.), 767.51 (5d), 767.62 (4) (d) 1., 767.62 (4) (e) (intro.),  
10 767.62 (4) (f), 938.30 (6), 938.31 (7), 938.33 (4m) (intro.), 938.357 (5m), 938.363  
11 (1), 948.22 (4) (b), 948.22 (7) (bm) and 948.22 (7) (bm); to repeal and recreate  
12 49.22 (9) and 767.62 (4); and to create 13.84, 767.251, 767.32 (1) (b) 5., 767.32

**BILL**

- 1 (1)(b) 6. and 767.32 (2)(b) of the statutes; **relating to:** calculating child support  
2 and creating committees to review the method of calculating child support.
- 

***Analysis by the Legislative Reference Bureau***

Under current law, in divorces, paternity actions and other actions affecting the family in which child support is ordered, including actions to revise child support, the court must determine child support payments by using the percentage standard established by administrative rule by the department of workforce development. The percentage standard is a percentage of the payer's gross monthly income. The percentage of income that the child support payer must pay varies with the number of children to be supported. A payer must pay 17% of his or her gross income for one child, 25% for two children, 29% for three children, 31% for four children and 34% for five or more children. Except in certain situations, the calculation of child support does not take into account the income of the payee or the amount of time that the payer cares for the child during periods of physical placement ordered by the court.

The rules provide for a special way of calculating child support for a shared-time payer. If the payer has physical placement of a child between 31% and 40% of the time, based on the number of times per year that the parent provides overnight care for the child, the rules provide for a specified reduction in the amount of child support that the payer would be required to pay by using the percentage standard alone. (For example, a payer with physical placement of a child for 37% of the time pays 76.69% of the amount that he or she would pay by using the percentage standard alone.) Also under the rules, if one parent has physical placement of a child between 41% and 59% of the time and the other parent has physical placement of the child for the remainder of the time, based on the number of times that each provides overnight care, the amount of child support that each parent would pay by using the percentage standard alone is calculated, reduced by a specified percentage depending on the amount of time each parent has physical placement of the child and compared with the other parent's similarly calculated and reduced amount of child support. (For example, a parent with physical placement of a child for 46% of the time would be obligated to pay 46.72% of the amount of child support that he or she would be obligated to pay by using the percentage standard alone while the other parent with physical placement for 54% of the time would be obligated to pay 20.08% of the amount calculated by using the percentage standard alone.) The parent with the larger calculated and reduced amount must pay the difference as child support to the other parent.

The rules also provide for a special way of calculating child support for a serial-family payer and for the imputation of income to a payer if the court determines that the payer has unproductive assets or has diverted income into assets to avoid paying child support. If a person who is already obligated to pay child support is later ordered to pay support for another child, from a later marriage or a paternity adjudication, for example, the amount of support that the person must pay under the later order is calculated by first reducing the payer's gross income by the

**BILL**

amount under the first child support order and then applying the percentage standard to that reduced income amount. The income imputation involves multiplying the net value of the assets by the current six-month treasury bill rate or any other reasonable rate.

Under current law, a court is authorized, upon the request of a party, to modify the amount of child support that would be ordered by using the percentage standard. The court must find that use of the percentage standard is unfair to the child or either of the parties after considering a number of factors, such as the earning capacity of each parent, the desirability that the custodian remain in the home as a full-time parent and extraordinary travel expenses incurred in exercising physical placement rights.

This bill changes the method of determining the amount of child support to be paid in actions affecting the family, including actions to revise child support. Under the bill, the court must determine each parent's gross income and percentage of physical placement with the child. The bill specifies what the court must include in income, what the court must exclude from income and what the court must deduct from income in determining each parent's gross income. The bill allows the court to include in a parent's gross income wages that the court determines were paid to other family members for the purpose of diverting income. The court may impute income to a parent if the court determines that the parent has concealed or transferred assets for the purpose of avoiding child support; that the gross incomes of the parents will not adequately provide for the child and there are unproductive assets; or that a parent who is able to work is not working at least 40 hours per week and work is available in the parent's community. The court determines the percentage of physical placement that a parent has on the basis of the number of days, rather than overnights, that a parent cares for the child in a year. If both parents care for the child on the same day, the court determines the amount of time that each parent cares for the child on that day on a basis that reflects each parent's proportionate share of the total expenses incurred for the child by both parents on that day.

After the court determines each parent's gross income and percentage of physical placement, the court determines each parent's gross monthly child support obligation. How that obligation is determined depends on the combined gross monthly income of the two parents. If the combined gross monthly income of the two parents is equal to or less than \$4,000, each parent's gross monthly child support obligation is equal to the percentage standard under current law. That is, if there is one child, each parent's gross monthly child support obligation is 17% of his or her gross monthly income. If the combined gross monthly income of the two parents is greater than \$4,000, determining a parent's gross monthly child support obligation is a multi-step process. The court must first determine the combined gross monthly child support obligation of the two parents. For combined gross monthly incomes that do not exceed \$20,000, the combined gross monthly child support obligation of the two parents equals a specified amount, depending on the number of children, plus a specified percentage of the combined gross monthly income of the two parents above \$4,000. For combined gross monthly incomes that exceed \$20,000, the combined gross monthly child support obligation of the two parents equals a

**BILL**

specified amount, depending on the number of children, plus a specified percentage of the combined gross monthly income of the two parents above \$20,000. The court must then determine what percentage each parent's gross monthly income is of the parents' combined gross monthly income. Each parent's gross monthly child support obligation is the same percentage of the parents' combined gross monthly child support obligation as that parent's gross monthly income is of the parents' combined gross monthly income. Just as under current law, a parent's gross monthly child support obligation is reduced if the parent is subject to another child support order or is otherwise legally obligated to support one or more other children. Under the bill, however, a parent's gross monthly child support obligation is reduced by a specified percentage, depending on the number of other children being supported, rather than by the amount of support being paid for the other children.

After determining each parent's gross monthly child support obligation, the court determines which parent pays support to the other parent and the amount of support to be paid. If the court grants a parent fewer than 55 days of physical placement in a year, that parent pays the amount of his or her gross monthly child support obligation to the other parent. If the court grants at least 55 days of physical placement to each parent, the court multiplies each parent's gross monthly child support obligation by 1.4 and by the other parent's percentage of physical placement. The resulting amount is each parent's net monthly child support obligation. The parent with the larger net monthly child support obligation pays to the other parent the difference between the two net monthly child support obligations. As under current law, the court may upon request modify the amount of support that would be determined by using the method of calculating child support that is provided for in the bill, after considering the same factors as under current law and upon finding that use of the new method is unfair to the child or either of the parties.

The bill also makes a couple of changes related to revisions of child support orders. Under current law, the court may revise the amount of child support under an order only if the court finds that there has been a substantial change in circumstances. The court must use the percentage standard in revising the amount. The bill requires the new method of calculating child support to be used in a revision. Current law specifies a number of situations that constitute rebuttable presumptions of a substantial change in circumstances sufficient to justify a revision. Among those situations is the expiration of 33 months since the date of entry of the last support order, including a revision, unless the order is expressed as a percentage of income rather than as a specific amount. The bill changes this provision so that the expiration of 33 months since the date of entry of the last support order, including a revision, constitutes a rebuttable presumption of a substantial change in circumstances, regardless of how the order is expressed, if the amount of child support calculated by using the new method exceeds the amount under the last order by at least 10% of the amount under the last order or by at least \$40 per month. The bill also adds a new situation that constitutes a rebuttable presumption of a substantial change in circumstances: if the amount of child support last ordered was based on the amount of physical placement awarded to the parties, the payer has consistently failed to exercise his or her physical placement rights and

**BILL**

the amount of child support under a revised order, using the new method and based on the actual amount of physical placement that the payer has in the past exercised, exceeds the amount under the last order by at least 15% of the amount under the last order or by at least \$60 per month. *> insert 5-A*

The bill requires the department of workforce development to prepare and make available to judges and other court personnel computer software, as well as tables and instruction manuals, to help with the calculation of child support by the new method provided in the bill.

Finally, federal law requires each state to review, and revise if appropriate, its child support guidelines at least once every four years to ensure that they result in the determination of appropriate child support amounts. The bill requires the joint legislative council to create a child support review committee by April 1, 2002, and by April 1 every four years after that, to review the adequacy for supporting children of the new method of calculating child support provided in the bill. The committee must be composed of representatives of the judicial, executive and legislative branches of state government, of the state bar and of advocates for children, child support payers and child support payees. Each committee created must report its findings and legislative recommendations to the joint legislative council and to the federal department of health and human services.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 13.84 of the statutes is created to read:

2           **13.84 Child support review committee.** (1) By April 1, 2002, and by April  
3           1 every 4 years thereafter, the joint legislative council shall create a child support  
4           review committee to review the adequacy to support children of the method of  
5           calculating child support under s. 767.251. The committee shall consider current  
6           research and economic and case data, as well as any other relevant resources, on the  
7           cost of, and expenditures that are necessary for, raising children.

8           (2) The committee shall be composed of representatives of the state's judicial  
9           branch, legislative branch, executive branch and state bar, and of advocates for  
10          children, child support payers and child support payees.

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1           (3) No later than January 1, 2003, and no later than January 1 every 4 years  
2 thereafter, the committee shall report its findings and legislative and other  
3 recommendations to the joint legislative council and to the federal department of  
4 health and human services.

5           **SECTION 2.** 46.10 (14) (b) of the statutes is amended to read:

6           46.10 (14) (b) Except as provided in par. (c) and subject to par. (cm), liability  
7 of a parent specified in sub. (2) or s. 46.03 (18) for the care and maintenance of the  
8 parent's minor child who has been placed by a court order under s. 48.355 or 48.357  
9 in a residential, nonmedical facility such as a group home, foster home, treatment  
10 foster home or child caring institution shall be determined by the court by using the  
11 ~~percentage standard established by the department of workforce development under~~  
12 ~~s. 49.22 (9) method of calculating child support under s. 767.251~~ and by applying the  
13 ~~percentage standard method~~ in the manner established by the department under s.  
14 46.247.

15           **SECTION 3.** 46.10 (14) (c) (intro.) of the statutes is amended to read:

16           46.10 (14) (c) (intro.) Upon request by a parent, the court may modify the  
17 amount of child support payments determined under par. (b), subject to par. (cm), if,  
18 after considering the following factors, the court finds by the greater weight of the  
19 credible evidence that ~~the use of the percentage standard method of calculating child~~  
20 ~~support under s. 767.251~~ is unfair to the child or to either of the parents:

21           **SECTION 4.** 46.10 (14) (d) of the statutes is amended to read:

22           46.10 (14) (d) If the court finds under par. (c) that use of the ~~percentage~~  
23 ~~standard method of calculating child support under s. 767.251~~ is unfair to the minor  
24 child or either of the parents, the court shall state in writing or on the record the  
25 amount of support that would be required by using the ~~percentage standard method~~

**BILL**

1 under s. 767.251, the amount by which the court's order deviates from that amount,  
2 its reasons for finding that use of the ~~percentage standard~~ method under s. 767.251  
3 is unfair to the child or the parent, its reasons for the amount of the modification and  
4 the basis for the modification.

5 **SECTION 5.** 46.247 of the statutes is amended to read:

6 **46.247 Application of method of calculating child support standard for**  
7 **certain children.** For purposes of determining child support under s. 46.10(14)(b),  
8 the department shall promulgate rules related to the application of the ~~standard~~  
9 ~~established by the department of workforce development under s. 49.22(9)~~ method  
10 under s. 767.251 to a child support obligation for the care and maintenance of a child  
11 who is placed by a court order under s. 48.355 or 48.357 in a residential, nonmedical  
12 facility. The rules shall take into account the needs of any person, including  
13 dependent children other than the child, whom either parent is legally obligated to  
14 support.

15 **SECTION 6.** 48.30 (6) of the statutes is amended to read:

16 **48.30 (6)** If a petition is not contested, the court shall set a date for the  
17 dispositional hearing which allows reasonable time for the parties to prepare but is  
18 no more than 10 days after the plea hearing for a child who is held in secure custody  
19 and no more than 30 days after the plea hearing for a child or an expectant mother  
20 who is not held in secure custody. If it appears to the court that disposition of the case  
21 may include placement of the child outside the child's home, the court shall order the  
22 child's parent to provide a statement of income, assets, debts and living expenses to  
23 the court or the designated agency under s. 48.33 (1) at least 5 days before the  
24 scheduled date of the dispositional hearing or as otherwise ordered by the court. The  
25 clerk of court shall provide, without charge, to any parent ordered to provide a



**BILL****SECTION 6**

1 statement of income, assets, debts and living expenses a document setting forth the  
2 ~~percentage standard established by the department of workforce development under~~  
3 ~~s. 49.22 (9) method of calculating child support under s. 767.251~~ and the manner of  
4 its application established by the department of health and family services under s.  
5 46.247 and listing the factors that a court may consider under s. 46.10 (14) (c). If all  
6 parties consent the court may proceed immediately with the dispositional hearing.

7 **SECTION 7.** 48.31 (7) of the statutes is amended to read:

8 48.31 (7) At the close of the fact-finding hearing, the court shall set a date for  
9 the dispositional hearing which allows a reasonable time for the parties to prepare  
10 but is no more than 10 days after the fact-finding hearing for a child in secure  
11 custody and no more than 30 days after the fact-finding hearing for a child or  
12 expectant mother who is not held in secure custody. If it appears to the court that  
13 disposition of the case may include placement of the child outside the child's home,  
14 the court shall order the child's parent to provide a statement of income, assets, debts  
15 and living expenses to the court or the designated agency under s. 48.33 (1) at least  
16 5 days before the scheduled date of the dispositional hearing or as otherwise ordered  
17 by the court. The clerk of court shall provide, without charge, to any parent ordered  
18 to provide a statement of income, assets, debts and living expenses a document  
19 ~~setting forth the percentage standard established by the department of workforce~~  
20 ~~development under s. 49.22 (9) method of calculating child support under s. 767.251~~  
21 and the manner of its application established by the department of health and family  
22 services under s. 46.247 and listing the factors that a court may consider under s.  
23 46.10 (14) (c). If all parties consent, the court may immediately proceed with a  
24 dispositional hearing.

25 **SECTION 8.** 48.33 (4m) (intro.) of the statutes is amended to read:

**BILL**

1           48.33 (4m) SUPPORT RECOMMENDATIONS; INFORMATION TO PARENTS. (intro.) In  
2           making a recommendation for an amount of child support under sub. (4), the agency  
3           shall consider the factors that the court considers under s. 46.10 (14) (c) for deviation  
4           from the ~~percentage standard~~ method of calculating child support under s. 767.251.

5           Prior to the dispositional hearing under s. 48.335, the agency shall provide the child's  
6           parent with all of the following:

7           **SECTION 9.** 48.357 (5m) of the statutes is amended to read:

8           48.357 (5m) If a proposed change in placement changes a child's placement  
9           from a placement in the child's home to a placement outside the child's home, the  
10          court shall order the child's parent to provide a statement of income, assets, debts  
11          and living expenses to the court or the person or agency primarily responsible for  
12          implementing the dispositional order by a date specified by the court. The clerk of  
13          court shall provide, without charge, to any parent ordered to provide a statement of  
14          income, assets, debts and living expenses a document setting forth the ~~percentage~~  
15          ~~standard established by the department of workforce development under s. 49.22 (9)~~  
16          method of calculating child support under s. 767.251 and the manner of its  
17          application established by the department of health and family services under s.  
18          46.247 and listing the factors that a court may consider under s. 46.10 (14) (c). If the  
19          child is placed outside the child's home, the court shall determine the liability of the  
20          parent in the manner provided in s. 46.10 (14).

21          **SECTION 10.** 48.363 (1) of the statutes is amended to read:

22          48.363 (1) A child, the child's parent, guardian or legal custodian, an expectant  
23          mother, an unborn child by the unborn child's guardian ad litem, any person or  
24          agency bound by a dispositional order or the district attorney or corporation counsel  
25          in the county in which the dispositional order was entered may request a revision in

**BILL****SECTION 10**

1 the order that does not involve a change in placement, including a revision with  
2 respect to the amount of child support to be paid by a parent, or the court may on its  
3 own motion propose such a revision. The request or court proposal shall set forth in  
4 detail the nature of the proposed revision and what new information is available that  
5 affects the advisability of the court's disposition. The request or court proposal shall  
6 be submitted to the court. The court shall hold a hearing on the matter if the request  
7 or court proposal indicates that new information is available which affects the  
8 advisability of the court's dispositional order and prior to any revision of the  
9 dispositional order, unless written waivers of objections to the revision are signed by  
10 all parties entitled to receive notice and the court approves. If a hearing is held, the  
11 court shall notify the child, the child's parent, guardian and legal custodian, all  
12 parties bound by the dispositional order, the child's foster parent, treatment foster  
13 parent or other physical custodian described in s. 48.62 (2), the district attorney or  
14 corporation counsel in the county in which the dispositional order was entered, and,  
15 if the child is the expectant mother of an unborn child under s. 48.133, the unborn  
16 child by the unborn child's guardian ad litem or shall notify the adult expectant  
17 mother, the unborn child through the unborn child's guardian ad litem, all parties  
18 bound by the dispositional order and the district attorney or corporation counsel in  
19 the county in which the dispositional order was entered, at least 3 days prior to the  
20 hearing. A copy of the request or proposal shall be attached to the notice. If the  
21 proposed revision is for a change in the amount of child support to be paid by a parent,  
22 the court shall order the child's parent to provide a statement of income, assets, debts  
23 and living expenses to the court and the person or agency primarily responsible for  
24 implementing the dispositional order by a date specified by the court. The clerk of  
25 court shall provide, without charge, to any parent ordered to provide a statement of

**BILL**

1 income, assets, debts and living expenses a document setting forth the ~~percentage~~  
2 ~~standard established by the department of workforce development under s. 49.22 (9)~~  
3 ~~method of calculating child support under s. 767.251~~ and the manner of its  
4 application established by the department of health and family services under s.  
5 46.247 and listing the factors that a court may consider under s. 46.10 (14) (c). If all  
6 parties consent, the court may proceed immediately with the hearing. No revision  
7 may extend the effective period of the original order.

8 **SECTION 11.** 49.22 (9) of the statutes is repealed and recreated to read:

9 49.22 (9) The department shall prepare and make available to judges and other  
10 court personnel forms, tables, computer software and instruction manuals or other  
11 publications to aid in the calculation of child support by using the method under s.  
12 767.251.

13 **SECTION 12.** 301.12 (14) (b) of the statutes is amended to read:

14 301.12 (14) (b) Except as provided in par. (c) and subject to par. (cm), liability  
15 of a parent specified in sub. (2) or s. 301.03 (18) for the care and maintenance of the  
16 parent's minor child who has been placed by a court order under s. 938.183, 938.355  
17 or 938.357 in a residential, nonmedical facility such as a group home, foster home,  
18 treatment foster home, child caring institution or juvenile correctional institution  
19 shall be determined by the court by using the ~~percentage standard established by the~~  
20 ~~department of workforce development under s. 49.22 (9) method of calculating child~~  
21 ~~support under s. 767.251~~ and by applying the ~~percentage standard~~ method in the  
22 manner established by the department under par. (g).

23 **SECTION 13.** 301.12 (14) (c) (intro.) of the statutes is amended to read:

24 301.12 (14) (c) (intro.) Upon request by a parent, the court may modify the  
25 amount of child support payments determined under par. (b), subject to par. (cm), if,

**BILL**

1 after considering the following factors, the court finds by the greater weight of the  
2 credible evidence that ~~the use of the percentage standard method of calculating child~~  
3 ~~support under s. 767.251~~ is unfair to the child or to either of the parents:

4 **SECTION 14.** 301.12 (14) (d) of the statutes is amended to read:

5 301.12 (14) (d) If the court finds under par. (c) that use of the ~~percentage~~  
6 ~~standard method of calculating child support under s. 767.251~~ is unfair to the minor  
7 child or either of the parents, the court shall state in writing or on the record the  
8 amount of support that would be required by using the ~~percentage standard method~~  
9 ~~under s. 767.251~~, the amount by which the court's order deviates from that amount,  
10 the court's reasons for finding that use of the ~~percentage standard method under s.~~  
11 ~~767.251~~ is unfair to the child or the parent, the court's reasons for the amount of the  
12 modification and the basis for the modification.

13 **SECTION 15.** 301.12 (14) (g) of the statutes is amended to read:

14 301.12 (14) (g) For purposes of determining child support under par. (b), the  
15 department shall promulgate rules related to the application of the ~~standard~~  
16 ~~established by the department of workforce development under s. 49.22 (9) method~~  
17 ~~under s. 767.251~~ to a child support obligation for the care and maintenance of a child  
18 who is placed by a court order under s. 938.183, 938.355 or 938.357 in a residential,  
19 nonmedical facility. The rules shall take into account the needs of any person,  
20 including dependent children other than the child, whom either parent is legally  
21 obligated to support.

22 **SECTION 16.** 767.085 (2) (b) of the statutes is amended to read:

23 767.085 (2) (b) The clerk of court shall provide without charge, to each person  
24 filing a petition requesting child support, a document setting forth the ~~percentage~~  
25 ~~standard established by the department under s. 49.22 (9) method of calculating~~

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1 child support under s. 767.251 and listing the factors which a court may consider  
2 under s. 767.25 (1m).

3 **SECTION 17.** 767.085 (2m) (a) 2. of the statutes is amended to read:

4 767.085 (2m) (a) 2. Shall be accompanied by a document, provided without  
5 charge by the clerk of court, setting forth the ~~percentage standard established by the~~  
6 ~~department under s. 49.22 (9)~~ method of calculating child support under s. 767.251  
7 and listing the factors which a court may consider under s. 767.25 (1m).

8 **SECTION 18.** 767.085 (2m) (b) of the statutes is amended to read:

9 767.085 (2m) (b) If service is by publication, notification regarding s. 948.31  
10 may consist of references to the statute numbers and titles, and information relating  
11 to the ~~percentage standard~~ method of calculating child support and the factors need  
12 not be provided.

13 **SECTION 19.** 767.23 (1n) of the statutes is amended to read:

14 767.23 (1n) Before making any temporary order under sub. (1), the court or  
15 family court commissioner shall consider those factors which the court is required  
16 by this chapter to consider before entering a final judgment on the same subject  
17 matter. If the court or family court commissioner makes a temporary child support  
18 order that deviates from the amount of support that would be required by using the  
19 ~~percentage standard established by the department under s. 49.22 (9)~~ method of  
20 calculating child support under s. 767.251, the court or family court commissioner  
21 shall comply with the requirements of s. 767.25 (1n). A temporary order under sub.  
22 (1) may be based upon the written stipulation of the parties, subject to the approval  
23 of the court or the family court commissioner. Temporary orders made by the family  
24 court commissioner may be reviewed by the court as provided in s. 767.13 (6).

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1           **SECTION 20.** 767.23 (1n) of the statutes, as affected by 1999 Wisconsin Act 9,  
2 is amended to read:

3           **767.23 (1n)** Before making any temporary order under sub. (1), the court or  
4 family court commissioner shall consider those factors that the court is required by  
5 this chapter to consider before entering a final judgment on the same subject matter.  
6 In making a determination under sub. (1) (a) or (am), the court or family court  
7 commissioner shall consider the factors under s. 767.24 (5). If the court or family  
8 court commissioner makes a temporary child support order that deviates from the  
9 amount of support that would be required by using the ~~percentage standard~~  
10 ~~established by the department under s. 49.22 (9) method of calculating child support~~  
11 under s. 767.251, the court or family court commissioner shall comply with the  
12 requirements of s. 767.25 (1n). A temporary order under sub. (1) may be based upon  
13 the written stipulation of the parties, subject to the approval of the court or the family  
14 court commissioner. Temporary orders made by the family court commissioner may  
15 be reviewed by the court as provided in s. 767.13 (6).

16           **SECTION 21.** 767.25 (1j) of the statutes is amended to read:

17           **767.25 (1j)** Except as provided in sub. (1m), the court shall determine child  
18 support payments by using the ~~percentage standard established by the department~~  
19 ~~under s. 49.22 (9) method~~ under s. 767.251.

20           **SECTION 22.** 767.25 (1m) (intro.) of the statutes is amended to read:

21           **767.25 (1m) (intro.)** Upon request by a party, the court may modify the amount  
22 of child support payments determined under ~~sub. (1j) s. 767.251~~ if, after considering  
23 the following factors, the court finds by the greater weight of the credible evidence  
24 that use of the ~~percentage standard~~ method under s. 767.251 is unfair to the child  
25 or to any of the parties:

**BILL**

1           **SECTION 23.** 767.25 (1n) of the statutes is amended to read:

2           767.25 (1n) If the court finds under sub. (1m) that use of the ~~percentage~~  
3 ~~standard~~ method of calculating child support under s. 767.251 is unfair to the child  
4 or the requesting party, the court shall state in writing or on the record the amount  
5 of support that would be required by using the ~~percentage standard~~ method under  
6 s. 767.251, the amount by which the court's order deviates from that amount, its  
7 reasons for finding that use of the ~~percentage standard~~ method under s. 767.251 is  
8 unfair to the child or the party, its reasons for the amount of the modification and the  
9 basis for the modification.

10           **SECTION 24.** 767.251 of the statutes is created to read:

11           **767.251 Calculation of child support payments. (1) GROSS INCOME.** For  
12 purposes of determining a parent's gross income under this section, all of the  
13 following apply:

14           (a) The court shall include as income all of the following:

- 15           1. Subject to par. (b), all personal income considered gross income for federal  
16 income tax purposes.
- 17           2. Net proceeds from worker's compensation or other personal injury awards  
18 intended to replace income.
- 19           3. Income continuation benefits.
- 20           4. Voluntary deferred compensation or employe contributions to a  
21 profit-sharing or pension account.
- 22           5. Military allowances and veterans benefits.
- 23           6. Undistributed income from a closely held corporation if all of the following  
24 apply:
  - 25           a. The parent has a majority interest in the corporation.



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1           b. The parent may exercise control over, or access the earnings of, the  
2 corporation.

3           7. Tax-exempt interest.

4           (b) The court shall exclude from income all of the following:

5           1. Onetime long-term capital gain income from the sale of individual passive  
6 investments.

7           2. Onetime capital gain income from the sale of the family home.

8           (c) The court shall deduct from income all of the following:

9           1. Any maintenance paid to the other parent or to a former spouse.

10          2. If the parent is self-employed, one-half of the unemployment tax that the  
11 parent pays.

12          3. Business expenses that are allowed as deductions for expenses for tax  
13 purposes.

14          4. Business expenses that are not allowed as deductions for expenses for tax  
15 purposes but that the court considers necessary for the production of income.

16          (d) The court may include as income wages paid by the parent to a member of  
17 the parent's household that the court determines were paid for the purpose of  
18 diverting income to avoid paying child support.

19          (e) If the court determines that a party has encumbered, concealed, damaged,  
20 destroyed, transferred or otherwise disposed of property for the purpose of avoiding  
21 payment of child support, or that child support based on the gross incomes of the  
22 parties will not adequately provide for the child and that the parties have  
23 nonproductive assets, the court may impute income to one or both parents from such  
24 property or assets by multiplying the value of the property or asset by the current

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1 6-month treasury bill interest rate and including the amount obtained in the gross  
2 income of the appropriate parent.

3 (f) If the court determines that a parent is able and available to work, that  
4 employment opportunities exist in the parent's community for which the parent is  
5 qualified and that the parent is not working at least 40 hours per week, the court may  
6 impute to the parent a gross income based on a 40-hour work week, the parent's  
7 educational attainment and work experience and the type of employment  
8 opportunities in the parent's community for which the parent is qualified.

9 (2) AMOUNT OF PHYSICAL PLACEMENT. (a) For the purpose of determining child  
10 support payments under sub. (4), the court shall determine the amount of physical  
11 placement that a parent has on the basis of the number of days, or amount of time,  
12 out of a total of 365 days in a year, that the parent provides care for the child.

13 (b) Notwithstanding par. (a), if both parents provide care for the child in the  
14 same 24-hour period, the court shall determine the amount of time that each parent  
15 provides care for the child on that day not on the basis of the number of hours that  
16 each parent cares for the child but on a basis that reflects each parent's proportionate  
17 share of the total expenses incurred by the 2 parents in caring for the child on that  
18 day.

19 (c) After making any adjustments necessary to ensure that the total number  
20 of days in a year that the parents have physical placement of the child equals 365,  
21 the court shall determine the percentage of the 365 days in a year that each parent  
22 has physical placement of the child, and shall make any adjustments necessary to  
23 ensure that the total of those percentages equals 100%.

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1           **(3) GROSS MONTHLY CHILD SUPPORT OBLIGATIONS.** For the purpose of determining  
2 child support payments under sub. (4), the court shall determine each parent's gross  
3 monthly child support obligation as follows:

4           (a) If the combined gross monthly income of the 2 parents is equal to or less than  
5 \$4,000, the gross monthly child support obligation of each parent equals the  
6 following percentage of that parent's gross monthly income:

- 7           1. If there is one minor child, 17%.
- 8           2. If there are 2 minor children, 25%.
- 9           3. If there are 3 minor children, 29%.
- 10          4. If there are 4 minor children, 31%.
- 11          5. If there are 5 or more minor children, 34%.

12          (b) If the combined gross monthly income of the 2 parents is greater than \$4,000  
13 but not greater than \$20,000, the gross monthly child support obligation of each  
14 parent is calculated as follows:

15           1. The combined gross monthly child support obligation of the 2 parents equals  
16 the following amount:

17           a. If there is one minor child, \$680 plus 8.5% of the combined gross monthly  
18 income of the 2 parents in excess of \$4,000.

19           b. If there are 2 minor children, \$1,000 plus 12.5% of the combined gross  
20 monthly income of the 2 parents in excess of \$4,000.

21           c. If there are 3 minor children, \$1,160 plus 14.5% of the combined gross  
22 monthly income of the 2 parents in excess of \$4,000.

23           d. If there are 4 minor children, \$1,240 plus 15.5% of the combined gross  
24 monthly income of the 2 parents in excess of \$4,000.

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1 e. If there are 5 or more minor children, \$1,360 plus 17% of the combined gross  
2 monthly income of the 2 parents in excess of \$4,000.

3 2. Determine each parent's percentage of the combined gross monthly income  
4 of the 2 parents by dividing that parent's gross monthly income by the combined  
5 gross monthly income of the 2 parents.

6 3. The gross monthly child support obligation of each parent equals the  
7 percentage determined under subd. 2. for that parent multiplied by the applicable  
8 amount under subd. 1.

9 (c) If the combined gross monthly income of the 2 parents is greater than  
10 \$20,000, the gross monthly child support obligation of each parent is calculated as  
11 follows:

12 1. The combined gross monthly child support obligation of the 2 parents equals  
13 the following amount:

14 a. If there is one minor child, \$2,040 plus 4% of the combined gross monthly  
15 income of the 2 parents in excess of \$20,000.

16 b. If there are 2 minor children, \$3,000 plus 6% of the combined gross monthly  
17 income of the 2 parents in excess of \$20,000.

18 c. If there are 3 minor children, \$3,480 plus 7% of the combined gross monthly  
19 income of the 2 parents in excess of \$20,000.

20 d. If there are 4 minor children, \$3,720 plus 8% of the combined gross monthly  
21 income of the 2 parents in excess of \$20,000.

22 e. If there are 5 or more minor children, \$4,080 plus 9% of the combined gross  
23 monthly income of the 2 parents in excess of \$20,000.

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1           2. Determine each parent's percentage of the combined gross monthly income  
2 of the 2 parents by dividing that parent's gross monthly income by the combined  
3 gross monthly income of the 2 parents.

4           3. The gross monthly child support obligation of each parent equals the  
5 percentage determined under subd. 2. for that parent multiplied by the applicable  
6 amount under subd. 1.

7           (d) Notwithstanding pars. (a), (b) and (c), if a parent is subject to another child  
8 support order or is otherwise legally obligated to support one or more other children,  
9 that parent's gross monthly child support obligation is the amount determined for  
10 that parent under par. (a), (b) or (c), reduced by the following percentage:

- 11           1. If the number of other children the parent is obligated to support is one, 90%.
- 12           2. If the number of other children the parent is obligated to support is 2, 85%.
- 13           3. If the number of other children the parent is obligated to support is 3, 80%.
- 14           4. If the number of other children the parent is obligated to support is 4 or more,  
15 75%.

16           (4) AMOUNT OF PAYMENTS. The court shall determine child support payments  
17 as follows:

18           (a) If the court grants periods of physical placement to only one parent, or if the  
19 court grants periods of physical placement to both parents but one parent has  
20 physical placement of the child for fewer than 55 days in a year, the parent with less  
21 or no physical placement shall pay to the other parent the gross monthly child  
22 support obligation determined for that payer parent under sub. (3).

23           (b) If the court grants periods of physical placement to both parents and each  
24 parent has physical placement of the child for at least 55 days in a year, the court  
25 shall determine child support payments in the following manner:

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1           1. Each parent's gross monthly child support obligation determined under sub.  
2           (3) shall be multiplied by 1.4 and by the other parent's percentage of physical  
3           placement determined under sub. (2) (c). The product under this subdivision for each  
4           parent is that parent's net monthly child support obligation.

5           2. Except as provided in subd. 3., the parent with the greater net monthly child  
6           support obligation under subd. 1. shall pay as child support, to the parent with the  
7           smaller net monthly child support obligation under subd. 1., the difference between  
8           those net monthly child support obligations.

9           3. If the amount of child support that a parent is obligated to pay under subd.  
10          2. is greater than his or her gross monthly child support obligation determined under  
11          sub. (3), that parent shall pay as child support to the other parent the amount of his  
12          or her gross monthly child support obligation determined under sub. (3).

13          (c) If a child is placed outside his or her home in a residential, nonmedical  
14          facility, the child support obligation of each parent shall be as determined under sub.  
15          (3).

16          (5) SPLIT PLACEMENT. If there is more than one child, if the amount of physical  
17          placement that a parent has with one or more of the children is not the same as the  
18          amount that the parent has with one or more of the other children and if the court  
19          determines that each parent is required to pay child support to the other parent  
20          under sub. (4)(a) or (b) 2. or 3., the court shall require only the parent who is required  
21          to pay the greater amount to pay child support, and to pay only the difference in the  
22          amounts, to the other parent.

23          **SECTION 25.** 767.295 (2) (c) of the statutes is amended to read:

24               767.295 (2) (c) If the court enters an order under par. (a), it shall order the  
25               parent to pay child support equal to the amount determined by applying the

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1 ~~percentage standard established under s. 49.22 (9) method under s. 767.251~~ to the  
2 income a person would earn by working 40 hours per week for the federal minimum  
3 hourly wage under 29 USC 206 (a) (1) or equal to the amount of child support that  
4 the parent was ordered to pay in the most recent determination of support under this  
5 chapter. The child support obligation ordered under this paragraph continues until  
6 the parent makes timely payment in full for 3 consecutive months or until the person  
7 participates in the program under s. 49.36 for 16 weeks, whichever comes first. The  
8 court shall provide in its order that the parent must make child support payments  
9 calculated under s. 767.25 ~~(1j) or (1m)~~ or 767.251, 767.51 (4m) or (5) or 767.62 (4) (d)  
10 1. or (e) after the obligation to make payments ordered under this paragraph ceases.

11 **SECTION 26.** 767.295 (2) (c) of the statutes, as affected by 1999 Wisconsin Act  
12 9, is amended to read:

13 767.295 (2) (c) If the court enters an order under par. (a), it shall order the  
14 parent to pay child support equal to the amount determined by applying the  
15 ~~percentage standard established under s. 49.22 (9) method under s. 767.251~~ to the  
16 income a person would earn by working 40 hours per week for the federal minimum  
17 hourly wage under 29 USC 206 (a) (1) or equal to the amount of child support that  
18 the parent was ordered to pay in the most recent determination of support under this  
19 chapter. The child support obligation ordered under this paragraph continues until  
20 the parent makes timely payment in full for 3 consecutive months or until the person  
21 participates in the program under s. 49.36 for 16 weeks, whichever comes first. The  
22 court shall provide in its order that the parent must make child support payments  
23 calculated under s. 767.25 ~~(1j) or (1m)~~ or 767.251 after the obligation to make  
24 payments ordered under this paragraph ceases.

25 **SECTION 27.** 767.32 (1) (b) 2. of the statutes is amended to read:

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1           767.32 (1) (b) 2. ~~Unless the amount of child support is expressed in the~~  
 2 ~~judgment or order as a percentage of parental income, the~~ The expiration of 33  
 3 months after the date of the entry of the last child support order, including a revision  
 4 of a child support order under this section, if the amount of child support under the  
 5 revised order by using the method of calculating child support under s. 767.251 will  
 6 ~~be~~ at least 10% of the amount under the last  
 7 order or by at least \$40 per month.

8           **SECTION 28.** 767.32 (1) (b) 4. of the statutes is amended to read:

9           767.32 (1) (b) 4. ~~A~~ If the action in which the court most recently ordered child  
 10 support, including a revision of a child support order under this section, was  
 11 commenced before the effective date of this subdivision .... [revisor inserts date], a  
 12 difference between the amount of child support ordered by the court to be paid by the  
 13 payer and the amount that the payer would have been required to pay based on the  
 14 percentage standard established by the department under s. 49.22 (9) if the court did  
 15 not use the percentage standard in determining the child support payments and did  
 16 not provide the information required under s. 46.10 (14) (d), 301.12 (14) (d), 767.25  
 17 (1n), 767.51 (5d) or 767.62 (4) (f), whichever is appropriate.

18           **SECTION 29.** 767.32 (1) (b) 4. of the statutes, as affected by 1999 Wisconsin Act  
19 9, is amended to read:

20           767.32 (1) (b) 4. ~~A~~ If the action in which the court most recently ordered child  
 21 support, including a revision of a child support order under this section, was  
 22 commenced before the effective date of this subdivision .... [revisor inserts date], a  
 23 difference between the amount of child support ordered by the court to be paid by the  
 24 payer and the amount that the payer would have been required to pay based on the  
 25 percentage standard established by the department under s. 49.22 (9) if the court did

differ from



**BILL**

1 not use the percentage standard in determining the child support payments and did  
2 not provide the information required under s. 46.10 (14) (d), 301.12 (14) (d) or 767.25  
3 (1n), whichever is appropriate.

4 **SECTION 30.** 767.32 (1) (b) 5. of the statutes is created to read:

5 767.32 (1) (b) 5. If the action in which the court most recently ordered child  
6 support, including a revision of a child support order under this section, was  
7 commenced on or after the effective date of this subdivision .... [revisor inserts date],  
8 a difference between the amount of child support ordered by the court to be paid by  
9 the payer and the amount that the payer would have been required to pay based on  
10 the method of calculating child support under s. 767.251 if the court did not use that  
11 method in determining the child support payments and did not provide the  
12 information required under s. 46.10 (14) (d), 301.12 (14) (d), 767.25 (1n), 767.51 (5d)  
13 or 767.62 (4) (f), whichever is appropriate.

14 **SECTION 31.** 767.32 (1) (b) 5. of the statutes, as created by 1999 Wisconsin Act  
15 .... (this act), is amended to read:

16 767.32 (1) (b) 5. If the action in which the court most recently ordered child  
17 support, including a revision of a child support order under this section, was  
18 commenced on or after the effective date of this subdivision .... [revisor inserts date],  
19 a difference between the amount of child support ordered by the court to be paid by  
20 the payer and the amount that the payer would have been required to pay based on  
21 the method of calculating child support under s. 767.251 if the court did not use that  
22 method in determining the child support payments and did not provide the  
23 information required under s. 46.10 (14) (d), 301.12 (14) (d), ~~or 767.25 (1n), 767.51~~  
24 ~~(5d) or 767.62 (4) (f)~~, whichever is appropriate.

25 **SECTION 32.** 767.32 (1) (b) 6. of the statutes is created to read:

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1           767.32 (1) (b) 6. The amount of child support last ordered by the court was  
2 based on the amount of physical placement awarded to the parties and the payer has  
3 consistently failed to exercise his or her periods of physical placement, if the amount  
4 of child support under the revised order, based on the actual amount of physical  
5 placement that the payer has in the past exercised, will ~~be~~ the amount under the  
6 last order by at least 15% of the amount under the last order or by at least \$60 per  
7 month.

8           **SECTION 33.** 767.32 (2) of the statutes is renumbered 767.32 (2) (a) and  
9 amended to read:

10           767.32 (2) (a) Except as provided in sub. (2m) or (2r), if the court revises a  
11 judgment or order with respect to child support payments, it shall do so by using the  
12 ~~percentage standard established by the department under s. 49.22 (9) method under~~  
13 s. 767.251.

14           **SECTION 34.** 767.32 (2) (b) of the statutes is created to read:

15           767.32 (2) (b) In determining the amount of physical placement that each  
16 parent has for purposes of calculating child support under s. 767.251, the court shall  
17 use the actual time that a child regularly spends with each parent, regardless of the  
18 allocation of physical placement between the parents under a physical placement  
19 order.

20           **SECTION 35.** 767.32 (2m) of the statutes is amended to read:

21           767.32 (2m) Upon request by a party, the court may modify the amount of  
22 revised child support payments determined under sub. (2) if, after considering the  
23 factors listed in s. 767.25 (1m), 767.51 (5) or 767.62 (4) (e), as appropriate, the court  
24 finds, by the greater weight of the credible evidence, that the use of the percentage

*different from*

**BILL**

1 standard method of calculating child support under s. 767.251 is unfair to the child  
2 or to any of the parties.

3 **SECTION 36.** 767.32 (2m) of the statutes, as affected by 1999 Wisconsin Act 9,  
4 is amended to read:

5 767.32 (2m) Upon request by a party, the court may modify the amount of  
6 revised child support payments determined under sub. (2) if, after considering the  
7 factors listed in s. 767.25 (1m), the court finds, by the greater weight of the credible  
8 evidence, that the use of the percentage standard method of calculating child support  
9 under s. 767.251 is unfair to the child or to any of the parties.

10 **SECTION 37.** 767.45 (7) of the statutes is amended to read:

11 767.45 (7) The clerk of court shall provide without charge, to each person  
12 bringing an action under this section, except to the state under sub. (1) (g) or (6m),  
13 a document setting forth the ~~percentage standard established by the department~~  
14 ~~under s. 49.22 (9) method of calculating child support under s. 767.251~~ and listing  
15 the factors which a court may consider under s. 767.51 (5).

16 **SECTION 38.** 767.45 (7) of the statutes, as affected by 1999 Wisconsin Act 9, is  
17 amended to read:

18 767.45 (7) The clerk of court shall provide without charge, to each person  
19 bringing an action under this section, except to the state under sub. (1) (g) or (6m),  
20 a document setting forth the ~~percentage standard established by the department~~  
21 ~~under s. 49.22 (9) method of calculating child support under s. 767.251~~ and listing  
22 the factors which a court may consider under s. 767.25 (1m).

23 **SECTION 39.** 767.455 (6) of the statutes is amended to read:

24 767.455 (6) DOCUMENT. The summons served on the respondent shall be  
25 accompanied by a document, provided without charge by the clerk of court, setting

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1     ~~forth the percentage standard established by the department under s. 49.22 (9)~~  
2     ~~method of calculating child support under s. 767.251~~ and listing the factors which a  
3     court may consider under s. 767.51 (5).

4     **SECTION 40.** 767.455 (6) of the statutes, as affected by 1999 Wisconsin Act 9,  
5     is amended to read:

6     767.455 (6) DOCUMENT. The summons served on the respondent shall be  
7     accompanied by a document, provided without charge by the clerk of court, setting  
8     ~~forth the percentage standard established by the department under s. 49.22 (9)~~  
9     ~~method of calculating child support under s. 767.251~~ and listing the factors which a  
10    court may consider under s. 767.25 (1m).

11    **SECTION 41.** 767.477 (2) of the statutes is amended to read:

12    767.477 (2) Before making any temporary order under sub. (1), the court shall  
13    consider those factors that the court is required under s. 767.51 to consider when  
14    granting a final judgment on the same subject matter. If the court makes a  
15    temporary child support order that deviates from the amount of support that would  
16    be required by using the ~~percentage standard established by the department under~~  
17    ~~s. 49.22 (9) method of calculating child support under s. 767.251~~, the court shall  
18    comply with the requirements of s. 767.51 (5d).

19    **SECTION 42.** 767.477 (2) of the statutes, as affected by 1999 Wisconsin Act 9,  
20    is amended to read:

21    767.477 (2) Before making any temporary order under sub. (1), the court shall  
22    consider those factors that the court is required to consider when granting a final  
23    judgment on the same subject matter. If the court makes a temporary child support  
24    order that deviates from the amount of support that would be required by using the  
25    ~~percentage standard established by the department under s. 49.22 (9) method of~~

**BILL**

1 calculating child support under s. 767.251, the court shall comply with the  
2 requirements of s. 767.25 (1n).

3 **SECTION 43.** 767.51 (4m) of the statutes is amended to read:

4 767.51 (4m) Except as provided in sub. (5), the court shall determine child  
5 support payments by using the ~~percentage standard established by the department~~  
6 under s. 49.22 (9) method under s. 767.251.

7 **SECTION 44.** 767.51 (4m) of the statutes, as affected by 1999 Wisconsin Acts 9  
8 and .... (this act), is repealed.

9 **SECTION 45.** 767.51 (5) (intro.) of the statutes is amended to read:

10 767.51 (5) (intro.) Upon request by a party, the court may modify the amount  
11 of child support payments determined under sub. (4m) if, after considering the  
12 following factors, the court finds by the greater weight of the credible evidence that  
13 use of the ~~percentage standard~~ method under s. 767.251 is unfair to the child or to  
14 the requesting party:

15 **SECTION 46.** 767.51 (5) (intro.) of the statutes, as affected by 1999 Wisconsin  
16 Acts 9 and .... (this act), is repealed.

17 **SECTION 47.** 767.51 (5d) of the statutes is amended to read:

18 767.51 (5d) If the court finds under sub. (5) that use of the ~~percentage standard~~  
19 method of calculating child support under s. 767.251 is unfair to the child or the  
20 requesting party, the court shall state in writing or on the record the amount of  
21 support that would be required by using the ~~percentage standard~~ method under s.  
22 767.251, the amount by which the court's order deviates from that amount, its  
23 reasons for finding that use of the ~~percentage standard~~ method under s. 767.251 is  
24 unfair to the child or the party, its reasons for the amount of the modification and the  
25 basis for the modification.

**BILL**

1           **SECTION 48.** 767.51 (5d) of the statutes, as affected by 1999 Wisconsin Acts 9  
2 and .... (this act), is repealed.

3           **SECTION 49.** 767.62 (4) of the statutes, as affected by 1999 Wisconsin Acts 9 and  
4 .... (this act), is repealed and recreated to read:

5           **767.62 (4) ORDERS WHEN PATERNITY ACKNOWLEDGED.** In an action under sub. (3)  
6 (a), if the persons who signed and filed the statement acknowledging paternity as  
7 parents of the child had notice of the hearing, the court or family court commissioner  
8 shall make an order that contains all of the following provisions:

9           (a) Orders for the legal custody of and periods of physical placement with the  
10 child, determined in accordance with s. 767.24.

11           (b) An order requiring either or both of the parents to contribute to the support  
12 of any child of the parties who is less than 18 years old, or any child of the parties who  
13 is less than 19 years old if the child is pursuing an accredited course of instruction  
14 leading to the acquisition of a high school diploma or its equivalent, determined in  
15 accordance with s. 767.25.

16           (c) A determination as to which parent, if eligible, shall have the right to claim  
17 the child as an exemption for federal tax purposes under 26 USC 151 (c) (1) (B), or  
18 as an exemption for state tax purposes under s. 71.07 (8) (b).

19           (d) An order requiring the father to pay or contribute to the reasonable  
20 expenses of the mother's pregnancy and the child's birth, based on the father's ability  
21 to pay or contribute to those expenses.

22           (e) An order requiring either or both parties to pay or contribute to the costs  
23 of the guardian ad litem fees and other costs.

24           (f) An order requiring either party to pay or contribute to the attorney fees of  
25 the other party.

**BILL**

1           **SECTION 50.** 767.62 (4) (d) 1. of the statutes is amended to read:

2           767.62 (4) (d) 1. Except as provided in par. (e), the court or family court  
3 commissioner shall determine child support payments under par. (a) by using the  
4 ~~percentage standard established by the department under s. 49.22 (9) method under~~  
5 s. 767.251.

6           **SECTION 51.** 767.62 (4) (e) (intro.) of the statutes is amended to read:

7           767.62 (4) (e) (intro.) Upon request by a party, the court or family court  
8 commissioner may modify the amount of child support payments determined under  
9 par. (d) if, after considering the following factors, the court or family court  
10 commissioner finds by the greater weight of the credible evidence that use of the  
11 ~~percentage standard method of calculating child support under s. 767.251~~ is unfair  
12 to the child or to the requesting party:

13           **SECTION 52.** 767.62 (4) (f) of the statutes is amended to read:

14           767.62 (4) (f) If the court or family court commissioner finds under par. (e) that  
15 use of the ~~percentage standard method of calculating child support under s. 767.251~~  
16 is unfair to the child or the requesting party, the court or family court commissioner  
17 shall state in writing or on the record the amount of support that would be required  
18 by using the ~~percentage standard method under s. 767.251~~, the amount by which the  
19 court's or family court commissioner's order deviates from that amount, the reasons  
20 for finding that use of the ~~percentage standard method under s. 767.251~~ is unfair to  
21 the child or the party, the reasons for the amount of the modification and the basis  
22 for the modification.

23           **SECTION 53.** 938.30 (6) of the statutes is amended to read:

24           938.30 (6) If a petition is not contested, the court shall set a date for the  
25 dispositional hearing which allows reasonable time for the parties to prepare but is

**BILL**

1 no more than 10 days from the plea hearing for a juvenile who is held in secure  
2 custody and no more than 30 days from the plea hearing for a juvenile who is not held  
3 in secure custody. If it appears to the court that disposition of the case may include  
4 placement of the juvenile outside the juvenile's home, the court shall order the  
5 juvenile's parent to provide a statement of income, assets, debts and living expenses  
6 to the court or the designated agency under s. 938.33 (1) at least 5 days before the  
7 scheduled date of the dispositional hearing or as otherwise ordered by the court. The  
8 clerk of court shall provide, without charge, to any parent ordered to provide a  
9 statement of income, assets, debts and living expenses a document setting forth the  
10 ~~percentage standard established by the department of workforce development under~~  
11 ~~s. 49.22 (9) method of calculating child support under s. 767.251~~ and listing the  
12 factors that a court may consider under s. 301.12 (14) (c). If all parties consent the  
13 court may proceed immediately with the dispositional hearing. If a citation is not  
14 contested, the court may proceed immediately to enter a dispositional order.

15 **SECTION 54.** 938.31 (7) of the statutes is amended to read:

16 938.31 (7) At the close of the fact-finding hearing, the court shall set a date for  
17 the dispositional hearing which allows a reasonable time for the parties to prepare  
18 but is no more than 10 days after the fact-finding hearing for a juvenile in secure  
19 custody and no more than 30 days after the fact-finding hearing for a juvenile not  
20 held in secure custody. If it appears to the court that disposition of the case may  
21 include placement of the juvenile outside the juvenile's home, the court shall order  
22 the juvenile's parent to provide a statement of income, assets, debts and living  
23 expenses to the court or the designated agency under s. 938.33 (1) at least 5 days  
24 before the scheduled date of the dispositional hearing or as otherwise ordered by the  
25 court. The clerk of court shall provide, without charge, to any parent ordered to



**BILL**

1 provide a statement of income, assets, debts and living expenses a document setting  
2 forth the ~~percentage standard established by the department of workforce~~  
3 ~~development under s. 49.22 (9) method of calculating child support under s. 767.251~~  
4 and listing the factors that a court may consider under s. 301.12 (14) (c). If all parties  
5 consent, the court may immediately proceed with a dispositional hearing.

6 **SECTION 55.** 938.33 (4m) (intro.) of the statutes is amended to read:

7 938.33 (4m) **SUPPORT RECOMMENDATIONS; INFORMATION TO PARENTS.** (intro.) In  
8 making a recommendation for an amount of child support under sub. (3) or (4), the  
9 agency shall consider the factors that the court considers under s. 301.12 (14) (c) for  
10 deviation from the ~~percentage standard~~ method of calculating child support under  
11 s. 767.251. At or before the dispositional hearing under s. 938.335, the agency shall  
12 provide the juvenile's parent with all of the following:

13 **SECTION 56.** 938.357 (5m) of the statutes is amended to read:

14 938.357 (5m) If a proposed change in placement changes a juvenile's placement  
15 from a placement in the juvenile's home to a placement outside the juvenile's home,  
16 the court shall order the juvenile's parent to provide a statement of income, assets,  
17 debts and living expenses to the court or the person or agency primarily responsible  
18 for implementing the dispositional order by a date specified by the court. The clerk  
19 of court shall provide, without charge, to any parent ordered to provide a statement  
20 of income, assets, debts and living expenses a document setting forth the ~~percentage~~  
21 ~~standard established by the department of workforce development under s. 49.22 (9)~~  
22 method of calculating child support under s. 767.251 and listing the factors that a  
23 court may consider under s. 301.12 (14) (c). If the juvenile is placed outside the  
24 juvenile's home, the court shall determine the liability of the parent in the manner  
25 provided in s. 301.12 (14).

**BILL**

1           **SECTION 57.** 938.363 (1) of the statutes is amended to read:

2           **938.363 (1)** A juvenile, the juvenile's parent, guardian or legal custodian, any  
3 person or agency bound by a dispositional order or the district attorney or  
4 corporation counsel in the county in which the dispositional order was entered may  
5 request a revision in the order that does not involve a change in placement, including  
6 a revision with respect to the amount of child support to be paid by a parent, or the  
7 court may on its own motion propose such a revision. The request or court proposal  
8 shall set forth in detail the nature of the proposed revision and what new information  
9 is available that affects the advisability of the court's disposition. The request or  
10 court proposal shall be submitted to the court. The court shall hold a hearing on the  
11 matter if the request or court proposal indicates that new information is available  
12 which affects the advisability of the court's dispositional order and prior to any  
13 revision of the dispositional order, unless written waivers of objections to the revision  
14 are signed by all parties entitled to receive notice and the court approves. If a hearing  
15 is held, the court shall notify the juvenile, the juvenile's parent, guardian and legal  
16 custodian, all parties bound by the dispositional order, the juvenile's foster parent,  
17 treatment foster parent or other physical custodian described in s. 48.62 (2), and the  
18 district attorney or corporation counsel in the county in which the dispositional order  
19 was entered at least 3 days prior to the hearing. A copy of the request or proposal  
20 shall be attached to the notice. If the proposed revision is for a change in the amount  
21 of child support to be paid by a parent, the court shall order the juvenile's parent to  
22 provide a statement of income, assets, debts and living expenses to the court and the  
23 person or agency primarily responsible for implementing the dispositional order by  
24 a date specified by the court. The clerk of court shall provide, without charge, to any  
25 parent ordered to provide a statement of income, assets, debts and living expenses

**BILL****SECTION 57**

1 a document setting forth the ~~percentage standard established by the department of~~  
2 ~~workforce development under s. 49.22 (9) method of calculating child support under~~  
3 s. 767.251 and listing the factors that a court may consider under s. 46.10 (14) (c).  
4 If all parties consent, the court may proceed immediately with the hearing. No  
5 revision may extend the effective period of the original order, or revise an original  
6 order under s. 938.34 (3) (f) or (6) (am) to impose more than 30 days of detention,  
7 nonsecure custody or inpatient treatment on a juvenile.

8 **SECTION 58.** 948.22 (4) (b) of the statutes is amended to read:

9 948.22 (4) (b) For a person not subject to a court order requiring child,  
10 grandchild or spousal support payments, when the person knows or reasonably  
11 should have known that he or she has a dependent, failure to provide support equal  
12 to at least the amount established by ~~rule by the department of workforce~~  
13 ~~development under s. 49.22 (9) the method of calculating child support under s.~~  
14 767.251 or causing a spouse, grandchild or child to become a dependent person, or  
15 continue to be a dependent person, as defined in s. 49.01 (2).

16 **SECTION 59.** 948.22 (7) (bm) of the statutes is amended to read:

17 948.22 (7) (bm) Upon request, the court may modify the amount of child or  
18 spousal support payments determined under par. (b) 2. if, after considering the  
19 factors listed in s. 767.25 (1m) or 767.51 (5), regardless of the fact that the action is  
20 not one for a determination of paternity or an action specified in s. 767.25 (1), the  
21 court finds, by the greater weight of the credible evidence, that the use of the  
22 ~~percentage standard method of calculating child support under s. 767.251~~ is unfair  
23 to the child or to either of the child's parents.

24 **SECTION 60.** 948.22 (7) (bm) of the statutes, as affected by 1999 Wisconsin Act  
25 9, is amended to read:

**BILL**

1           948.22 (7) (bm) Upon request, the court may modify the amount of child or  
 2           spousal support payments determined under par. (b) 2. if, after considering the  
 3           factors listed in s. 767.25 (1m), regardless of the fact that the action is not ~~one for a~~ ←  
 4           ~~determination of paternity or an~~ <sup>plain</sup> action specified in s. 767.25 (1), the court finds, by  
 5           the greater weight of the credible evidence, that ~~the use of the percentage standard~~  
 6           method of calculating child support under s. 767.251 is unfair to the child or to either  
 7           of the child's parents.

**SECTION 61. Initial applicability.**

8  
 9           (1) This act first applies to actions or proceedings, including actions or  
 10          proceedings to enforce or modify a judgment or order previously granted, that are  
 11          commenced on the effective date of this subsection.

**SECTION 62. Effective dates.** This act takes effect on the day after publication, except as follows:

12  
 13  
 14          (1) The treatment of sections 767.23 (1n) (by SECTION 20), 767.295 (2) (c) (by  
 15          SECTION 26), 767.32 (1) (b) 4. (by SECTION 29) and (2m) (by SECTION 36), 767.45 (7) (by  
 16          SECTION 38), 767.455 (6) (by SECTION 40), 767.477 (2) (by SECTION 42) and 948.22 (7)  
 17          (bm) (by SECTION 60), the repeal of section 767.51 (4m), (5) (intro.) and (5d) of the  
 18          statutes, the amendment of section 767.32 (1) (b) 5. of the statutes and the repeal and  
 19          recreation of section 767.62 (4) of the statutes take effect on May 1, 2000.

(END)

*D - note*

1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4519/ins  
PJK.....

INSERT 5-A

12/21

Additionally, the bill requires a court to delay, until at least 30 days after an order modifying child support is signed, a decision on a motion to modify physical placement if the court determines that the parent is seeking the physical placement modification in response to a motion to modify child support. The delay does not apply, however, if the parent seeking the physical placement modification presents any credible evidence that the current allocation of physical placement will cause irreparable harm to the child.

Parents

(END OF INSERT 5-A)

INSERT 26-9

SECTION 1. 767.325 (5r) of the statutes is created to read:

767.325 (5r) DELAY IF MODIFICATION SOUGHT IN RESPONSE TO CHILD SUPPORT MODIFICATION. (a) Except as provided in par. (b), if the court determines that a petition, motion or order to show cause to modify a physical placement order is filed under this section in response to a petition, motion or order to show cause filed under s. 767.32 to revise a judgment or order with respect to an amount of child support, the court may not hear or make a determination on the petition, motion or order to show cause filed under this section until at least 30 days after the signing of the order related to the petition, motion or order to show cause to revise child support.

(b) The delay requirement under par. (a) does not apply if the party seeking to modify the physical placement order presents any credible evidence that the current allocation of physical placement will cause irreparable harm to the child.

(END OF INSERT 26-9)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-4519/rdn  
PJK.....

Cm H

Dan:

✓  
· This is the same as LRB-2022/1 with the two changes you mentioned in your voice mail message. Let us know if you want this version jacketed or if any other changes are needed first (the new language is s. 767.325 (5r)).

This bill draft appears very similar to the Virginia law you sent me for drafting into our statutes. Do you still want to pursue that draft or does this take its place? (I'm wondering because I want to know if I should complete the other draft.)

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: Pam.Kahler@legis.state.wi.us

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-4519/1dn  
PJK.cmh.hmh

February 14, 2000

Dan:

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STEPHEN R. MILLER  
CHIEF

# State of Wisconsin

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# *FISCAL ESTIMATES*

**BILL NUMBER:**

**SENATE BILL 520**

Note: The analysis of this bill states that a fiscal estimate was required for this bill. A request was made though the department of administration to have a fiscal estimate prepared. The agency(s) assigned to prepare a fiscal estimate for this bill did not return a estimate for this bill so none are included in this file.