

2003 DRAFTING REQUEST

Bill

Received: **04/07/2003**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Carol Roessler (608) 266-5300**

By/Representing: **Sara Jermstad**

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.Roessler@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Miscellaneous modifications related to establishing child support

Instructions:

See Attached

Drafting History:

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/?	pkahler 04/07/2003	kgilfoy 04/07/2003		_____			
/P1			rschluet 04/07/2003	_____	lemery 04/07/2003		
/P2	pkahler	kgilfoy	pgreensl	_____	sbasford		

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/1	pkahler 07/16/2003	kfollett 07/16/2003	chaskett 07/16/2003	_____	lemery 07/16/2003		
/2	pkahler 08/05/2003	kfollett 08/08/2003	chaugen 08/11/2003	_____	sbasford 08/11/2003		
	pkahler 08/18/2003	kgilfoy 08/19/2003		_____			
/3			pgreensl 08/19/2003	_____	sbasford 08/19/2003	lemery 08/29/2003	

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KMG*

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11 kgf
7/16

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1?	pkahler	1/1-4/7 Kmg					

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4.7.3
<END>

4-7

Sarah Jernsted - Sen. Lesesle

for DWD, combine into one draft
the following drafts that were
proposed for the budget:

0017/P1 (was not modified for P2)

0018/P1 (was not modified for 1)

0021/P2 was not modified through

2003

Date (time) needed _____

LRB - 2485, P1

BILL

D-note

PJK : fmg.

Use the appropriate components and routines developed for bills.

AN ACT ... [generate catalog] *to repeal ... ; to renumber ... ; to consolidate and renumber ... ; to renumber and amend ... ; to consolidate, renumber and amend ... ; to amend ... ; to repeal and recreate ... ; and to create ...* of the statutes; relating to: *use of the percentage standard in special cases, considering income disparity when establishing support, and information in family action petition.*

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

Analysis by the Legislative Reference Bureau

If titles are needed in the analysis, in the component bar:

For the main heading, execute: create → anal: → title: → head

For the subheading, execute: create → anal: → title: → sub

For the sub-subheading, execute: create → anal: → title: → sub-sub

For the analysis text, in the component bar:

For the text paragraph, execute: create → anal: → text

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

SECTION #.





State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-0021/P2

PJK:kmg:jf

DOA:.....Fath – BB0187, Clarify that percentage standard is permissive in certain cases

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

the Department of Workforce Development (DWD)

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

CHILDREN

Under current law, ~~the~~ must promulgate rules that provide a standard for courts to use in determining child support based on a percentage of a parent's gross income. This standard is called the percentage standard, and it requires a payer to pay a specific percentage of his or her gross income as child support. The specific percentage depends on the number of children to be supported. ~~Insert A -~~

The statute that requires DWD to establish the percentage standard by administrative rule also requires those rules to provide for consideration of each parent's income and physical placement with the child in determining child support in cases in which both parents have substantial physical placement with the child. Thus, in addition to the percentage standard, the rules set out a special method that may be used to calculate child support payments, based on adjustments to the percentage standard to fit the specific circumstance, if the payer provides care for the child at least 31% of the time (shared-time payer), already has a legal obligation to pay support for one or more children from a previous marriage or other relationship (serial-family payer), or has at least two children and cares for at least one, but not all, of the children for more time than the other parent (split-custody payer).

Current law requires a court to use the percentage standard in determining child support in divorces, paternity actions, and other actions affecting the family in which child support is ordered, as well as when a child is placed in a residential, nonmedical facility, such as a group home, foster home, or juvenile correctional institution. The court may, however, modify the amount of child support that it would order by using the percentage standard if the court finds that use of the percentage standard is unfair to the child or to either of the parties after considering a number of factors, such as the earning capacity of each parent, the needs of any other person whom a parent is legally obligated to support, the child's educational needs, and the physical, emotional, and mental health needs of the child. If the court does modify the amount of child support, the court must state in writing or on the record the amount of support that would be required if the percentage standard were used, the amount by which the court's order deviates from that amount, its reasons for finding that the use of the percentage standard is unfair, the reason for the amount of the modification, and the basis for the modification.

In *In re Marriage of Randall v. Randall*, 2000 WI App 98, 235 Wis. 2d 1, 612 N.W. 2d 737, the Wisconsin Court of Appeals decided that, even though the administrative rule setting out the special method for calculating child support for shared-time, serial-family, and split-custody payers is permissive in the rule, a court is required to use the special method if the payer is a shared-time, serial-family, or split-custody payer because the special method is part of the percentage standard, which the court is required to use under the statute. This bill reverses that decision.

Under the bill, DWD is required to establish the percentage standard by rule and authorized to provide by rule for adjustments to the percentage standard that a court may, in its discretion, use for determining support in cases in which both parents have substantial physical placement with the child or in which a parent has a preexisting obligation to support a child. The bill authorizes, but does not require, a court to modify the amount of child support that it would order if it used the percentage standard by using the special method of calculating child support set out in the rule if both parents have substantial physical placement with the child or a parent has a preexisting obligation to support a child. If the court uses the special method set out in the rule, the court is not required to consider the factors that are specified in current law for deviating from the percentage standard on the basis of finding that its use is unfair to the child or either party and is not required to state in writing or on the record the amount of support that would be required if the percentage standard were used, the amount by which the court's order deviates from that amount, its reasons for the amount of the modification, or the basis for the modification.

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:

1 46.10 (14) (b) Except as provided in par. (c) and subject to par. (cm), liability
2 of a parent specified in sub. (2) or s. 46.03 (18) for the care and maintenance of the
3 parent's minor child who has been placed by a court order under s. 48.355 or 48.357
4 in a residential, nonmedical facility such as a group home, foster home, treatment
5 foster home, or residential care center for children and youth shall be determined by
6 the court by using the percentage standard established by the department of
7 workforce development under s. 49.22 (9) (a) and by applying the percentage
8 standard in the manner established by the department under s. 46.247.

9 **SECTION 2.** 46.247 of the statutes is amended to read:

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

18 **SECTION 3.** 48.30 (6) (b) of the statutes is amended to read:

19 48.30 (6) (b) If it appears to the court that disposition of the case may include
20 placement of the child outside the child's home, the court shall order the child's
21 parent to provide a statement of income, assets, debts, and living expenses to the
22 court or the designated agency under s. 48.33 (1) at least 5 days before the scheduled
23 date of the dispositional hearing or as otherwise ordered by the court. The clerk of
24 court shall provide, without charge, to any parent ordered to provide a statement of
25 income, assets, debts, and living expenses a document setting forth the percentage

1 standard established by the department of workforce development under s. 49.22 (9)
2 (a) and the manner of its application established by the department of health and
3 family services under s. 46.247 and listing the factors that a court may consider
4 under s. 46.10 (14) (c).

5 **SECTION 4.** 48.31 (7) (b) of the statutes is amended to read:

6 48.31 (7) (b) If it appears to the court that disposition of the case may include
7 placement of the child outside the child's home, the court shall order the child's
8 parent to provide a statement of income, assets, debts, and living expenses to the
9 court or the designated agency under s. 48.33 (1) at least 5 days before the scheduled
10 date of the dispositional hearing or as otherwise ordered by the court. The clerk of
11 court shall provide, without charge, to any parent ordered to provide a statement of
12 income, assets, debts, and living expenses a document setting forth the percentage
13 standard established by the department of workforce development under s. 49.22 (9)
14 (a) and the manner of its application established by the department of health and
15 family services under s. 46.247 and listing the factors that a court may consider
16 under s. 46.10 (14) (c).

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

18 48.357 (5m) (a) If a proposed change in placement changes a child's placement
19 from a placement in the child's home to a placement outside the child's home, the
20 court shall order the child's parent to provide a statement of income, assets, debts,
21 and living expenses to the court or the person or agency primarily responsible for
22 implementing the dispositional order by a date specified by the court. The clerk of
23 court shall provide, without charge, to any parent ordered to provide a statement of
24 income, assets, debts, and living expenses a document setting forth the percentage
25 standard established by the department of workforce development under s. 49.22 (9)

1 (a) and the manner of its application established by the department of health and
2 family services under s. 46.247 and listing the factors that a court may consider
3 under s. 46.10 (14) (c). If the child is placed outside the child's home, the court shall
4 determine the liability of the parent in the manner provided in s. 46.10 (14).

5 SECTION 6. 48.363 (1) (c) of the statutes is amended to read:

6 48.363 (1) (c) If the proposed revision is for a change in the amount of child
7 support to be paid by a parent, the court shall order the child's parent to provide a
8 statement of income, assets, debts, and living expenses to the court and the person
9 or agency primarily responsible for implementing the dispositional order by a date
10 specified by the court. The clerk of court shall provide, without charge, to any parent
11 ordered to provide a statement of income, assets, debts, and living expenses a
12 document setting forth the percentage standard established by the department of
13 workforce development under s. 49.22 (9) (a) and the manner of its application
14 established by the department of health and family services under s. 46.247 and
15 listing the factors that a court may consider under s. 46.10 (14) (c).

16 SECTION 7. 49.22 (9) of the statutes is amended to read:

17 49.22 (9) (a) The department shall promulgate rules that provide a standard
18 for courts to use in determining a child support obligation based upon a percentage
19 of the gross income and assets of either or both parents.

20 (b) The department may promulgate rules shall that provide for consideration
21 of the income of each parent and the amount of physical placement with each parent
22 adjustments to the standard promulgated under par. (a) that a court, in its
23 discretion, may use in determining a child support obligation in cases in which a
24 child has substantial periods of physical placement with each parent or in which a
25 parent has a preexisting obligation to support a child.

1 **SECTION 8.** 301.12 (14) (b) of the statutes is amended to read:

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

11 **SECTION 9.** 301.12 (14) (g) of the statutes is amended to read:

12 301.12 (14) (g) For purposes of determining child support under par. (b), the
13 department shall promulgate rules related to the application of the standard
14 established by the department of workforce development under s. 49.22 (9) (a) to a
15 child support obligation for the care and maintenance of a child who is placed by a
16 court order under s. 938.183, 938.355, or 938.357 in a residential, nonmedical facility.
17 The rules shall take into account the needs of any person, including dependent
18 children other than the child, whom either parent is legally obligated to support.

19 **SECTION 10.** 767.085 (2) (b) of the statutes is amended to read:

20 767.085 (2) (b) The clerk of court shall provide without charge, to each person
21 filing a petition requesting child support, a document setting forth the percentage
22 standard established by the department under s. 49.22 (9) (a) and listing the factors
23 ~~which~~ that a court may consider under s. 767.25 (1m) and (1r).

24 **SECTION 11.** 767.085 (2m) (a) 2. of the statutes is amended to read:

Insert 6-18

1 767.085 (2m) (a) 2. Shall be accompanied by a document, provided without
2 charge by the clerk of court, setting forth the percentage standard established by the
3 department under s. 49.22 (9) (a) and listing the factors ~~which~~ that a court may
4 consider under s. 767.25 (1m) and (1r).

5 **SECTION 12.** 767.23 (1n) of the statutes is amended to read:

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

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

20 767.25 (1j) Except as provided in ~~sub.~~ subs. (1m) and (1r), the court shall
21 determine child support payments by using the percentage standard established by
22 the department under s. 49.22 (9) (a).

23 **SECTION 14.** 767.25 (1r) of the statutes is created to read:

24 767.25 (1r) Notwithstanding sub. (1m), in cases in which a child has
25 substantial periods of physical placement with each parent or in which a parent has

Insert 7-22

1 a preexisting obligation to support a child, upon request by a party or on its own
2 motion, the court may modify the amount of child support payments determined
3 under sub. (1j) in the manner provided by rule under s. 49.22 (9) (b). The court is not
4 required to provide the information specified in sub. (1n) if the court determines child
5 support payments under this subsection.

6 **SECTION 15.** 767.295 (2) (c) of the statutes is amended to read:

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

19 **SECTION 16.** 767.32 (1) (b) 4. of the statutes is amended to read:

20 767.32 (1) (b) 4. A difference between the amount of child support ordered by
21 the court to be paid by the payer and the amount that the payer would have been
22 required to pay based on the percentage standard established by the department
23 under s. 49.22 (9) (a), or based on the method of calculating child support under s.
24 767.25 (1r), if the court did not use the percentage standard or the method under s.
25 767.25 (1r) in determining the child support payments and did not provide the

1 information required under s. 46.10 (14) (d), 301.12 (14) (d), or 767.25 (1n), whichever
2 is appropriate.

3 **SECTION 17.** 767.32 (2) of the statutes is amended to read:

4 767.32 (2) Except as provided in sub. (2m) or (2r), if the court revises a
5 judgment or order with respect to child support payments, it shall do so by using the
6 percentage standard established by the department under s. 49.22 (9) (a).

7 **SECTION 18.** 767.32 (2m) of the statutes is renumbered 767.32 (2m) (a).

8 **SECTION 19.** 767.32 (2m) (b) of the statutes is created to read:

9 767.32 (2m) (b) Notwithstanding par. (a), in cases in which a child has
10 substantial periods of physical placement with each parent or in which a parent has
11 a preexisting obligation to support a child, upon request by a party or on its own
12 motion, the court may modify the amount of child support payments determined
13 under sub. (2) in the manner provided by rule under s. 49.22 (9) (b). The court is not
14 required to provide the information specified in s. 767.25 (1n) if the court determines
15 child support payments under this paragraph.

16 **SECTION 20.** 767.33 (1) (a) of the statutes is amended to read:

17 767.33 (1) (a) An order for child or family support under this chapter may
18 provide for an annual adjustment in the amount to be paid based on a change in the
19 payer's income if the amount of child or family support is expressed in the order as
20 a fixed sum and based on the percentage standard established by the department
21 under s. 49.22 (9) (a). No adjustment may be made under this section unless the
22 order provides for the adjustment.

23 **SECTION 21.** 767.33 (1) (b) of the statutes is amended to read:

1 767.33 (1) (b) An adjustment under this section may not be made more than
2 once in a year and shall be determined on the basis of the percentage standard
3 established by the department under s. 49.22 (9) (a).

4 **SECTION 22.** 767.45 (7) of the statutes is amended to read:

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

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

11 767.455 (6) DOCUMENT. The summons served on the respondent shall be
12 accompanied by a document, provided without charge by the clerk of court, setting
13 forth the percentage standard established by the department under s. 49.22 (9) (a)
14 and listing the factors ~~which~~ that a court may consider under s. 767.25 (1m) and (1r).

15 **SECTION 24.** 767.477 (2) of the statutes is amended to read:

16 767.477 (2) Before making any temporary order under sub. (1), the court shall
17 consider those factors that the court is required to consider when granting a final
18 judgment on the same subject matter. If the court makes a temporary child support
19 order that deviates from the amount of support that would be required by using the
20 percentage standard established by the department under s. 49.22 (9) (a) or by using
21 the method of calculating child support under in s. 767.25 (1r), the court shall comply
22 with the requirements of s. 767.25 (1n).

23 **SECTION 25.** 938.30 (6) (b) of the statutes is amended to read:

24 938.30 (6) (b) If it appears to the court that disposition of the case may include
25 placement of the juvenile outside the juvenile's home, the court shall order the

1 juvenile's parent to provide a statement of income, assets, debts, and living expenses
2 to the court or the designated agency under s. 938.33 (1) at least 5 days before the
3 scheduled date of the dispositional hearing or as otherwise ordered by the court. The
4 clerk of court shall provide, without charge, to any parent ordered to provide a
5 statement of income, assets, debts, and living expenses a document setting forth the
6 percentage standard established by the department of workforce development under
7 s. 49.22 (9) (a) and listing the factors that a court may consider under s. 301.12 (14)
8 (c).

9 **SECTION 26.** 938.31 (7) (b) of the statutes is amended to read:

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

20 **SECTION 27.** 938.357 (5m) (a) of the statutes is amended to read:

21 938.357 (5m) (a) If a proposed change in placement changes a juvenile's
22 placement from a placement in the juvenile's home to a placement outside the
23 juvenile's home, the court shall order the juvenile's parent to provide a statement of
24 income, assets, debts, and living expenses to the court or the person or agency
25 primarily responsible for implementing the dispositional order by a date specified by

1 the court. The clerk of court shall provide, without charge, to any parent ordered to
2 provide a statement of income, assets, debts, and living expenses a document setting
3 forth the percentage standard established by the department of workforce
4 development under s. 49.22 (9) (a) and listing the factors that a court may consider
5 under s. 301.12 (14) (c). If the juvenile is placed outside the juvenile's home, the court
6 shall determine the liability of the parent in the manner provided in s. 301.12 (14).

7 **SECTION 28.** 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) (a) and listing the factors that a court may
16 consider under s. 301.12 (14) (c).

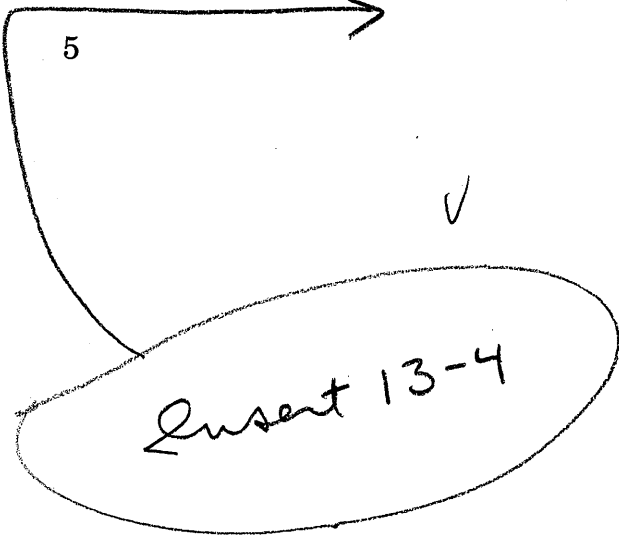
17 **SECTION 28.59. Initial applicability ~~workforce development~~**

18 (1) CALCULATING CHILD SUPPORT IN SPECIAL CIRCUMSTANCES. The treatment of
19 sections 767.23 (1n), 767.25 (1j) and (1r), 767.295 (2) (c), 767.32 (1) (b) 4., and 767.477
20 (2) of the statutes, the renumbering of section 767.32 (2m) of the statutes, and the
21 creation of section 767.32 (2m) (b) of the statutes first apply to child support orders
22 that are granted on the effective date of this subsection, including orders in actions
23 or proceedings to modify a judgment or order that was granted before the effective
24 date of this subsection.

1 (2) PERCENTAGE STANDARD DOCUMENT LISTING DEVIATION FACTORS. The treatment
2 of sections 767.085 (2) (b) and (2m) (a) 2., 767.45 (7), and 767.455 (6) of the statutes
3 first applies to actions commenced on the first day of the 7th month beginning after
4 publication.

5

(END)



D-note



DOA:.....Fath – BB0186, Require consideration of income disparity when establishing support

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

OTHER HEALTH AND HUMAN SERVICES

Under current law, in divorces, paternity actions, and other actions affecting the family in which child support is ordered, the court must determine child support payments by using the percentage standard established by administrative rule by DWD. The percentage standard is a percentage of the payer's gross monthly income and 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.

insert A-1 ✓

^a Under ~~the statute~~, a court may, upon the request of a party, modify the amount of child support that would be ordered by using the percentage standard if the court, after considering a number of factors, finds that use of the percentage standard is unfair to the child or to either of the parties. Among the factors under current law that the court must consider are the financial resources and earning capacity of each parent. This bill adds that the court must also consider the standards of living of both parents, including any significant disparity between the gross incomes or earning capacities of the parents. This addition is intended to address the decision in *Luciani v. Montemurro-Luciani*, 199 Wis. 2d 280, 544 N.W. 2d 561 (1996), which some

current law

insert A-1 ✓

↓ contd

insert A-2 cont'd (2 of 2)

*Ins.
A-2
cont'd*

perceive as unfair to the child support payer. In that case, the parent with less physical placement with the couple's two children and whose income was much lower than the income of the parent with more physical placement was ordered to pay child support in the amount determined by using the percentage standard without any modification based on the payee's significantly higher income.

(end of ins A-2)

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

insert 7-22c

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

2 767.25 (1m) (b) The financial resources and standards of living of both parents,

3 including any significant disparity between the gross incomes or earning capacities

4 of the parents.

5

(END)



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-0018/1

PJK:kmg:rs

DOA:.....Fath – BB0189, Require support petition to include information about other support orders

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT *to create* 767.085 (1) (dm) of the statutes; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

OTHER HEALTH AND HUMAN SERVICES

4 Current law specifies certain information that must be included in a petition in an action affecting the family, such as a divorce, paternity action, or action to enforce or revise an order issued in a divorce. This bill requires a petition in an action affecting the family to indicate whether either of the parties is obligated to pay child or family support under a judgment or order issued by a court and, if so, the name of the court and the amount of support owed under the judgment or order.

Insert
A-3 →

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

Insert 6-18
↓

2 SECTION 1. 767.085 (1) (dm) of the statutes is created to read:

3 767.085 (1) (dm) Whether either of the parties is obligated to pay child or family
4 support under a judgment or order issued by a court and, if so, the name of the court

↓ contd

Insert 6-18 cont ↓

1 that issued each judgment or order and the amount of child or family support owed
2 under each judgment or order, if known.

3 ~~SECTION 9359. Initial applicability; workforce development.~~

Insert 13-4 ↓

4 ~~#3~~ (1) NOTING OTHER SUPPORT ORDERS IN PETITION. The treatment of section 767.085
5 (1) (dm) of the statutes first applies to petitions filed on the first day of the 2nd month
6 beginning after the effective date of this subsection.

7

08/07

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0021/P2dn

PJK:kmg:jf



October 18, 2002

D-note

Notes 1 and 2 below accompanied the draft related to clarifying that ~~the~~ use of the percentage ~~the~~ standard is permissive in certain situations:

1. The delay in the initial applicability of ss. 767.085 (2) (b) and (2m) (a) 2., 767.45 (7), and 767.455 (6) is intended to provide time to update the documents that clerks of court provide showing the percentage standard and the factors considered for deviation from it.

2. Sometimes a change in the statutes related to child support is used as a "substantial change in circumstances" for an action to revise support under s. 767.32. Do you want to provide explicitly that this change is not a substantial change in circumstances?

This would only be an issue for those cases in which the court determined that it was required to calculate support by using s. DWD 40.04, Wis. Adm. Code. I don't know how often that might have happened before the decision in *Randall*, or since that decision, so I don't know if there would be very many parties who would try to get support revised on the basis of the statutory change, placing a burden on the courts.

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(the change in proposed s. 767.25 (1r))



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0017/P2dn
PJK:kmg:jf

October 16, 2002

(D-note cont'd)

NOTES ^{3, 4, and 5} ~~1, 2, and 3~~ below accompanied the draft related to requiring consideration of income disparity when establishing support:

3. This proposed change may not accomplish what is wanted. Both the appeals court and the supreme court explicitly considered the disparity in the parties' incomes in the *Luciani* case. The supreme court left the support as originally ordered because Mr. Luciani did not show that, despite the disparity in the parties' incomes, ordering him to pay support based on the percentage standard was unfair to anyone, as s. 767.25 (1m) requires.

Since it seems that the court did in fact consider the disparity in the parties' incomes, I can't see that explicitly adding that language to s. 767.25 (1m) (b) will change anything, or that *Luciani* would have come out any differently if the added language had been there when the case was decided. It seems to me that to overrule *Luciani* something more direct is needed, such as creating a rebuttable presumption of unfairness if the payer's income is much less than the payee's.

4. The drafting instructions say to add a legislative note explaining that the purpose of the statute change is to overrule *Luciani*, and I have mentioned the *Luciani* case in the analysis. Unless the statutory language is considered ambiguous, however, a court will not look beyond the language to outside sources, such as the legislative history, including the analysis of the bill that became the act, for help with interpreting the language.

5. It is not clear to me whether the proposed "standard of living" language is intended to refer to the standard of living of the parties at the time support is ordered or the standard of living that will result after support is ordered? Interpretation would be left to a court's discretion. Most of the other factors in s. 767.25 (1m) relate to the situation at the time support is ordered, unaffected by that order. In the *Luciani* case, requiring Mr. Luciani to pay support based on the percentage standard without modification resulted in a lower standard of living for him and a greater disparity in their standards of living after the order. Perhaps requiring the court to consider the standards of living and any disparity that will result after support is ordered would better serve the intended purpose.

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(W.A. Kahler in proposed s. 767.25 (1m) (b))

(in proposed s. 767.25 (1m) (b))

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2485/P1dn
PJK:kmg:rs

April 7, 2003

Notes 1 and 2 below accompanied the draft related to clarifying that use of the percentage standard is permissive in certain situations:

1. The delay in the initial applicability of ss. 767.085 (2) (b) and (2m) (a) 2., 767.45 (7), and 767.455 (6) is intended to provide time to update the documents that clerks of court provide showing the percentage standard and the factors considered for deviation from it.
2. Sometimes a change in the statutes related to child support is used as a "substantial change in circumstances" for an action to revise support under s. 767.32. Do you want to provide explicitly that this change (the change in proposed s. 767.25 (1r)) is not a substantial change in circumstances?

This would only be an issue for those cases in which the court determined that it was *required* to calculate support by using s. DWD 40.04, Wis. Adm. Code. I don't know how often that might have happened before the decision in *Randall*, or since that decision, so I don't know if there would be very many parties who would try to get support revised on the basis of the statutory change, placing a burden on the courts.

Notes 3, 4, and 5 below accompanied the draft related to requiring consideration of income disparity when establishing support:

3. This proposed change (in s. 767.25 (1m) (b)) may not accomplish what is wanted. Both the appeals court and the supreme court explicitly considered the disparity in the parties' incomes in the *Luciani* case. The supreme court left the support as originally ordered because Mr. Luciani did not show that, despite the disparity in the parties' incomes, ordering him to pay support based on the percentage standard was unfair to anyone, as s. 767.25 (1m) requires.

Since it seems that the court did in fact consider the disparity in the parties' incomes, I can't see that explicitly adding that language to s. 767.25 (1m) (b) will change anything, or that *Luciani* would have come out any differently if the added language had been there when the case was decided. It seems to me that to overrule *Luciani* something more direct is needed, such as creating a rebuttable presumption of unfairness if the payer's income is much less than the payee's.

4. The drafting instructions say to add a legislative note explaining that the purpose of the statute change is to overrule *Luciani*, and I have mentioned the *Luciani* case in

the analysis. Unless the statutory language is considered ambiguous, however, a court will not look beyond the language to outside sources, such as the legislative history, including the analysis of the bill that became the act, for help with interpreting the language.

5. It is not clear to me whether the proposed "standard of living" language (in s. 767.25 (1m) (b)) is intended to refer to the standard of living of the parties at the time support is ordered or the standard of living that will result *after* support is ordered? Interpretation would be left to a court's discretion. Most of the other factors in s. 767.25 (1m) relate to the situation at the time support is ordered, unaffected by that order. In the *Luciani* case, requiring Mr. Luciani to pay support based on the percentage standard without modification resulted in a lower standard of living for him and a greater disparity in their standards of living *after* the order. Perhaps requiring the court to consider the standards of living and any disparity that will result *after* support is ordered would better serve the intended purpose.

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RESEARCH APPENDIX - Draft Transfer/Copy Request Form

- Atty's please complete this form and give to Mike Barman (or Lynn E. in his absence)

(Request Made By: PJK) (Date: 4/7/03)



Please transfer the drafting file for

2001 LRB _____ to the drafting file

for 2003 LRB _____

The final version of the 2001 draft and the final Request Sheet will be copied on yellow paper, and returned to the original 2001 drafting file. A new cover sheet will be created/included listing the new location of the drafting file's "guts".

For research purposes, because the 2001 draft was incorporated into a 2003 draft, the complete drafting file will be transferred, as a separate appendix, to the new 2003 drafting file. This request form will be inserted into the "guts" of the 2003 draft. If introduced, the appendix will be scanned/added to the electronic drafting file folder.

done 4/7/03 LW — OR —

Please copy the drafting file for

2003 LRB 0017, 0018, 0021 ^(all versions) and place it in the

drafting file for 2003 LRB - 2485

For research purposes, because the original 2003 draft was incorporated into another 2003 draft, the original drafting file will be copied on yellow paper (darkened/auto centered/reduced to 90%) and added, as a separate appendix, to the new 2003 drafting file. This request form will be inserted into the "guts" of the new 2003 draft. If introduced the appendix will be scanned/added to the electronic drafting file folder.

The original drafting file will then be returned, intact, to its folder and filed. For future reference, a copy of the transfer/copy request form will also be added to the "guts" of the original draft.

7-1 phone conversation with Jan Rossmiller of State Bar
re. redraft of LRB-2485/P1

① Do add language specifying that statute
re. calculation of support in special
circumstances is not a substantial
change in circumstances for a revision
under s. 767.32 (see #2 of D-vote)

② Number 3 and 5 of D-vote: take out
standard of living language and
instead of changing s. 767.25
(1a) (b), create rebuttable presumption
that using 75 standard is unfair if
payer's income is low

③ Change "may" to "shall" on p. 6, line 1,
because dept must promulgate the rules
under fed. law. (Connie Chesnick)

④ Add (1r) in SECTIONS 22+23.
(Connie Chesnick)



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-2485/24

PJK:kmg:rs

r mis run

Wue Wed, 7/16

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note

a rebuttable presumption related to when use of the percentage standard is unfair to the payer

regenerate ↓

1 AN ACT to renumber 767.32 (2m); to amend 46.10 (14) (b), 46.247, 48.30 (6) (b),
 2 48.31 (7) (b), 48.357 (5m) (a), 48.363 (1) (c), 49.22 (9), 301.12 (14) (b), 301.12 (14)
 3 (g), 767.085 (2) (b), 767.085 (2m) (a) 2., 767.23 (1n), 767.25 (1j), 767.25 (1m) (b),
 4 767.295 (2) (c), 767.32 (1) (b) 4., 767.32 (2), 767.33 (1) (a), 767.33 (1) (b), 767.45
 5 (7), 767.455 (6), 767.477 (2), 938.30 (6) (b), 938.31 (7) (b), 938.357 (5m) (a) and
 6 938.363 (1) (c); and to create 767.085 (1) (dm), 767.25 (1r) and 767.32 (2m) (b)
 7 of the statutes; relating to: use of the percentage standard in special cases,
 8 ~~considering income disparity when establishing support~~ and information in
 9 family action petition.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Workforce Development (DWD) must promulgate rules that provide a standard for courts to use in determining child support based on a percentage of a parent's gross income. This standard is called the percentage standard, and it requires a payer to 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.

The statute that requires DWD to establish the percentage standard by administrative rule also requires those rules to provide for consideration of each

parent's income and physical placement with the child in determining child support in cases in which both parents have substantial physical placement with the child. Thus, in addition to the percentage standard, the rules set out a special method that may be used to calculate child support payments, based on adjustments to the percentage standard to fit the specific circumstance, if the payer provides care for the child at least 31% of the time (shared-time payer), already has a legal obligation to pay support for one or more children from a previous marriage or other relationship (serial-family payer), or has at least two children and cares for at least one, but not all, of the children for more time than the other parent (split-custody payer).

In *In re Marriage of Randall v. Randall*, 2000 WI App 98, 235 Wis. 2d 1, 612 N.W. 2d 737, the Wisconsin Court of Appeals decided that, even though the administrative rule setting out the special method for calculating child support for shared-time, serial-family, and split-custody payers is permissive in the rule, a court is required to use the special method if the payer is a shared-time, serial-family, or split-custody payer because the special method is part of the percentage standard, which the court is required to use under the statute. This bill reverses that decision.

Required

Under the bill, DWD is required to establish the percentage standard by rule and ~~authorized~~ to provide by rule for adjustments to the percentage standard that a court may, in its discretion, use for determining support in cases in which both parents have substantial physical placement with the child or in which a parent has a preexisting obligation to support a child. The bill authorizes, but does not require, a court to modify the amount of child support that it would order if it used the percentage standard by using the special method of calculating child support set out in the rule if both parents have substantial physical placement with the child or a parent has a preexisting obligation to support a child.

Under current law, a court may, upon the request of a party, modify the amount of child support that would be ordered by using the percentage standard if the court, after considering a number of factors, finds that use of the percentage standard is unfair to the child or to either of the parties. Among the factors under current law that the court must consider are the financial resources and earning capacity of each parent. This bill adds that the court must also consider the standards of living of both parents, including any significant disparity between the gross incomes or earning capacities of the parents. This addition is intended to address the decision in *Luciani v. Montemurro-Luciani*, 199 Wis. 2d 280, 544 N.W. 2d 561 (1996), which some perceive as unfair to the child support payer. In that case, the parent with less physical placement with the couple's two children and whose income was much lower than the income of the parent with more physical placement was ordered to pay child support in the amount determined by using the percentage standard without any modification based on the payee's significantly higher income.

Insert A

Current law specifies certain information that must be included in a petition in an action affecting the family, such as a divorce, paternity action, or action to enforce or revise an order issued in a divorce. This bill requires a petition in an action affecting the family to indicate whether either of the parties is obligated to pay child

or family support under a judgment or order issued by a court and, if so, the name of the court and the amount of support owed under the judgment or order.

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) (a) and by applying the percentage
9 standard in the manner established by the department under s. 46.247.

10 **SECTION 2.** 46.247 of the statutes is amended to read:

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

19 **SECTION 3.** 48.30 (6) (b) of the statutes is amended to read:

20 48.30 (6) (b) If it appears to the court that disposition of the case may include
21 placement of the child outside the child's home, the court shall order the child's

1 parent to provide a statement of income, assets, debts, and living expenses to the
2 court or the designated agency under s. 48.33 (1) at least 5 days before the scheduled
3 date of the dispositional hearing or as otherwise ordered by the court. The clerk of
4 court shall provide, without charge, to any parent ordered to provide a statement of
5 income, assets, debts, and living expenses a document setting forth the percentage
6 standard established by the department of workforce development under s. 49.22 (9)
7 (a) and the manner of its application established by the department of health and
8 family services under s. 46.247 and listing the factors that a court may consider
9 under s. 46.10 (14) (c).

10 **SECTION 4.** 48.31 (7) (b) of the statutes is amended to read:

11 48.31 (7) (b) If it appears to the court that disposition of the case may include
12 placement of the child outside the child's home, the court shall order the child's
13 parent to provide a statement of income, assets, debts, and living expenses to the
14 court or the designated agency under s. 48.33 (1) at least 5 days before the scheduled
15 date of the dispositional hearing or as otherwise ordered by the court. The clerk of
16 court shall provide, without charge, to any parent ordered to provide a statement of
17 income, assets, debts, and living expenses a document setting forth the percentage
18 standard established by the department of workforce development under s. 49.22 (9)
19 (a) and the manner of its application established by the department of health and
20 family services under s. 46.247 and listing the factors that a court may consider
21 under s. 46.10 (14) (c).

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

23 48.357 (5m) (a) If a proposed change in placement changes a child's placement
24 from a placement in the child's home to a placement outside the child's home, the
25 court shall order the child's parent to provide a statement of income, assets, debts,

1 and living expenses to the court or the person or agency primarily responsible for
2 implementing the dispositional order by a date specified by the court. The clerk of
3 court shall provide, without charge, to any parent ordered to provide a statement of
4 income, assets, debts, and living expenses a document setting forth the percentage
5 standard established by the department of workforce development under s. 49.22 (9)
6 (a) and the manner of its application established by the department of health and
7 family services under s. 46.247 and listing the factors that a court may consider
8 under s. 46.10 (14) (c). If the child is placed outside the child's home, the court shall
9 determine the liability of the parent in the manner provided in s. 46.10 (14).

10 **SECTION 6.** 48.363 (1) (c) of the statutes is amended to read:

11 48.363 (1) (c) If the proposed revision is for a change in the amount of child
12 support to be paid by a parent, the court shall order the child's parent to provide a
13 statement of income, assets, debts, and living expenses to the court and the person
14 or agency primarily responsible for implementing the dispositional order by a date
15 specified by the court. The clerk of court shall provide, without charge, to any parent
16 ordered to provide a statement of income, assets, debts, and living expenses a
17 document setting forth the percentage standard established by the department of
18 workforce development under s. 49.22 (9) (a) and the manner of its application
19 established by the department of health and family services under s. 46.247 and
20 listing the factors that a court may consider under s. 46.10 (14) (c).

21 **SECTION 7.** 49.22 (9) of the statutes is amended to read:

22 49.22 (9) (a) The department shall promulgate rules that provide a standard
23 for courts to use in determining a child support obligation based upon a percentage
24 of the gross income and assets of either or both parents.

shall
↑

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(b) The department ~~shall~~ promulgate rules shall that provide for consideration of the income of each parent and the amount of physical placement with each parent adjustments to the standard promulgated under par. (a) that a court, in its discretion, may use in determining a child support obligation in cases in which a child has substantial periods of physical placement with each parent or in which a parent has a preexisting obligation to support a child.

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SECTION 8. 301.12 (14) (b) of the statutes is amended to read:

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

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SECTION 9. 301.12 (14) (g) of the statutes is amended to read:

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

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SECTION 10. 767.085 (1) (dm) of the statutes is created to read:

1 767.085 (1) (dm) Whether either of the parties is obligated to pay child or family
2 support under a judgment or order issued by a court and, if so, the name of the court
3 that issued each judgment or order and the amount of child or family support owed
4 under each judgment or order, if known.

5 **SECTION 11.** 767.085 (2) (b) of the statutes is amended to read:

6 767.085 (2) (b) The clerk of court shall provide without charge, to each person
7 filing a petition requesting child support, a document setting forth the percentage
8 standard established by the department under s. 49.22 (9) (a) and listing the factors
9 ~~which~~ that a court may consider under s. 767.25 (1m) and (1r).

10 **SECTION 12.** 767.085 (2m) (a) 2. of the statutes is amended to read:

11 767.085 (2m) (a) 2. Shall be accompanied by a document, provided without
12 charge by the clerk of court, setting forth the percentage standard established by the
13 department under s. 49.22 (9) (a) and listing the factors ~~which~~ that a court may
14 consider under s. 767.25 (1m) and (1r).

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

16 767.23 (1n) Before making any temporary order under sub. (1), the court or
17 circuit court commissioner shall consider those factors that the court is required by
18 this chapter to consider before entering a final judgment on the same subject matter.
19 In making a determination under sub. (1) (a) or (am), the court or circuit court
20 commissioner shall consider the factors under s. 767.24 (5). If the court or circuit
21 court commissioner makes a temporary child support order that deviates from the
22 amount of support that would be required by using the percentage standard
23 established by the department under s. 49.22 (9) (a) or by using the method of
24 calculating child support under (in) s. 767.25 (1r), the court or circuit court
25 commissioner shall comply with the requirements of s. 767.25 (1n). A temporary

1 order under sub. (1) may be based upon the written stipulation of the parties, subject
2 to the approval of the court or circuit court commissioner. Temporary orders made
3 by a circuit court commissioner may be reviewed by the court.

4 SECTION 14. 767.25 (1j) of the statutes is amended to read:

5 767.25 (1j) Except as provided in ~~sub.~~ subs. (1m) and (1r), the court shall
6 determine child support payments by using the percentage standard established by
7 the department under s. 49.22 (9) (a).

8 SECTION 15. 767.25 (1m)(b) of the statutes is amended to read:

9 767.25 (1m) (b) The financial resources and standards of living of both parents,
10 including any significant disparity between the gross incomes or earning capacities
11 of the parents.

Insert 8-11

12 SECTION 16. 767.25 (1r) of the statutes is created to read:

13 767.25 (1r) Notwithstanding sub. (1m), in cases in which a child has
14 substantial periods of physical placement with each parent or in which a parent has
15 a preexisting obligation to support a child, upon request by a party or on its own
16 motion, the court may modify the amount of child support payments determined
17 under sub. (1j) in the manner provided by rule under s. 49.22 (9) (b). The court is not
18 required to provide the information specified in sub. (1n) if the court determines child
19 support payments under this subsection.

20 SECTION 17. 767.295 (2) (c) of the statutes is amended to read:

21 767.295 (2) (c) If the court enters an order under par. (a), it shall order the
22 parent to pay child support equal to the amount determined by applying the
23 percentage standard established under s. 49.22 (9) (a) to the income a person would
24 earn by working 40 hours per week for the federal minimum hourly wage under 29
25 USC 206 (a) (1) or equal to the amount of child support that the parent was ordered

1 to pay in the most recent determination of support under this chapter. The child
2 support obligation ordered under this paragraph continues until the parent makes
3 timely payment in full for 3 consecutive months or until the person participates in
4 the program under s. 49.36 for 16 weeks, whichever comes first. The court shall
5 provide in its order that the parent must make child support payments calculated
6 under s. 767.25 (1j) ~~or~~, (1m), or (1r) after the obligation to make payments ordered
7 under this paragraph ceases.

8 **SECTION 18.** 767.32 (1) (b) 4. of the statutes is amended to read:

9 767.32 (1) (b) 4. A difference between the amount of child support ordered by
10 the court to be paid by the payer and the amount that the payer would have been
11 required to pay based on the percentage standard established by the department
12 under s. 49.22 (9) (a), or based on the method of calculating child support under s.
13 767.25 (1r), if the court did not use the percentage standard or the method under s.
14 767.25 (1r) in determining the child support payments and did not provide the
15 information required under s. 46.10 (14) (d), 301.12 (14) (d), or 767.25 (1n), whichever
16 is appropriate.

17 **SECTION 19.** 767.32 (2) of the statutes is amended to read:

18 767.32 (2) Except as provided in sub. (2m) [✓] or (2r), if the court revises a
19 judgment or order with respect to child support payments, it shall do so by using the
20 percentage standard established by the department under s. 49.22 (9) (a).

21 ~~**SECTION 20.** 767.32 (2m) of the statutes is renumbered 767.32 (2m) (a).~~

22 **SECTION 21.** 767.32 (2m) (b) of the statutes is created to read:

23 767.32 (2m) (b) Notwithstanding par. (a), in cases in which a child has
24 substantial periods of physical placement with each parent or in which a parent has
25 a preexisting obligation to support a child, upon request by a party or on its own

Insert 9-21

1 motion, the court may modify the amount of child support payments determined
2 under sub. (2) in the manner provided by rule under s. 49.22 (9) (b). The court is not
3 required to provide the information specified in s. 767.25 (1n) if the court determines
4 child support payments under this paragraph.

5 **SECTION 22.** 767.33 (1) (a) of the statutes is amended to read:

6 767.33 (1) (a) An order for child or family support under this chapter may
7 provide for an annual adjustment in the amount to be paid based on a change in the
8 payer's income if the amount of child or family support is expressed in the order as
9 a fixed sum and based on the percentage standard established by the department
10 under s. 49.22 (9) (a). *→ insert 10-10* No adjustment may be made under this section unless the
11 order provides for the adjustment.

12 **SECTION 23.** 767.33 (1) (b) of the statutes is amended to read:

13 767.33 (1) (b) An adjustment under this section may not be made more than
14 once in a year and shall be determined on the basis of the percentage standard
15 established by the department under s. 49.22 (9) (a). *→ insert 10-15*

16 **SECTION 24.** 767.45 (7) of the statutes is amended to read:

17 767.45 (7) The clerk of court shall provide without charge, to each person
18 bringing an action under this section, except to the state under sub. (1) (g) or (6m),
19 a document setting forth the percentage standard established by the department
20 under s. 49.22 (9) (a) and listing the factors which that a court may consider under
21 s. 767.25 (1m) and (1r).

22 **SECTION 25.** 767.455 (6) of the statutes is amended to read:

23 767.455 (6) DOCUMENT. The summons served on the respondent shall be
24 accompanied by a document, provided without charge by the clerk of court, setting

1 forth the percentage standard established by the department under s. 49.22 (9) (a)
2 and listing the factors ~~which~~ that a court may consider under s. 767.25 (1m) and (1r).

3 **SECTION 26.** 767.477 (2) of the statutes is amended to read:

4 767.477 (2) Before making any temporary order under sub. (1), the court shall
5 consider those factors that the court is required to consider when granting a final
6 judgment on the same subject matter. If the court makes a temporary child support
7 order that deviates from the amount of support that would be required by using the
8 percentage standard established by the department under s. 49.22 (9) (a) or by using
9 the method of calculating child support under (in) s. 767.25 (1r), the court shall comply
10 with the requirements of s. 767.25 (1n).

11 **SECTION 27.** 938.30 (6) (b) of the statutes is amended to read:

12 938.30 (6) (b) If it appears to the court that disposition of the case may include
13 placement of the juvenile outside the juvenile's home, the court shall order the
14 juvenile's parent to provide a statement of income, assets, debts, and living expenses
15 to the court or the designated agency under s. 938.33 (1) at least 5 days before the
16 scheduled date of the dispositional hearing or as otherwise ordered by the court. The
17 clerk of court shall provide, without charge, to any parent ordered to provide a
18 statement of income, assets, debts, and living expenses a document setting forth the
19 percentage standard established by the department of workforce development under
20 s. 49.22 (9) (a) and listing the factors that a court may consider under s. 301.12 (14)
21 (c).

22 **SECTION 28.** 938.31 (7) (b) of the statutes is amended to read:

23 938.31 (7) (b) If it appears to the court that disposition of the case may include
24 placement of the juvenile outside the juvenile's home, the court shall order the
25 juvenile's parent to provide a statement of income, assets, debts, and living expenses

1 to the court or the designated agency under s. 938.33 (1) at least 5 days before the
2 scheduled date of the dispositional hearing or as otherwise ordered by the court. The
3 clerk of court shall provide, without charge, to any parent ordered to provide a
4 statement of income, assets, debts, and living expenses a document setting forth the
5 percentage standard established by the department of workforce development under
6 s. 49.22 (9) (a) and listing the factors that a court may consider under s. 301.12 (14)
7 (c).

8 **SECTION 29.** 938.357 (5m) (a) of the statutes is amended to read:

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

20 **SECTION 30.** 938.363 (1) (c) of the statutes is amended to read:

21 938.363 (1) (c) If the proposed revision is for a change in the amount of child
22 support to be paid by a parent, the court shall order the juvenile's parent to provide
23 a statement of income, assets, debts, and living expenses to the court and the person
24 or agency primarily responsible for implementing the dispositional order by a date
25 specified by the court. The clerk of court shall provide, without charge, to any parent

Insert 13-4

1 ordered to provide a statement of income, assets, debts, and living expenses a
2 document setting forth the percentage standard established by the department of
3 workforce development under s. 49.22 (9) (a) and listing the factors that a court may
4 consider under s. 301.12 (14) (c).

5 **SECTION 31. Initial applicability.**

6 (1) CALCULATING CHILD SUPPORT IN SPECIAL CIRCUMSTANCES. The treatment of
7 sections 767.23 (1n), 767.25 (1j) and (1r), 767.295 (2) (c), 767.32 (1) (b) 4., and 767.477
8 (2) of the statutes, ~~the renumbering of section 767.32 (2m) of the statutes,~~ and the
9 creation of section 767.32 (2m) (b) of the statutes first apply to child support orders
10 that are granted on the effective date of this subsection, including orders in actions
11 or proceedings to modify a judgment or order that was granted before the effective
12 date of this subsection.

767.33(1)(a) and (b)

13 (2) PERCENTAGE STANDARD DOCUMENT LISTING DEVIATION FACTORS. The treatment
14 of sections 767.085 (2) (b) and (2m) (a) 2., 767.45 (7), and 767.455 (6) of the statutes
15 first applies to actions commenced on the first day of the 7th month beginning after
16 publication.

17 ~~(1) (dm)~~ NOTING OTHER SUPPORT ORDERS IN PETITION. The treatment of section 767.085
18 (1) (dm) of the statutes first applies to petitions filed on the first day of the 2nd month
19 beginning after the effective date of this subsection.

20 (END)

Insert 13-16

D-note

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2485/P2ins
PJK:kmg:rs

INSERT A ✓

^{wo A} creates a rebuttable presumption that use of the percentage standard is unfair to the payer if the payer's income and earning capacity are significantly lower than the payee's. If the presumption is not rebutted, the court may modify the amount of support that would be ordered by using the percentage standard. The presumption
(END OF INSERT A)

INSERT 8-11 ✓

1 **SECTION 1.** 767.25 (1m) (intro.) of the statutes is renumbered 767.25 (1m) (am)
2 (intro.) and amended to read:

3 767.25 (1m) (am) (intro.) ~~Upon~~ Subject to par. (bm), upon request by a party,
4 the court may modify the amount of child support payments determined under sub.
5 (1j) if, after considering the following factors, the court finds by the greater weight
6 of the credible evidence that use of the percentage standard is unfair to the child or
7 to any of the parties:

History: 1971 c. 157; 1977 c. 29, 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.25; 1981 c. 20; 1983 a. 27; 1985 a. 29; 1987 a. 27, 37, 355, 413; 1989 a. 31, 212; 1991 a. 39; 1993 a. 481; 1995 a. 27 ss. 7101, 7102, 9126 (19); 1995 a. 201, 279, 404; 1997 a. 27, 35, 191; 1999 a. 9, 32; 2001 a. 16, 61.

8 **SECTION 2.** 767.25 (1m) (a) of the statutes is renumbered 767.25 (1m) (am) 1.

9 **SECTION 3.** 767.25 (1m) (b) of the statutes is renumbered 767.25 (1m) (am) 2.

10 **SECTION 4.** 767.25 (1m) (bj) of the statutes is renumbered 767.25 (1m) (am) 3.

11 **SECTION 5.** 767.25 (1m) (bm) of the statutes is created to read:

12 767.25 (1m) (bm) If the gross income and earning capacity of the payer are
13 significantly lower than the gross income and earning capacity of the payee, there
14 is a rebuttable presumption that use of the percentage standard is unfair to the
15 payer.

16 **SECTION 6.** 767.25 (1m) (bp) of the statutes is renumbered 767.25 (1m) (am) 4.

17 **SECTION 7.** 767.25 (1m) (bz) of the statutes is renumbered 767.25 (1m) (am) 5.

18 **SECTION 8.** 767.25 (1m) (c) of the statutes is renumbered 767.25 (1m) (am) 6.



Ins 8-11 cont'd

1 **SECTION 9.** 767.25 (1m) (d) of the statutes is renumbered 767.25 (1m) (am) 7.

2 **SECTION 10.** 767.25 (1m) (e) of the statutes is renumbered 767.25 (1m) (am) 8.

3 **SECTION 11.** 767.25 (1m) (ej) of the statutes is renumbered 767.25 (1m) (am) 9.

4 **SECTION 12.** 767.25 (1m) (em) of the statutes is renumbered 767.25 (1m) (am)

5 10.

6 **SECTION 13.** 767.25 (1m) (f) of the statutes is renumbered 767.25 (1m) (am) 11.

7 **SECTION 14.** 767.25 (1m) (g) of the statutes is renumbered 767.25 (1m) (am) 12.

8 **SECTION 15.** 767.25 (1m) (h) of the statutes is renumbered 767.25 (1m) (am) 13.

9 **SECTION 16.** 767.25 (1m) (hm) of the statutes is renumbered 767.25 (1m) (am)

10 14.

11 **SECTION 17.** 767.25 (1m) (hs) of the statutes is renumbered 767.25 (1m) (am)

12 15.

13 **SECTION 18.** 767.25 (1m) (i) of the statutes is renumbered 767.25 (1m) (am) 16. ✓

(END OF INSERT 8-11)

INSERT 9-21 ✓

14 **SECTION 19.** 767.32 (2m) of the statutes is renumbered 767.32 (2m) (a) 1. and
15 amended to read:

16 767.32 (2m) (a) 1. ~~Upon~~ Subject to subd. 2., upon request by a party, the court
17 may modify the amount of revised child support payments determined under sub. (2)
18 if, after considering the factors listed in s. 767.25 (1m) (am), the court finds, by the
19 greater weight of the credible evidence, that the use of the percentage standard is
20 unfair to the child or to any of the parties.

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; 1999 a. 9, 103; 2001 a. 16, 61, 105.

21 **SECTION 20.** 767.32 (2m) (a) 2. of the statutes is created to read:



ins 9-21 contd

1 767.32 (2m) (a) 2. If the gross income and earning capacity of the payer are
2 significantly lower than the gross income and earning capacity of the payee, there
3 is a rebuttable presumption that use of the percentage standard is unfair to the
4 payer.

(END OF INSERT 9-21)

INSERT 10-10 ✓

5 (No ff) or on the method of calculating child support under s. 767.25 (1r) ✓

(END OF INSERT 10-10)

INSERT 10-15 ✓

6 (No ff) or the method of calculating child support under s. 767.25 (1r) ✓

(END OF INSERT 10-15)

INSERT 13-4

7 **SECTION 21.** 948.22 (7) (bm) of the statutes is renumbered 948.22 (7) (bm) 1.
8 and amended to read:

9 948.22 (7) (bm) 1. Upon Subject to subd. 2., upon request, the court may modify
10 the amount of child or spousal support payments determined under par. (b) 2. if, after
11 considering the factors listed in s. 767.25 (1m) (am), regardless of the fact that the
12 action is not one for a determination of paternity or an action specified in s. 767.25
13 (1), the court finds, by the greater weight of the credible evidence, that the use of the
14 percentage standard is unfair to the child or to either of the child's parents.

History: 1985 a. 29, 56; 1987 a. 332 s. 33; Stats. 1987 s. 948.22; 1989 a. 31, 212; 1993 a. 274, 481; 1995 a. 289; 1997 a. 35, 191, 252; 1999 a. 9; 2001 a. 109.

15 **SECTION 22.** 948.22 (7) (bm) 2. of the statutes is created to read:

16 948.22 (7) (bm) 2. If the gross income and earning capacity of the payer are
17 significantly lower than the gross income and earning capacity of the payee, there



ins 13-4 contd

1 is a rebuttable presumption that use of the percentage standard is unfair to the
2 payer.

3 **SECTION 23. Nonstatutory provisions.**

4 (1) No creation or amendment of a statute section by this act constitutes a
5 substantial change in circumstances on which may be based a revision under section
6 767.32 of the statutes, as affected by this act, of a judgment or order with respect to
7 an amount of child or family support.

(END OF INSERT 13-4)

INSERT 13-16

8 ~~§~~ (8) **REBUTTABLE PRESUMPTION THAT PERCENTAGE STANDARD UNFAIR.** The treatment
9 of section 767.25 (1m) (intro.), (a), (b), (bj), (bm), (bp), (bz), (c), (d), (e), (ej), (em), (f),
10 (g), (h), (hm), (hs), and (i) of the statutes, the renumbering and amendment of
11 sections 767.32 (2m) and 948.22 (7) (bm) of the statutes, and the creation of sections
12 767.32 (2m) (a) 2. and 948.22 (7) (bm) 2. of the statutes first apply to actions,
13 proceedings, and prosecutions commenced on the effective date of this subsection.

(END OF INSERT 13-16)

→ (as it relates to the rebuttable presumption of unfairness to a child support payer)

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

LRB-2485/P2dn
PJK:kmg:rs



(a) 2.)
2
1. In this version, I specifically included the rebuttable presumption under ss. 767.32 (2m) and 948.22 (7) (bm). Do you want any changes? 767.25 (1m)(bm)

2. Is the relationship in this draft between using the rule for determining support in special cases (shared-time, serial-family, and split-custody) and modifying the amount of support on the basis of the factors okay? Modifying on the basis of the factors, including the rebuttable presumption, is subordinate to using the method under the rule in a special case.

3. Do you want the initial applicability of the rebuttable presumption to be actions commenced on the first day of the 7th month after publication, rather than on the effective date, since the documents provided by the clerk of court listing the new factors for deviation from the percentage standard will not be available until the first day of the 7th month after publication?

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-2485/P2dn
PJK:kmg:pg

July 14, 2003

1. In this version, I specifically included the rebuttable presumption under ss. 767.25 (1m) (bm), 767.32 (2m) (a) 2., and 948.22 (7) (bm) 2. Do you want any changes?
2. Is the relationship in this draft between using the rule for determining support in special cases (shared-time, serial-family, and split-custody) and modifying the amount of support on the basis of the factors okay? Modifying on the basis of the factors, including the rebuttable presumption, is subordinate to using the method under the rule in a special case.
3. Do you want the initial applicability of the rebuttable presumption to be actions commenced on the first day of the 7th month after publication, rather than on the effective date, since the documents provided by the clerk of court listing the new factors for deviation from the percentage standard will not be available until the first day of the 7th month after publication?

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

7-15

phone conversation w/ Don Rossmiller
& Connie Chesnick

delete rebuttable presumption (more
than committee wants) and

replace with amdt of 767.25

(1m).(b) again - but Dan will
poll individuals on version to use

Kahler, Pam

From: Dan Rossmiller [DRossmiller@wisbar.org]
Sent: Wednesday, July 16, 2003 12:13 PM
To: pam.kahler@legis.state.wi.us
Subject: Child Support Legislation Draft (LRB--2485/P2) re: Luciani decision

Pam,

As we discussed by telephone, the consensus seems to be in favor of language along the following lines:

Amend 767.25 (1m) (b) as follows:

767.25(1m)(b) The disparity in the parties' income and resources and whether application of the standard would cause undue hardship to the payer, where his or her income and resources are less than the payee's income and resources.

or

The financial resources of both parents and/including the disparity in the parties' income and resources and whether application of the standard would cause undue hardship to the payer, where his or her income and resources are less than the payee's income and resources.

Thanks for your help. Let me know if you have any questions.

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07/16/2003