

2003 DRAFTING REQUEST

Bill

Received: **04/07/2003**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Gary George (608) 266-2500**

By/Representing: **Aaron (from his office)**

This file may be shown to any legislator: **NO**

Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Dom. Rel. - child support**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.George@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Calculating child support

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 04/07/2003	jdye 04/08/2003					S&L
/1			jfrantze 04/08/2003		sbasford 04/08/2003	amentkow 05/05/2003	

FE Sent For:

<END>

At
Intro.

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/1			jfrantze 04/08/2003	_____	sbasford 04/08/2003		

For Senak per Aaron

FE Sent For:

<END>

4-7

(Schwartz?)

Aaron | from Sen. George's office

wants a companion to Messer's 1107/3



State of Wisconsin
2003 - 2004 LEGISLATURE

2486/1
LRB-1107/3
PJK:jls
jls

2003 BILL

D-note

Regen

1 AN ACT *to amend* 46.10 (14) (b), 46.10 (14) (c) (intro.), 46.10 (14) (d), 46.247, 48.30
2 (6) (b), 48.31 (7) (b), 48.33 (4m) (intro.), 48.357 (5m) (a), 48.363 (1) (c), 301.12
3 (14) (b), 301.12 (14) (c) (intro.), 301.12 (14) (d), 301.12 (14) (g), 767.085 (2) (b),
4 767.085 (2m) (a) 2., 767.085 (2m) (b), 767.23 (1n), 767.25 (1j), 767.25 (1m)
5 (intro.), 767.25 (1n), 767.25 (4m) (b), 767.295 (2) (c), 767.32 (1) (b) 2., 767.32 (1)
6 (b) 4., 767.32 (2), 767.32 (2m), 767.33 (1) (a), 767.33 (1) (b), 767.45 (7), 767.455
7 (6), 767.477 (2), 938.30 (6) (b), 938.31 (7) (b), 938.33 (4m) (intro.), 938.357 (5m)
8 (a), 938.363 (1) (c), 948.22 (4) (b) and 948.22 (7) (bm); *to repeal and recreate*
9 49.22 (9); and *to create* 49.22 (10), 767.25 (4c), 767.251 and 767.32 (1) (b) 5. of
10 the statutes; **relating to:** calculating child support and creating committees to
11 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

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(DWD). 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 in which child support may be calculated for a shared-time payer. If the payer has physical placement with 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 calculating support by using the percentage standard alone. (For example, a payer with physical placement with a child for 37% of the time would pay 76.69% of the amount that he or she would pay by calculating support by using the percentage standard alone.) If one parent has physical placement with a child between 41% and 59% of the time and the other parent has physical placement with 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 with the child, and compared with the other parent's similarly calculated and reduced amount of child support. (For example, a parent with physical placement with 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 would pay the difference as child support to the other parent.

The rules also provide for a special way in which child support may be calculated 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 would 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. 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

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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 subtract from income in determining each parent's gross income. The bill requires 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 or that the gross incomes of the parents will not adequately provide for the child and there are unproductive assets. The court must impute income based on a 40-hour work week to a parent who is not working at least 40 hours per week if the court determines that the parent is able to work and that work is available in the parent's community. The court determines the percentage of physical placement that a parent has on the basis of the number of overnights or equivalent overnights that a parent cares for the child in a year. The bill provides that a court may consider as an equivalent overnight a period of time during which a parent cares for the child that is not overnight but which the court determines requires the parent to assume support costs that are substantially equivalent to what the parent would spend to care for the child overnight. The total overnights or equivalent overnights for the parents combined must equal 365 in a year, and the court determines each parent's percentage of that number.

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, which 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. 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 income is of the parents'

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combined gross income. If a parent is subject to another child support order or is otherwise legally obligated to support one or more other children, his or her gross monthly child support obligation is reduced to a specified percentage of his or her gross monthly child support obligation, depending on the number of other children being supported.

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 92 overnights or equivalent overnights 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 92 overnights or equivalent overnights of physical placement to each parent (shared placement), the court multiplies each parent's gross monthly child support obligation by 1.5 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 provided 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.

Under current law, in addition to ordering child support for a child, the court is required to assign responsibility for payment of the child's health care expenses and may require a parent to initiate or continue health insurance coverage for the child. This bill provides that each parent must contribute to the child's health care expenses in the same proportion as his or her gross monthly income bears to the total combined gross monthly income of the parties. In addition, the bill requires the court to assign responsibility for payment of reasonable child care expenses necessary to allow a parent to work or attend school and requires each parent to contribute in the same proportion as his or her gross monthly income bears to the total combined gross monthly income of the parties. The bill also provides that if the parties have shared placement of the child the court must order each party to pay the child's day-to-day expenses during the time that each has physical placement with the child and to share the child's variable expenses, such as the cost of tuition, school books, and clothing, in the same proportion as each parent's proportion of physical placement with the child.

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

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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 20% of the amount under the last order or by at least \$60 per month.

The bill requires DWD to prepare and make available to judges and other court personnel computer software, as well as tables and instruction manuals, to help with calculating child support under the new method provided in the bill.

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 requests the Joint Legislative Council to appoint a child support review committee by January 1, 2006, and by January 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 of Wisconsin; and of advocates for children, child support payers, and child support payees. Each committee must report its findings and legislative recommendations to the appropriate standing committees of the legislature 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.

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

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

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

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1 **SECTION 2.** 46.10 (14) (c) (intro.) of the statutes is amended to read:

2 46.10 (14) (c) (intro.) Upon request by a parent, the court may modify the
3 amount of child support payments determined under par. (b), subject to par. (cm), if,
4 after considering the following factors, the court finds by the greater weight of the
5 credible evidence that ~~the use of the percentage standard~~ method of calculating child
6 support under s. 767.251 is unfair to the child or to either of the parents:

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

8 46.10 (14) (d) If the court finds under par. (c) that use of the ~~percentage~~
9 ~~standard~~ method of calculating child support under s. 767.251 is unfair to the minor
10 child or either of the parents, the court shall state in writing or on the record the
11 amount of support that would be required by using the ~~percentage standard~~ method
12 under s. 767.251, the amount by which the court's order deviates from that amount,
13 its reasons for finding that use of the ~~percentage standard~~ method under s. 767.251
14 is unfair to the child or the parent, its reasons for the amount of the modification, and
15 the basis for the modification.

16 **SECTION 4.** 46.247 of the statutes is amended to read:

17 **46.247 Application of method of calculating child support standard for**
18 **certain children.** For purposes of determining child support under s. 46.10 (14) (b),
19 the department shall promulgate rules related to the application of the ~~standard~~
20 ~~established by the department of workforce development under s. 49.22 (9)~~ method
21 under s. 767.251 to a child support obligation for the care and maintenance of a child
22 who is placed by a court order under s. 48.355 or 48.357 in a residential, nonmedical
23 facility. The rules shall take into account the needs of any person, including
24 dependent children other than the child, whom either parent is legally obligated to
25 support.

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1 **SECTION 5.** 48.30 (6) (b) of the statutes is amended to read:

2 48.30 (6) (b) If it appears to the court that disposition of the case may include
3 placement of the child outside the child's home, the court shall order the child's
4 parent to provide a statement of income, assets, debts, and living expenses to the
5 court or the designated agency under s. 48.33 (1) at least 5 days before the scheduled
6 date of the dispositional hearing or as otherwise ordered by the court. The clerk of
7 court shall provide, without charge, to any parent ordered to provide a statement of
8 income, assets, debts, and living expenses a document setting forth the percentage
9 ~~standard established by the department of workforce development under s. 49.22 (9)~~
10 method of calculating child support under s. 767.251 and the manner of its
11 application established by the department of health and family services under s.
12 46.247 and listing the factors that a court may consider under s. 46.10 (14) (c).

13 **SECTION 6.** 48.31 (7) (b) of the statutes is amended to read:

14 48.31 (7) (b) If it appears to the court that disposition of the case may include
15 placement of the child outside the child's home, the court shall order the child's
16 parent to provide a statement of income, assets, debts, and living expenses to the
17 court or the designated agency under s. 48.33 (1) at least 5 days before the scheduled
18 date of the dispositional hearing or as otherwise ordered by the court. The clerk of
19 court shall provide, without charge, to any parent ordered to provide a statement of
20 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 the manner of its
23 application established by the department of health and family services under s.
24 46.247 and listing the factors that a court may consider under s. 46.10 (14) (c).

25 **SECTION 7.** 48.33 (4m) (intro.) of the statutes is amended to read:

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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 8.** 48.357 (5m) (a) of the statutes is amended to read:

8 48.357 (5m) (a) 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 9.** 48.363 (1) (c) of the statutes is amended to read:

22 48.363 (1) (c) If the proposed revision is for a change in the amount of child
23 support to be paid by a parent, the court shall order the child's parent to provide a
24 statement of income, assets, debts, and living expenses to the court and the person
25 or agency primarily responsible for implementing the dispositional order by a date

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1 specified by the court. The clerk of court shall provide, without charge, to any parent
2 ordered to provide a statement of income, assets, debts, and living expenses a
3 document setting forth the ~~percentage standard established by the department of~~
4 ~~workforce development under s. 49.22 (9)~~ method of calculating child support under
5 s. 767.251 and the manner of its application established by the department of health
6 and family services under s. 46.247 and listing the factors that a court may consider
7 under s. 46.10 (14) (c).

8 **SECTION 10.** 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 11.** 49.22 (10) of the statutes is created to read:

14 49.22 (10) (a) The joint legislative council is requested to appoint, by January
15 1, 2006, and by January 1 every 4 years thereafter, a child support committee to
16 review the adequacy to support children of the method of calculating child support
17 under s. 767.251. The committee shall consider current research and economic and
18 case data, as well as any other relevant resources, on the cost of, and expenditures
19 that are necessary for, raising children.

20 (b) The committee shall be composed of representatives of the state's judicial
21 branch, legislative branch, executive branch, and state bar, and of advocates for
22 children, child support payers, and child support payees.

23 (c) No later than January 1, 2007, and no later than January 1 every 4 years
24 thereafter, the committee shall report its findings and legislative and other

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1 recommendations to the appropriate standing committees of the legislature under
2 s. 13.172 (3) and to the federal department of health and human services.

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

4 301.12 (14) (b) Except as provided in par. (c) and subject to par. (cm), liability
5 of a parent specified in sub. (2) or s. 301.03 (18) for the care and maintenance of the
6 parent's minor child who has been placed by a court order under s. 938.183, 938.355,
7 or 938.357 in a residential, nonmedical facility such as a group home, foster home,
8 treatment foster home, residential care center for children and youth, or juvenile
9 correctional institution shall be determined by the court by using the percentage
10 standard established by the department of workforce development under s. 49.22 (9)
11 method of calculating child support under s. 767.251 and by applying the percentage
12 standard method in the manner established by the department under par. (g).

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

14 301.12 (14) (c) (intro.) Upon request by a parent, the court may modify the
15 amount of child support payments determined under par. (b), subject to par. (cm), if,
16 after considering the following factors, the court finds by the greater weight of the
17 credible evidence that ~~the use of the percentage standard~~ method of calculating child
18 support under s. 767.251 is unfair to the child or to either of the parents:

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

20 301.12 (14) (d) If the court finds under par. (c) that use of the percentage
21 standard method of calculating child support under s. 767.251 is unfair to the minor
22 child or either of the parents, the court shall state in writing or on the record the
23 amount of support that would be required by using the ~~percentage standard~~ method
24 under s. 767.251, the amount by which the court's order deviates from that amount,
25 the court's reasons for finding that use of the ~~percentage standard~~ method under s.

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1 767.251 is unfair to the child or the parent, the court's reasons for the amount of the
2 modification, and the basis for the modification.

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

4 301.12 (14) (g) For purposes of determining child support under par. (b), the
5 department shall promulgate rules related to the application of the ~~standard~~
6 ~~established by the department of workforce development under s. 49.22 (9) method~~
7 under s. 767.251 to a child support obligation for the care and maintenance of a child
8 who is placed by a court order under s. 938.183, 938.355, or 938.357 in a residential,
9 nonmedical facility. The rules shall take into account the needs of any person,
10 including dependent children other than the child, whom either parent is legally
11 obligated to support.

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

13 767.085 (2) (b) The clerk of court shall provide without charge, to each person
14 filing a petition requesting child support, a document setting forth the ~~percentage~~
15 ~~standard established by the department under s. 49.22 (9) method of calculating~~
16 child support under s. 767.251 and listing the factors ~~which~~ that a court may consider
17 under s. 767.25 (1m).

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

19 767.085 (2m) (a) 2. Shall be accompanied by a document, provided without
20 charge by the clerk of court, setting forth the ~~percentage standard established by the~~
21 ~~department under s. 49.22 (9) method of calculating child support under s. 767.251~~
22 and listing the factors ~~which~~ that a court may consider under s. 767.25 (1m).

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

24 767.085 (2m) (b) If service is by publication, notification regarding s. 948.31
25 may consist of references to the statute numbers and titles, and information relating

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1 to the ~~percentage standard~~ method of calculating child support and the factors need
2 not be provided.

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

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

17 **SECTION 20.** 767.25 (1j) of the statutes is amended to read:

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

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

22 767.25 (1m) (intro.) Upon request by a party, the court may modify the amount
23 of child support payments determined under sub. (1j) s. 767.251 if, after considering
24 the following factors, the court finds by the greater weight of the credible evidence

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1 that use of the ~~percentage standard~~ method under s. 767.251 is unfair to the child
2 or to any of the parties:

3 **SECTION 22.** 767.25 (1n) of the statutes is amended to read:

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

12 **SECTION 23.** 767.25 (4c) of the statutes is created to read:

13 767.25 (4c) (a) In an action in which the court orders a parent to pay child
14 support, the court shall assign responsibility for payment of reasonable child care
15 expenses that are necessary to allow a parent to work or attend school. Each parent
16 shall be required to contribute to child care expenses in the same proportion as his
17 or her gross monthly income determined under s. 767.251 (1) bears to the combined
18 gross monthly income of the 2 parents.

19 (b) In an action in which the court calculates child support payments under s.
20 767.251 (4) (b), the court shall order each parent to pay the child's day-to-day
21 expenses during the time that the parent has physical placement with the child, and
22 shall order the parents to share the reasonable variable expenses of the child, such
23 as tuition, activity fees, and the cost of school books and clothing, in the same
24 proportion as the court determines each parent has physical placement with the
25 child under s. 767.251 (2).

BILL**SECTION 24**

1 **SECTION 24.** 767.25 (4m) (b) of the statutes is amended to read:

2 767.25 (4m) (b) In addition to ordering child support for a child under sub. (1),
3 the court shall specifically assign responsibility for and direct the manner of
4 payment of the child's health care expenses, including health insurance premiums,
5 cost sharing under any health insurance policy or plan, and health care expenses not
6 covered by insurance. Each parent shall be required to contribute to the child's
7 health care expenses in the same proportion as his or her gross monthly income
8 determined under s. 767.251 (1) bears to the combined gross monthly income of the
9 2 parents. In assigning responsibility for a child's health care expenses, the court
10 shall consider whether a child is covered under a parent's health insurance policy or
11 plan at the time the court approves a stipulation for child support under s. 767.10,
12 enters a judgment of annulment, divorce, or legal separation, or enters an order or
13 a judgment in a paternity action or in an action under s. 767.02 (1) (f) or (j), 767.08,
14 or 767.62 (3); the availability of health insurance to each parent through an
15 employer or other organization; the extent of coverage available to a child; and the
16 costs to the parent for the coverage of the child. A parent may be required to initiate
17 or continue health care insurance coverage for a child under this subsection. If a
18 parent is required to do so, he or she shall provide copies of necessary program or
19 policy identification to the custodial parent and is liable for any health care costs for
20 which he or she receives direct payment from an insurer. This subsection shall not
21 be construed to limit the authority of the court to enter or modify support orders
22 containing provisions for payment of medical expenses, medical costs, or insurance
23 premiums which are in addition to and not inconsistent with this subsection.

24 **SECTION 25.** 767.251 of the statutes is created to read:

BILL

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

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

5 1. Subject to par. (b), all personal income considered gross income for federal
6 income tax purposes.

7 2. Net proceeds from worker's compensation or other personal injury awards
8 intended to replace income.

9 3. Income continuation benefits.

10 4. Voluntary deferred compensation or employee contributions to a
11 profit-sharing or pension account.

12 5. Military allowances and veterans benefits.

13 6. Undistributed income from a closely held corporation if all of the following
14 apply:

15 a. The parent has a majority interest in the corporation.

16 b. The parent may exercise control over, or access the earnings of, the
17 corporation.

18 7. Tax-exempt interest.

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

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

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

23 (c) The court shall subtract from income all of the following:

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

BILL

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

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

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

7 (d) The court shall include as income wages paid by the parent to a member of
8 the parent's household that the court determines were paid for the purpose of
9 diverting income to avoid paying child support.

10 (e) If the court determines that a party has encumbered, concealed, damaged,
11 destroyed, transferred, or otherwise disposed of property for the purpose of avoiding
12 payment of child support, or that child support based on the gross incomes of the
13 parties will not adequately provide for the child and that the parties have
14 nonproductive assets, the court may impute income to one or both parents from such
15 property or assets by multiplying the value of the property or asset by the current
16 6-month treasury bill interest rate and including the amount obtained in the gross
17 income of the appropriate parent.

18 (f) If the court determines that a parent is able and available to work, that
19 employment opportunities exist in the parent's community for which the parent is
20 qualified, and that the parent is not working at least 40 hours per week, the court
21 shall impute to the parent a gross income based on a 40-hour work week, the parent's
22 educational attainment and work experience, and the type of employment
23 opportunities in the parent's community for which the parent is qualified.

24 (2) AMOUNT OF PHYSICAL PLACEMENT. (a) For the purpose of determining child
25 support payments under sub. (4), the court shall determine the amount of

BILL

1 court-ordered physical placement that a parent has on the basis of the number of
2 overnights or equivalent overnights that the parent provides care for the child. The
3 court may consider as an equivalent overnight a period of time during which a parent
4 cares for a child that is not overnight but which requires the parent to assume
5 support costs that are substantially equivalent to what the parent would spend to
6 care for the child overnight.

7 (b) After making any adjustments necessary to ensure that the total number
8 of overnights or equivalent overnights in a year that the parents have physical
9 placement with the child equals 365, the court shall determine the number and
10 percentage of the 365 overnights or equivalent overnights in a year that each parent
11 has physical placement with the child, and shall make any adjustments necessary
12 to ensure that the total of those percentages equals 100%.

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

16 (a) If the combined gross monthly income of the 2 parents is equal to or less than
17 \$4,000, the gross monthly child support obligation of each parent equals the
18 following percentage of that parent's gross monthly income:

- 19 1. If there is one minor child, 17%.
- 20 2. If there are 2 minor children, 25%.
- 21 3. If there are 3 minor children, 29%.
- 22 4. If there are 4 minor children, 31%.
- 23 5. If there are 5 or more minor children, 34%.

BILL

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

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

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

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

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

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

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

16 2. The gross monthly child support obligation of each parent equals that
17 parent's percentage of the combined gross income of the 2 parents multiplied by the
18 applicable combined gross monthly child support obligation amount under subd. 1.

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

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

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

BILL

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

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

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

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

9 2. The gross monthly child support obligation of each parent equals that
10 parent's percentage of the combined gross income of the 2 parents multiplied by the
11 applicable combined gross monthly child support obligation amount under subd. 1.

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

16 1. If the number of other children the parent is obligated to support is one, 90%.

17 2. If the number of other children the parent is obligated to support is 2, 85%.

18 3. If the number of other children the parent is obligated to support is 3, 80%.

19 4. If the number of other children the parent is obligated to support is 4 or more,
20 75%.

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

23 (a) *In primary placement cases.* If the court grants periods of physical
24 placement to only one parent, or if the court grants periods of physical placement to
25 both parents but one parent has physical placement with the child for fewer than 92

BILL

1 overnights or equivalent overnights in a year, the parent with less or no physical
2 placement shall pay to the other parent the gross monthly child support obligation
3 determined for that payer parent under sub. (3).

4 (b) *In shared placement cases.* If the court grants periods of physical placement
5 to both parents and each parent has physical placement with the child for at least
6 92 overnights or equivalent overnights in a year, the court shall determine child
7 support payments in the following manner:

8 1. Each parent's gross monthly child support obligation determined under sub.
9 (3) shall be multiplied by 1.5 and by the other parent's percentage of physical
10 placement determined under sub. (2) (b). The product under this subdivision for each
11 parent is that parent's net monthly child support obligation.

12 2. Except as provided in subd. 3., the parent with the greater net monthly child
13 support obligation under subd. 1. shall pay as child support, to the parent with the
14 smaller net monthly child support obligation under subd. 1., the difference between
15 those net monthly child support obligations.

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

20 (c) *In 3rd-party placement cases.* If a child is placed outside his or her home
21 in a residential, nonmedical facility, the child support obligation of each parent shall
22 be his or her gross monthly child support obligation, as determined under sub. (3).

23 (d) *In split placement cases.* If there is more than one child, if the amount of
24 physical placement that a parent has with one or more of the children is not the same
25 as the amount that the parent has with one or more of the other children, and if the

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1 court determines that each parent is required to pay child support to the other parent
2 under par. (a) or (b) 2. or 3., the court shall require only the parent who is required
3 to pay the greater amount to pay child support, and to pay only the difference in the
4 amounts, to the other parent.

5 **SECTION 26.** 767.295 (2) (c) of the statutes is amended to read:

6 767.295 (2) (c) If the court enters an order under par. (a), it shall order the
7 parent to pay child support equal to the amount determined by applying the
8 ~~percentage standard established under s. 49.22 (9)~~ method under s. 767.251 to the
9 income a person would earn by working 40 hours per week for the federal minimum
10 hourly wage under 29 USC 206 (a) (1) or equal to the amount of child support that
11 the parent was ordered to pay in the most recent determination of support under this
12 chapter. The child support obligation ordered under this paragraph continues until
13 the parent makes timely payment in full for 3 consecutive months or until the person
14 participates in the program under s. 49.36 for 16 weeks, whichever comes first. The
15 court shall provide in its order that the parent must make child support payments
16 calculated under s. 767.25 ~~(1j) or (1m)~~ or 767.251 after the obligation to make
17 payments ordered under this paragraph ceases.

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

19 767.32 (1) (b) 2. ~~Unless the amount of child support is expressed in the~~
20 ~~judgment or order as a percentage of parental income, the~~ The expiration of 33
21 months after the date of the entry of the last child support order, including a revision
22 of a child support order under this section, if the amount of child support under the
23 revised order by using the method of calculating child support under s. 767.251 will
24 differ from the amount under the last order by at least 20% of the amount under the
25 last order or by at least \$60 per month.

BILL

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

2 767.32 (1) (b) 4. ~~A~~ If the action in which the court most recently ordered child
3 support, including a revision of a child support order under this section, was
4 commenced before the effective date of this subdivision [revisor inserts date], a
5 difference between the amount of child support ordered by the court to be paid by the
6 payer and the amount that the payer would have been required to pay based on the
7 percentage standard established by the department under s. 49.22 (9), 2001 stats.,
8 if the court did not use the percentage standard in determining the child support
9 payments and did not provide the information required under s. 46.10 (14) (d), 301.12
10 (14) (d), or 767.25 (1n), whichever is appropriate.

11 **SECTION 29.** 767.32 (1) (b) 5. of the statutes is created to read:

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

21 **SECTION 30.** 767.32 (2) of the statutes is amended to read:

22 767.32 (2) 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.

BILL

1 **SECTION 31.** 767.32 (2m) of the statutes is amended to read:

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

7 **SECTION 32.** 767.33 (1) (a) of the statutes is amended to read:

8 767.33 (1) (a) An order for child or family support under this chapter may
9 provide for an annual adjustment in the amount to be paid based on a change in the
10 payer's income if the amount of child or family support is expressed in the order as
11 a fixed sum and based on the ~~percentage standard established by the department~~
12 under s. 49.22 (9) method of calculating child support under s. 767.251. No
13 adjustment may be made under this section unless the order provides for the
14 adjustment.

15 **SECTION 33.** 767.33 (1) (b) of the statutes is amended to read:

16 767.33 (1) (b) An adjustment under this section may not be made more than
17 once in a year and shall be determined on the basis of the ~~percentage standard~~
18 established by the department under s. 49.22 (9) method of calculating child support
19 under s. 767.251.

20 **SECTION 34.** 767.45 (7) of the statutes is amended to read:

21 767.45 (7) The clerk of court shall provide without charge, to each person
22 bringing an action under this section, except to the state under sub. (1) (g) or ~~(h)~~, (6),
23 (6m), or (6r), a document setting forth the ~~percentage standard established by the~~
24 department under s. 49.22 (9) method of calculating child support under s. 767.251
25 and listing the factors ~~which~~ that a court may consider under s. 767.25 (1m).

BILL

1 **SECTION 35.** 767.455 (6) of the statutes is amended to read:

2 767.455 (6) DOCUMENT. The summons served on the respondent shall be
3 accompanied by a document, provided without charge by the clerk of court, setting
4 forth the ~~percentage standard established by the department under s. 49.22 (9)~~
5 method of calculating child support under s. 767.251 and listing the factors which
6 that a court may consider under s. 767.25 (1m).

7 **SECTION 36.** 767.477 (2) of the statutes is amended to read:

8 767.477 (2) Before making any temporary order under sub. (1), the court shall
9 consider those factors that the court is required to consider when granting a final
10 judgment on the same subject matter. If the court makes a temporary child support
11 order that deviates from the amount of support that would be required by using the
12 ~~percentage standard established by the department under s. 49.22 (9)~~ method of
13 calculating child support under s. 767.251, the court shall comply with the
14 requirements of s. 767.25 (1n).

15 **SECTION 37.** 938.30 (6) (b) of the statutes is amended to read:

16 938.30 (6) (b) If it appears to the court that disposition of the case may include
17 placement of the juvenile outside the juvenile's home, the court shall order the
18 juvenile's parent to provide a statement of income, assets, debts, and living expenses
19 to the court or the designated agency under s. 938.33 (1) at least 5 days before the
20 scheduled date of the dispositional hearing or as otherwise ordered by the court. The
21 clerk of court shall provide, without charge, to any parent ordered to provide a
22 statement of income, assets, debts, and living expenses a document setting forth the
23 ~~percentage standard established by the department of workforce development under~~
24 ~~s. 49.22 (9)~~ method of calculating child support under s. 767.251 and listing the
25 factors that a court may consider under s. 301.12 (14) (c).

BILL

1 **SECTION 38.** 938.31 (7) (b) of the statutes is amended to read:

2 938.31 (7) (b) If it appears to the court that disposition of the case may include
3 placement of the juvenile outside the juvenile's home, the court shall order the
4 juvenile's parent to provide a statement of income, assets, debts, and living expenses
5 to the court or the designated agency under s. 938.33 (1) at least 5 days before the
6 scheduled date of the dispositional hearing or as otherwise ordered by the court. The
7 clerk of court shall provide, without charge, to any parent ordered to provide a
8 statement of income, assets, debts, and living expenses a document setting forth the
9 ~~percentage standard established by the department of workforce development under~~
10 ~~s. 49.22 (9) method of calculating child support under s. 767.251~~ and listing the
11 factors that a court may consider under s. 301.12 (14) (c).

12 **SECTION 39.** 938.33 (4m) (intro.) of the statutes is amended to read:

13 938.33 (4m) SUPPORT RECOMMENDATIONS; INFORMATION TO PARENTS. (intro.) In
14 making a recommendation for an amount of child support under sub. (3) or (4), the
15 agency shall consider the factors that the court considers under s. 301.12 (14) (c) for
16 deviation from the ~~percentage standard~~ method of calculating child support under
17 s. 767.251. At or before the dispositional hearing under s. 938.335, the agency shall
18 provide the juvenile's parent with all of the following:

19 **SECTION 40.** 938.357 (5m) (a) of the statutes is amended to read:

20 938.357 (5m) (a) If a proposed change in placement changes a juvenile's
21 placement from a placement in the juvenile's home to a placement outside the
22 juvenile's home, the court shall order the juvenile's parent to provide a statement of
23 income, assets, debts, and living expenses to the court or the person or agency
24 primarily responsible for implementing the dispositional order by a date specified by
25 the court. The clerk of court shall provide, without charge, to any parent ordered to

BILL**SECTION 40**

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 the
5 juvenile is placed outside the juvenile's home, the court shall determine the liability
6 of the parent in the manner provided in s. 301.12 (14).

7 **SECTION 41.** 938.363 (1) (c) of the statutes is amended to read:

8 938.363 (1) (c) If the proposed revision is for a change in the amount of child
9 support to be paid by a parent, the court shall order the juvenile's parent to provide
10 a statement of income, assets, debts, and living expenses to the court and the person
11 or agency primarily responsible for implementing the dispositional order by a date
12 specified by the court. The clerk of court shall provide, without charge, to any parent
13 ordered to provide a statement of income, assets, debts, and living expenses a
14 document setting forth the ~~percentage standard established by the department of~~
15 ~~workforce development under s. 49.22 (9) method of calculating child support under~~
16 ~~s. 767.251~~ and listing the factors that a court may consider under s. 301.12 (14) (c).

17 **SECTION 42.** 948.22 (4) (b) of the statutes is amended to read:

18 948.22 (4) (b) For a person not subject to a court order requiring child,
19 grandchild, or spousal support payments, when the person knows or reasonably
20 should have known that he or she has a dependent, failure to provide support equal
21 to at least the amount established by ~~rule by the department of workforce~~
22 ~~development under s. 49.22 (9) the method of calculating child support under s.~~
23 ~~767.251~~ or causing a spouse, grandchild, or child to become a dependent person, or
24 continue to be a dependent person, as defined in s. 49.01 (2).

25 **SECTION 43.** 948.22 (7) (bm) of the statutes is amended to read:

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

2486/1dn
LRB-11073dn
PJK:jls
↑
JL

March 3, 2003

This bill draft is the companion you requested to LRB-1107/3. The

~~language in s. 767.251 (2) and (4) (a) and (b) (intro.)~~ language in s. 767.251 (2) and (4) (a) and (b) (intro.) related to overnights and equivalent overnights is problematic and will certainly result in much inconsistency among courts, but ~~insisted~~ insisted that the language be included in its present form. The language appears to set out a precise method for courts to use in determining the percentage of physical placement that each parent has with a child, but uses imprecise terms so that it is unclear how a court is supposed to implement the method. For example, a court is supposed to determine what percentage each parent has of precisely 365 overnights or equivalent overnights in a year, but it is unclear whether the court may use both overnights and equivalent overnights or only one or the other. The bill specifies what the court may consider as an equivalent overnight but, presumably, the court is free to come up with other measures if it chooses to use equivalent overnights. If a court uses both overnights and equivalent overnights, it is unclear how the court is supposed to reduce the total number to 365 since there is a potential for at least one overnight and one equivalent overnight each day of the year, producing a total of 730. In at least some situations it will be unclear which of s. 767.251 (4) (a) or (b) the court is supposed to use for determining the support amount. For example, if the court uses both overnights and equivalent overnights and determines that a parent has 68 overnights and 41 equivalent overnights in a year, does the court use s. 767.251 (4) (a) or (b) for determining child support? You could argue that the parent has fewer than 92 overnights and fewer than 92 equivalent overnights, so the court must use s. 767.251 (4) (a). On the other hand, you could argue that the parent has at least 92 overnights or equivalent overnights in total so the court must use s. 767.251 (4) (b) for determining support.

the constituent who proposed the draft

Perhaps the intent of the language is to give courts discretion within the confines of what is clear in the bill. If so, that has been achieved, although you will certainly end up with inconsistent support awards among similarly situated individuals. You could let the committee process work out the kinks, and it is always possible that no one else will find the language unclear or confusing, but if I am asked how a court is supposed to interpret the language I will have to say that I do not know.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2486/1dn
PJK:jld:jf

April 8, 2003

This bill draft is the companion you requested to LRB-1107/3. The language in s. 767.251 (2) and (4) (a) and (b) (intro.) related to overnights and equivalent overnights is problematic and will certainly result in much inconsistency among courts, but the constituent who proposed the draft insisted that the language be included in its present form. The language appears to set out a precise method for courts to use in determining the percentage of physical placement that each parent has with a child, but uses imprecise terms so that it is unclear how a court is supposed to implement the method. For example, a court is supposed to determine what percentage each parent has of precisely 365 overnights *or* equivalent overnights in a year, but it is unclear whether the court may use both overnights and equivalent overnights or only one or the other. The bill specifies what the court *may* consider as an equivalent overnight but, presumably, the court is free to come up with other measures if it chooses to use equivalent overnights. If a court uses both overnights and equivalent overnights, it is unclear how the court is supposed to reduce the total number to 365 since there is a potential for at least one overnight and one equivalent overnight each day of the year, producing a total of 730. In at least some situations it will be unclear which of s. 767.251 (4) (a) or (b) the court is supposed to use for determining the support amount. For example, if the court uses both overnights and equivalent overnights and determines that a parent has 68 overnights and 41 equivalent overnights in a year, does the court use s. 767.251 (4) (a) or (b) for determining child support? You could argue that the parent has fewer than 92 overnights *and* fewer than 92 equivalent overnights, so the court must use s. 767.251 (4) (a). On the other hand, you could argue that the parent has at least 92 overnights or equivalent overnights in total so the court must use s. 767.251 (4) (b) for determining support.

Perhaps the intent of the language is to give courts discretion within the confines of what *is* clear in the bill. If so, that has been achieved, although you will certainly end up with inconsistent support awards among similarly situated individuals. You could let the committee process work out the kinks, and it is always possible that no one else will find the language unclear or confusing, but if I am asked how a court is supposed to interpret the language I will have to say that I do not know.

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