

2003 DRAFTING REQUEST

Bill

Received: 09/13/2002

Received By: pkahler

Wanted: Soon

Identical to LRB:

For: Administration-Budget 6-8219

By/Representing: Fath

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:

Carbon copy (CC:) to:

Pre Topic:

DOA:.....Fath - BB0187,

Topic:

Clarify that percentage standard is permissive in certain cases

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 09/27/2002	kgilfoy 10/10/2002		_____			
/P1			pgreensl 10/10/2002	_____	sbasford 10/10/2002		
/P2	pkahler	kgilfoy	jfrantze	_____	sbasford		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	10/17/2002	10/17/2002	10/18/2002	_____	10/18/2002		

FE Sent For:

<END>

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		1/12-10/17 King	10/10/02	10/10/02 10/10/02 <END>			

2003 DRAFTING REQUEST

Bill

Received: **09/13/2002**

Received By: **pkahler**

Wanted: **Soon**

Identical to LRB:

For: **Workforce Development 6-3338**

By/Representing: **Troy Sterr**

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: **sterrtr@dwd.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

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Instructions:

See Attached

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/?	pkahler 09/27/2002	kgilfoy 10/10/2002		_____			
/P1			pgreensl 10/10/2002	_____	sbasford 10/10/2002		

10/10/2002 02:46:48 PM

Page 2

LRB-0021

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: 09/13/2002

Received By: pkahler

Wanted: Soon

Identical to LRB:

For: Workforce Development 6-3338

By/Representing: Troy Sterr

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: sterrtr@dwd.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

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Clarify that percentage standard is permissive in certain cases

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Drafting History:

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		1/21-10/9 kmg	10/10 P/	10/10 P/			

FE Sent For:

Handwritten notes and signatures including "ENDS" and "10/10" are present in the Drafting History section.

STATUTORY MODIFICATIONS

Department of Workforce Development
2003-2005 Biennial Budget Request

DIN Number: DIN56XXSTAT#8

Topic: Application of child support percentage standard in
shared time, serial family and split custody cases

Description of Change:

Amend s. 767.25 to clarify that the use of the percentage standard is permissive in shared time, serial family and split custody cases.

Justification:

In the Randall v. Randall decision, the Court of Appeals held that the presumptive application of the percentage standard also applied to the shared time formula. The court stated that when parents have physical placement for a substantial number of overnights or the equivalent, they generally assume the variable costs for the children when they are with them. A parent does not need to demonstrate that he/she assumes a proportion of variable costs when having the children as a shared-time payer.

Although use of the percentage standard is presumptive under Wisconsin law, its application in shared time, serial family and split custody cases was intended to be permissive. This is substantiated by language in Administrative Rule DWD 40 that uses the terminology 'may'. The DWD Child Support Guidelines Advisory Committee reviewed this issue and recommended a statutory change to clarify that the use of the percentage standard in shared time, serial family and split custody cases was intended to be permissive.

If there is no change to the statute, the Randall decision will continue to be applied in shared-time arrangements resulting in an inconsistency between state law and administrative rule, and application of the law by the court. Courts are unlikely to consider special circumstances when ordering support. Shared time, serial families and split custody cases are the primary situations when special circumstances should be considered when determining support.

connie.chesnik@dwd.state.wi.us

-----Original Message-----

From: Sterr, Troy
Sent: Monday, September 09, 2002 10:43 AM
To: Chesnik, Constance
Subject: LRB drafting question

Connie,
Could you please respond to Pam's question? Thanks.

-----Original Message-----

From: Kahler, Pam
Sent: Monday, September 09, 2002 10:36 AM
To: Sterr, Troy
Subject: Drafting request

Hi, Troy:

In looking over the drafting request related to the permissive use of the percentage standard in shared-time, serial family, and split custody cases, it strikes me that something is missing. In *Randall v. Randall*, the court came to the conclusion that the formulas set out in DWD 40.04 for special cases were also "the percentage standard" so that s. 767.25 (1j) required their use. The question that needs to be addressed for proper drafting is whether those formulas are "the percentage standard"? If so, and its use in those special cases is permissive only, what is presumptive in those cases? Is there no presumptive amount, and the court is free to use total discretion? If those formulas set out in DWD 40.04 are *not* the percentage standard, is the straight percentage standard in DWD 40.03 presumptive in those cases? I think we need to provide a little more guidance as to what the correct standard is supposed to be in those special cases if *Randall v. Randall* was decided incorrectly.

Pam

From: Chesnik, Constance
Sent: Tuesday, September 17, 2002 9:28 AM
To: Kahler, Pam
Subject: RE: LRB drafting question

Pam, the way it has always been utilized, 40.03 refers to the straightforward application of the percentage standard based on the number of children-2 kids, you owe 25%. That use of the standard is presumptive. However, the rule also provides for some built in deviations from the standard in special circumstances. Those deviations have always been intended to be optional for use by the court. The court can choose to 'tweak' the standard in the way provided in 40.04. If the court chooses to provide for a reduction in the support in those cases, it can, but then the judge must provide their reasoning on the record.

Connie M. Chesnik

Attorney
(608) 267-7295
(608) 267-2824 (fax)
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-----Original Message-----

From: Kahler, Pam
Sent: Thursday, September 12, 2002 3:09 PM
To: Chesnik, Constance
Subject: RE: LRB drafting question

I just want to make sure I understand exactly what the possibilities are. 1) The court *may* determine support in those special cases by using DWD 40.03. 2) The court *may* determine support in those special cases by using DWD 40.04. (Either one is "the percentage standard" and the court is not required to use the percentage standard.) 3) The court *may* determine support in those special cases in another manner based on the factors in s. 767.25 (1m), but if it does it must comply with s. 767.25 (1n).

If my understanding is correct, then the "shall" in s. 767.25 (1j) will be "may" for those special cases (there will be no "shall" for those cases) and somehow s. 767.25 (1m) and (1n) will have to make it clear that although use of the percentage standard is not required, the court must use the factors under (1m) and comply with (1n) if it deviates from the percentage standard.

Is all of that correct?

-----Original Message-----

From: Chesnik, Constance
Sent: Thursday, September 12, 2002 1:57 PM
To: Kahler, Pam
Cc: Sterr, Troy
Subject: FW: LRB drafting question

Hi Pam. Troy asked me to follow up with you on this. I am attaching the information I sent you when the Department asked to have this drafted last session. When the Department was first instructed by the legislature to draft administrative rules related to the guidelines back in the '80's, it was provided that the percentage standard was the guideline to be used and that its use was presumptive. However, we were also instructed to provide guidance in our rules for how to use the percentage standard in special circumstances, including shared time cases. We chose not to make the use of the percentage standard presumptive in those types of cases because there are an infinite variety of circumstances. If the court chooses not to deviate at all from the percentage standard in a shared time case, they could so choose. If they use some other methodology to give a payer a break in a shared time case, it would be a deviation from the standard that they would have to provide their reasoning for on the record. I think there is a pretty strong consensus among most attorneys practicing family law that the use of the standard in these types of cases was never intended to be presumptive. Let me know if you're still uncomfortable with it. << File: guidelinesbilldraft2.doc >>

Connie M. Chesnik

Attorney
(608) 267-7295
(608) 267-2824 (fax)

Kahler, Pam

From: Chesnik, Constance
Sent: Tuesday, September 17, 2002 11:54 AM
To: Kahler, Pam
Subject: RE: LRB drafting question

Yes, that's it. Thanks.

Connie M. Chesnik

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(608) 267-2824 (fax)
connie.chesnik@dwd.state.wi.us

-----Original Message-----

From: Kahler, Pam
Sent: Tuesday, September 17, 2002 11:11 AM
To: Chesnik, Constance
Subject: RE: LRB drafting question

I think I've got it now. For the special circumstances cases: 1) the percentage standard under 40.03 is presumptive; 2) the deviation under 40.04, however, may be used without explanation on the record; 3) any other deviation may be used (based on the relevant factors under s. 767.25 (1m)), but the reasoning must be explained on the record.

-----Original Message-----

From: Chesnik, Constance
Sent: Tuesday, September 17, 2002 10:10 AM
To: Kahler, Pam
Subject: RE: LRB drafting question

Well, everything except having to provide the reasoning on the record. What we were trying to do years ago, was to recognize that there were a fair number of special circumstance cases that justified some deviation from the straightforward application of the standard. We wanted to provide some guidance to the court, but also recognized that there were many ways to manipulate the standard to make its application fair in these types of cases, so we made the use of the special circumstance formulas permissive. I think the way to justify it is to say that if the court deviates from the standard in the way suggested in the rule in 40.04, then no further justification on the record is necessary. However, if the court chooses to use its own methodology, then it has to explain how it decided the case on the record. I'd be happy to talk to you about this if you'd like. I know the Family Law Section of the State Bar was very upset with the Randall ruling, but I do understand your concerns.

Connie M. Chesnik

Attorney
(608) 267-7295
(608) 267-2824 (fax)
connie.chesnik@dwd.state.wi.us

-----Original Message-----

From: Kahler, Pam
Sent: Tuesday, September 17, 2002 9:47 AM
To: Chesnik, Constance
Subject: RE: LRB drafting question

My problem is that currently s. 767.25 (1j) requires use of the "percentage standard." I believe that the court of appeals in *Randall v. Randall* came to the conclusion that, for those special circumstances cases, the "percentage standard" includes the calculations under 40.04. It sounds like what you are saying is that the "percentage standard" is only 40.03, that the "percentage standard" does *not* include 40.04, that use of the "percentage standard" under 40.03 is presumptive even for special circumstances cases, and that use of 40.04 (or any other deviation from 40.03, for that matter) in special circumstances cases requires the judge to provide his or her reasoning on the record. Is that right?

-----Original Message-----



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-0021A^{PI}
PJK/.....
King

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SOON
(in 9-27)
D-vote

Agency budget draft

DON'T
GEN. CAT.

1

AN ACT ...; relating to: use of the child support percentage standard.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

CHILDREN

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~~ DWD. The percentage standard is also used to determine the amount of child support that a parent must pay when a child is placed outside the home in a residential, nonmedical facility, such as a group home, foster home, or juvenile correctional institution. 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.

In addition to the percentage standard, the administrative rules set out a special method that may be used to calculate child support payments for a shared-time payer, serial-family payer, or split-custody payer, based on the percentage standard and modified to fit the specific circumstance. Under the rules, a shared-time payer is, generally, one who provides care for the child at least 31% of the time; a serial-family payer is, generally, one who already has a legal obligation to pay support for one or more children from a previous marriage or other relationship; and a split-custody payer is, generally, one who has at least two



children and who cares for at least one, but not all, of the children for more time than the other parent.

Under current statutory law, upon the request of a party a court may modify the amount of child support that would be ordered 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 cost of day care, the child's educational needs, and extraordinary travel expenses incurred in exercising physical placement rights. 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.

This bill authorizes a court to modify the amount of child support that would be ordered by using the percentage standard if the payer is a shared-time payer, serial-family payer, or split-custody payer, and the court uses the method set out in the administrative rules for calculating child support for that type of payer. In deciding whether to modify the amount of support, the court must first 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. However, if the court does modify the amount of support in accordance with the method set out in the administrative rules for a shared-time, serial, or split-custody payer, the court 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. 46.03 (18) (a) of the statutes is amended to read:

2 46.03 (18) (a) Except as provided in s. 46.10 (14) (b) and, (c), and (cd), the
3 department of health and family services shall establish a uniform system of fees for
4 services provided or purchased by the department of health and family services, or
5 a county department under s. 46.215, 46.22, 51.42, or 51.437, except for services
6 provided under subch. III of ch. 49; services relating to adoption; services provided
7 to courts; outreach, information, and referral services; or where, as determined by
8 the department of health and family services, a fee is administratively unfeasible or

1 would significantly prevent accomplishing the purpose of the service. A county
 2 department under s. 46.215, 46.22, 51.42, or 51.437 shall apply the fees ~~which that~~
 3 it collects under this program to cover the cost of such services. The department of
 4 health and family services shall report to the joint committee on finance no later than
 5 March 1 of each year on the number of children placed for adoption by the
 6 department of health and family services during the previous year and the costs to
 7 the state for services relating to such adoptions.

History: 1971 c. 270 s. 104; 1973 c. 90; 1973 c. 284 ss. 2, 32; 1973 c. 333; 1975 c. 39, 82; 1975 c. 189 s. 99 (1), (2); 1975 c. 224, 377, 413, 422; 1977 c. 29, 193; 1977 c. 196 s. 131; 1977 c. 203, 205, 271, 354; 1977 c. 418 ss. 287 to 289m, 924 (18) (d); 1977 c. 447, 449; 1979 c. 32 s. 92 (1); 1979 c. 34; 1979 c. 175 s. 46; 1979 c. 221, 331, 352; 1981 c. 20, 81; 1981 c. 314 s. 144; 1981 c. 390; 1983 a. 27, 193; 1983 a. 435 s. 7; 1983 a. 447, 474; 1983 a. 532 s. 36; 1985 a. 19, 29, 120, 176, 234, 285, 328, 331; 1985 a. 332 s. 251 (3); 1987 a. 3, 5, 27, 161, 186, 307, 339, 385, 399, 403, 413; 1989 a. 31 ss. 938m to 951, 2909g, 2909i; 1989 a. 56, 105, 107, 122; 1991 a. 39, 277; 1993 a. 16 ss. 851 to 859, 3072d; 1993 a. 98, 377, 385, 446, 481; 1995 a. 27 ss. 2026m to 2038b, 9126 (19); 1995 a. 77, 201, 225, 352, 370, 404, 448; 1997 a. 3, 27, 111, 283, 292; 1999 a. 9, 83; 2001 a. 16, 59, 61, 109.

8 **SECTION 2.** 46.03 (18) (b) of the statutes is amended to read:

9 46.03 (18) (b) Except as provided in s. 46.10 (14) (b) ~~and~~, (c), ~~and~~ (cd), any person
 10 receiving services provided or purchased under par. (a) or the spouse of the person
 11 and, in the case of a minor, the parents of the person, and, in the case of a foreign child
 12 described in s. 48.839 (1) who became dependent on public funds for his or her
 13 primary support before an order granting his or her adoption, the resident of this
 14 state appointed guardian of the child by a foreign court who brought the child into
 15 this state for the purpose of adoption, shall be liable for the services in the amount
 16 of the fee established under par. (a). If a minor receives services without ^{the} consent of
 17 a parent or guardian under s. 51.47, the department shall base the fee solely on the
 18 minor's ability to pay.

History: 1971 c. 270 s. 104; 1973 c. 90; 1973 c. 284 ss. 2, 32; 1973 c. 333; 1975 c. 39, 82; 1975 c. 189 s. 99 (1), (2); 1975 c. 224, 377, 413, 422; 1977 c. 29, 193; 1977 c. 196 s. 131; 1977 c. 203, 205, 271, 354; 1977 c. 418 ss. 287 to 289m, 924 (18) (d); 1977 c. 447, 449; 1979 c. 32 s. 92 (1); 1979 c. 34; 1979 c. 175 s. 46; 1979 c. 221, 331, 352; 1981 c. 20, 81; 1981 c. 314 s. 144; 1981 c. 390; 1983 a. 27, 193; 1983 a. 435 s. 7; 1983 a. 447, 474; 1983 a. 532 s. 36; 1985 a. 19, 29, 120, 176, 234, 285, 328, 331; 1985 a. 332 s. 251 (3); 1987 a. 3, 5, 27, 161, 186, 307, 339, 385, 399, 403, 413; 1989 a. 31 ss. 938m to 951, 2909g, 2909i; 1989 a. 56, 105, 107, 122; 1991 a. 39, 277; 1993 a. 16 ss. 851 to 859, 3072d; 1993 a. 98, 377, 385, 446, 481; 1995 a. 27 ss. 2026m to 2038b, 9126 (19); 1995 a. 77, 201, 225, 352, 370, 404, 448; 1997 a. 3, 27, 111, 283, 292; 1999 a. 9, 83; 2001 a. 16, 59, 61, 109.

19 **SECTION 3.** 46.10 (2) of the statutes is amended to read:

20 46.10 (2) Except as provided in subs. (2m) and (14) (b) ~~and~~, (c), ~~and~~ (cd), any
 21 person, including but not limited to a person admitted, committed, or placed under

1 s. 975.01, 1977 stats., s. 975.02, 1977 stats., and s. 975.17, 1977 stats., and ss. 51.10,
2 51.13, 51.15, 51.20, 51.35 (3), 51.37 (5), 51.45 (10), (11), (12), and (13), 55.05, 55.06,
3 971.14 (2) and (5), 971.17 (1), 975.06, and 980.06, receiving care, maintenance,
4 services, and supplies provided by any institution in this state including University
5 of Wisconsin Hospitals and Clinics, in which the state is chargeable with all or part
6 of the person's care, maintenance, services, and supplies, any person receiving care
7 and services from a county department established under s. 51.42 or 51.437 or from
8 a facility established under s. 49.73, and any person receiving treatment and services
9 from a public or private agency under s. 980.06 (2) (c), 1997 stats., or s. 971.17 (3) (d)
10 or (4) (e) or 980.08 (5) and the person's property and estate, including the homestead,
11 and the spouse of the person, and the spouse's property and estate, including the
12 homestead, and, in the case of a minor child, the parents of the person, and their
13 property and estates, including their homestead, and, in the case of a foreign child
14 described in s. 48.839 (1) who became dependent on public funds for his or her
15 primary support before an order granting his or her adoption, the resident of this
16 state appointed guardian of the child by a foreign court who brought the child into
17 this state for the purpose of adoption, and his or her property and estate, including
18 his or her homestead, shall be liable for the cost of the care, maintenance, services,
19 and supplies in accordance with the fee schedule established by the department
20 under s. 46.03 (18). If a spouse, widow or, minor, or an incapacitated person may be
21 lawfully dependent upon the property for ~~their~~ ^{his or her} support, the court shall release all or
22 such part of the property and estate from the charges that may be necessary to
23 provide for those persons. The department shall make every reasonable effort to

21

~~their~~ ^{his or her}
plain

- 1 notify the liable persons as soon as possible after the beginning of the maintenance,
2 but the notice or the receipt thereof is not a condition of liability.

History: 1971 c. 125; 1971 c. 213 s. 5; 1973 c. 90 ss. 223, 223m, 560 (3); 1973 c. 198, 333; 1975 c. 39 ss. 347 to 350, 734; 1975 c. 41, 94; 1975 c. 189 s. 99 (2); 1975 c. 198, 199, 224; 1975 c. 413 s. 18; 1975 c. 428; 1975 c. 430 ss. 6, 80; 1977 c. 29, 203; 1977 c. 418 ss. 294 to 295, 924 (50), 929 (18); 1977 c. 428; 1977 c. 447 s. 206; 1977 c. 449 ss. 75, 497; 1979 c. 34; 1979 c. 102 ss. 236 (4), 237; 1979 c. 117, 221, 331; 1981 c. 20 ss. 755 to 758, 2202 (20) (i), (m); 1981 c. 81; 1983 a. 27 ss. 955m, 2202 (20); 1985 a. 29, 176, 281, 332; 1987 a. 307; 1989 a. 31, 56, 96, 212; 1991 a. 39, 221, 315, 316; 1993 a. 16, 27, 385, 437, 446, 479, 481; 1995 a. 27 ss. 2054, 2055, 9130 (4); 1995 a. 77, 224, 404; 1997 a. 3, 27, 35, 237, 308; 1999 a. 9, 103; 2001 a. 16, 59, 103.

- 3 **SECTION 4. 46.10 (14) (a) of the statutes is amended to read:**

4 46.10 (14) (a) Except as provided in pars. (b) and, (c), ~~and~~ ^e (cd), liability of a
5 person specified in sub. (2) or s. 46.03 (18) for inpatient care and maintenance of
6 persons under 18 years of age at community mental health centers, a county mental
7 health complex under s. 51.08, the centers for the developmentally disabled, the
8 Mendota Mental Health Institute, and the Winnebago Mental Health Institute or
9 care and maintenance of persons under 18 years of age in residential, nonmedical
10 facilities such as group homes, foster homes, treatment foster homes, child caring
11 institutions, and juvenile correctional institutions is determined in accordance with
12 the cost-based fee established under s. 46.03 (18). The department shall bill the
13 liable person up to any amount of liability not paid by an insurer under s. 632.89 (2)
14 or (2m) or by other 3rd-party benefits, subject to rules that include formulas
15 governing ability to pay promulgated by the department under s. 46.03 (18). Any
16 liability of the patient not payable by any other person terminates when the patient
17 reaches age 18, unless the liable person has prevented payment by any act or
18 omission.

History: 1971 c. 125; 1971 c. 213 s. 5; 1973 c. 90 ss. 223, 223m, 560 (3); 1973 c. 198, 333; 1975 c. 39 ss. 347 to 350, 734; 1975 c. 41, 94; 1975 c. 189 s. 99 (2); 1975 c. 198, 199, 224; 1975 c. 413 s. 18; 1975 c. 428; 1975 c. 430 ss. 6, 80; 1977 c. 29, 203; 1977 c. 418 ss. 294 to 295, 924 (50), 929 (18); 1977 c. 428; 1977 c. 447 s. 206; 1977 c. 449 ss. 75, 497; 1979 c. 34; 1979 c. 102 ss. 236 (4), 237; 1979 c. 117, 221, 331; 1981 c. 20 ss. 755 to 758, 2202 (20) (i), (m); 1981 c. 81; 1983 a. 27 ss. 955m, 2202 (20); 1985 a. 29, 176, 281, 332; 1987 a. 307; 1989 a. 31, 56, 96, 212; 1991 a. 39, 221, 315, 316; 1993 a. 16, 27, 385, 437, 446, 479, 481; 1995 a. 27 ss. 2054, 2055, 9130 (4); 1995 a. 77, 224, 404; 1997 a. 3, 27, 35, 237, 308; 1999 a. 9, 103; 2001 a. 16, 59, 103.

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

20 46.10 (14) (b) Except as provided in ~~par.~~ pars. (c) and (cd) and subject to par.
21 (cm), liability of a parent specified in sub. (2) or s. 46.03 (18) for the care and
22 maintenance of the parent's minor child who has been placed by a court order under

1 s. 48.355 or 48.357 in a residential, nonmedical facility such as a group home, foster
 2 home, treatment foster home, or residential care center for children and youth shall
 3 be determined by the court by using the percentage standard established by the
 4 department of workforce development under s. 49.22 (9) and set out in s. DWD 40.03,
 5 Wis. Adm. Code, and by applying the percentage standard in the manner established
 6 by the department under s. 46.247.

History: 1971 c. 125; 1971 c. 213 s. 5; 1973 c. 90 ss. 223, 223m, 560 (3); 1973 c. 198, 333; 1975 c. 39 ss. 347 to 350, 734; 1975 c. 41, 94; 1975 c. 189 s. 99 (2); 1975 c. 198, 199, 224; 1975 c. 413 s. 18; 1975 c. 428; 1975 c. 430 ss. 6, 80; 1977 c. 29, 203; 1977 c. 418 ss. 294 to 295, 924 (50), 929 (18); 1977 c. 428; 1977 c. 447 s. 206; 1977 c. 449 ss. 75, 497; 1979 c. 34; 1979 c. 102 ss. 236 (4), 237; 1979 c. 117, 221, 331; 1981 c. 20 ss. 755 to 758, 2202 (20) (i), (n); 1981 c. 81; 1983 a. 27 ss. 955m, 2202 (20); 1985 a. 29, 176, 281, 332; 1987 a. 307; 1989 a. 31, 56, 96, 212; 1991 a. 39, 221, 315, 316; 1993 a. 16, 27, 385, 437, 446, 479, 481; 1995 a. 27 ss. 2054, 2055, 9130 (4); 1995 a. 77, 224, 404; 1997 a. 3, 27, 35, 237, 308; 1999 a. 9, 103; 2001 a. 16, 59, 103.

7 **SECTION 6.** 46.10 (14) (cd) of the statutes is created to read:

8 46.10 (14) (cd) Upon request by a parent and after considering the factors
 9 under par. (c) 1. to 11., the court may modify the amount of child support payments
 10 determined under par. (b), subject to par. (cm), in the special circumstance specified
 11 in s. 40.04 (1), Wis. Adm. Code, by calculating child support payments in the manner
 12 provided in s. 40.04 (1), Wis. Adm. Code; in the special circumstance specified in s.
 13 40.04 (2), Wis. Adm. Code, by calculating child support payments in the manner
 14 provided in s. 40.04 (2), Wis. Adm. Code; and in the special circumstance specified
 15 in s. 40.04 (3), Wis. Adm. Code, by calculating child support payments in the manner
 16 provided in s. 40.04 (3), Wis. Adm. Code. The court is not required to provide the
 17 information specified in par. (d) if the court determines child support payments
 18 under this paragraph.

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19 **SECTION 7.** 46.10 (14) (cm) 1. of the statutes is amended to read:

20 46.10 (14) (cm) 1. Except as provided in subd. 2., if a parent who is required to
 21 pay child support under par. (b) or (c), or (cd) is receiving adoption assistance under
 22 s. 48.975 for the child for whom support is ordered, the amount of the child support
 23 payments determined under par. (b) or (c), or (cd) may not exceed the amount of the

1 adoption assistance maintenance payments under s. 48.975 (3) (a). If an agreement
2 under s. 48.975 (4) is in effect that provides for a payment of \$0 under s. 48.975 (3)
3 (a), the payment of \$0 shall be considered to be an adoption assistance maintenance
4 payment for purposes of this subdivision.

History: 1971 c. 125; 1971 c. 213 s. 5; 1973 c. 90 ss. 223, 223m, 560 (3); 1973 c. 198, 333; 1975 c. 39 ss. 347 to 350, 734; 1975 c. 41, 94; 1975 c. 189 s. 99 (2); 1975 c. 198, 199, 224; 1975 c. 413 s. 18; 1975 c. 428; 1975 c. 430 ss. 6, 80; 1977 c. 29, 203; 1977 c. 418 ss. 294 to 295, 924 (50), 929 (18); 1977 c. 428; 1977 c. 447 s. 206; 1977 c. 449 ss. 75, 497; 1979 c. 34; 1979 c. 102 ss. 236 (4), 237; 1979 c. 117, 221, 331; 1981 c. 20 ss. 755 to 758, 2202 (20) (i), (n); 1981 c. 81; 1983 a. 27 ss. 955m, 2202 (20); 1985 a. 29, 176, 281, 332; 1987 a. 307; 1989 a. 31, 56, 96, 212; 1991 a. 39, 221, 315, 316; 1993 a. 16, 27, 385, 437, 446, 479, 481; 1995 a. 27 ss. 2054, 2055, 9130 (4); 1995 a. 77, 224, 404; 1997 a. 3, 27, 35, 237, 308; 1999 a. 9, 103; 2001 a. 16, 59, 103.

5 **SECTION 8. 48.30 (6) (b) of the statutes is amended to read:**

6 48.30 (6) (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, debts² 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, debts² and living expenses a document setting forth the percentage
13 standard established by the department of workforce development under s. 49.22 (9)
14 and the manner of its application established by the department of health and family
15 services under s. 46.247 and listing the factors that a court may consider under s.
16 46.10 (14) (c) and (cd).

History: 1977 c. 354, 355, 447; 1979 c. 300, 331, 355, 359; 1985 a. 321, 332; 1987 a. 151; 1987 a. 403 s. 256; Sup. Ct. Order, 158 Wis. 2d xvii (1990); 1993 a. 163, 474, 481; 1995 a. 77, 225, 404, 417; 1997 a. 3, 252, 292; 1999 a. 103; 2001 a. 61.

17 **SECTION 9. 48.31 (7) (b) of the statutes is amended to read:**

18 48.31 (7) (b) If it appears to the court that disposition of the case may include
19 placement of the child outside the child's home, the court shall order the child's
20 parent to provide a statement of income, assets, debts² and living expenses to the
21 court or the designated agency under s. 48.33 (1) at least 5 days before the scheduled
22 date of the dispositional hearing or as otherwise ordered by the court. The clerk of
23 court shall provide, without charge, to any parent ordered to provide a statement of

1 income, assets, debts² and living expenses a document setting forth the percentage
 2 standard established by the department of workforce development under s. 49.22 (9)
 3 and the manner of its application established by the department of health and family
 4 services under s. 46.247 and listing the factors that a court may consider under s.
 5 46.10 (14) (c) and (cd).

History: 1977 c. 354, 447; 1979 c. 32 s. 92 (13); 1979 c. 300, 331, 355, 357, 359; 1983 a. 197; 1985 a. 262 s. 8; 1987 a. 339; 1993 a. 481; 1995 a. 77, 275, 404, 448; 1997 a. 3, 35, 292; 1999 a. 103; 2001 a. 105.

6 **SECTION 10.** 48.33 (4m) (intro.) of the statutes is amended to read:

7 **48.33 (4m) SUPPORT RECOMMENDATIONS; INFORMATION TO PARENTS.** (intro.) In
 8 making a recommendation for an amount of child support under sub. (4), the agency
 9 shall consider the factors that the court considers under s. 46.10 (14) (c) and (cd) for
 10 deviation from the percentage standard. Prior to the dispositional hearing under s.
 11 48.335, the agency shall provide the child's parent with all of the following:

History: 1977 c. 354; 1979 c. 300; 1983 a. 399; 1987 a. 27, 339; 1989 a. 31, 41, 107; 1993 a. 377, 385, 446, 481; 1995 a. 27, 77, 201; 1997 a. 27, 292; 2001 a. 59, 109.

12 **SECTION 11.** 48.33 (4m) (b) of the statutes is amended to read:

13 **48.33 (4m) (b)** A written explanation of how the parent may request that the
 14 court modify the amount of child support under s. 46.10 (14) (c) or (cd).

History: 1977 c. 354; 1979 c. 300; 1983 a. 399; 1987 a. 27, 339; 1989 a. 31, 41, 107; 1993 a. 377, 385, 446, 481; 1995 a. 27, 77, 201; 1997 a. 27, 292; 2001 a. 59, 109.

15 **SECTION 12.** 48.357 (5m) (a) of the statutes is amended to read:

16 **48.357 (5m) (a)** If a proposed change in placement changes a child's placement
 17 from a placement in the child's home to a placement outside the child's home, the
 18 court shall order the child's parent to provide a statement of income, assets, debts²
 19 and living expenses to the court or the person or agency primarily responsible for
 20 implementing the dispositional order by a date specified by the court. The clerk of
 21 court shall provide, without charge, to any parent ordered to provide a statement of
 22 income, assets, debts² and living expenses a document setting forth the percentage
 23 standard established by the department of workforce development under s. 49.22 (9)

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

History: 1977 c. 354; 1979 c. 300; 1987 a. 27; 1989 a. 31, 107; 1993 a. 16, 385, 395, 446, 481, 491; 1995 a. 27, 77, 275, 404; 1997 a. 3, 35, 80, 237, 292; 1999 a. 9, 103, 149; 2001 a. 16, 103, 109.

5 **SECTION 13.** 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, debts² 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, debts² and living expenses a
12 document setting forth the percentage standard established by the department of
13 workforce development under s. 49.22 (9) 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) and (cd).

History: 1977 c. 354; 1979 c. 300; 1985 a. 172; 1993 a. 481; 1995 a. 275, 404; 1997 a. 3, 80, 237, 292; 1999 a. 103, 149; 2001 a. 38, 109.

16 **SECTION 14.** 301.03 (18) (a) of the statutes is amended to read:

17 301.03 (18) (a) Except as provided in s. 301.12 (14) (b) and, (c), and (cd),
18 establish a uniform system of fees for juvenile delinquency-related services provided
19 or purchased by the department or a county department under s. 46.215, 46.22, or
20 46.23, except for services provided to courts; outreach, information, and referral
21 services; or when, as determined by the department, a fee is administratively
22 unfeasible or would significantly prevent accomplishing the purpose of the service.

1 A county department under s. 46.215, 46.22, or 46.23 shall apply the fees that it
2 collects under this program to cover the cost of those services.

History: 1989 a. 31, 107, 121, 188, 336; 1991 a. 39; 1993 a. 16, 377, 479; 1995 a. 27 ss. 6355, 6356m, 6356p, 9126 (19); 1995 a. 77, 141; 1997 a. 27, 35, 237, 275, 283, 284; 1999 a. 9, 32; 2001 a. 16, 109.

3 **SECTION 15.** 301.03 (18) (b) of the statutes is amended to read:

4 301.03 (18) (b) Except as provided in s. 301.12 (14) (b) ~~and~~, (c), and (cd), hold
5 liable for the services provided or purchased under par. (a) in the amount of the fee
6 established under par. (a) any person receiving those services or the spouse of the
7 person and, in the case of a minor, the parents of the person, and, in the case of a
8 foreign child described in s. 48.839 (1) who became dependent on public funds for his
9 or her primary support before an order granting his or her adoption, the resident of
10 this state appointed guardian of the child by a foreign court who brought the child
11 into this state for the purpose of adoption.

History: 1989 a. 31, 107, 121, 188, 336; 1991 a. 39; 1993 a. 16, 377, 479; 1995 a. 27 ss. 6355, 6356m, 6356p, 9126 (19); 1995 a. 77, 141; 1997 a. 27, 35, 237, 275, 283, 284; 1999 a. 9, 32; 2001 a. 16, 109.

12 **SECTION 16.** 301.12 (2) of the statutes is amended to read:

13 301.12 (2) Except as provided in subs. (2m) and (14) (b) ~~and~~, (c), and (cd), any
14 person, including but not limited to a person placed under s. 48.366, 938.183, 938.34
15 (4h) or (4m), or 938.357 (4) or (5) (e), receiving care, maintenance, services, and
16 supplies provided by any institution in this state operated or contracted for by the
17 department, in which the state is chargeable with all or part of the person's care,
18 maintenance, services, and supplies, and the person's property and estate, including
19 the homestead, and the spouse of the person, and the spouse's property and estate,
20 including the homestead, and, in the case of a minor child, the parents of the person,
21 and their property and estates, including their homestead, and, in the case of a
22 foreign child described in s. 48.839 (1) who became dependent on public funds for his
23 or her primary support before an order granting his or her adoption, the resident of

1 this state appointed guardian of the child by a foreign court who brought the child
2 into this state for the purpose of adoption, and his or her property and estate,
3 including his or her homestead, shall be liable for the cost of the care, maintenance,
4 services, and supplies in accordance with the fee schedule established by the
5 department under s. 301.03 (18). If a spouse, widow or, minor, or an incapacitated
6 person may be lawfully dependent upon the property for their support, the court
7 shall release all or such part of the property and estate from the charges that may
8 be necessary to provide for those persons. The department shall make every
9 reasonable effort to notify the liable persons as soon as possible after the beginning
10 of the maintenance, but the notice or the receipt of the notice is not a condition of
11 liability.

History: 1995 a. 27 ss. 6361, 9126 (19); 1995 a. 77; 1997 a. 237; 1999 a. 103; 2001 a. 59.

12 SECTION 17. 301.12 (14) (a) of the statutes is amended to read:

13 301.12 (14) (a) Except as provided in pars. (b) and, (c), and (cd), liability of a
14 person specified in sub. (2) or s. 301.03 (18) for care and maintenance of persons
15 under 17 years of age in residential, nonmedical facilities such as group homes, foster
16 homes, treatment foster homes, child caring institutions, and juvenile correctional
17 institutions is determined in accordance with the cost-based fee established under
18 s. 301.03 (18). The department shall bill the liable person up to any amount of
19 liability not paid by an insurer under s. 632.89 (2) or (2m) or by other 3rd-party
20 benefits, subject to rules which that include formulas governing ability to pay
21 promulgated by the department under s. 301.03 (18). Any liability of the resident not
22 payable by any other person terminates when the resident reaches age 17, unless the
23 liable person has prevented payment by any act or omission.

History: 1995 a. 27 ss. 6361, 9126 (19); 1995 a. 77; 1997 a. 237; 1999 a. 103; 2001 a. 59.

24 SECTION 18. 301.12 (14) (b) of the statutes is amended to read:

1 301.12 (14) (b) Except as provided in ~~par. pars.~~ [✓] (c) and (cd) and subject to par.
 2 (cm), liability of a parent specified in sub. (2) or s. 301.03 (18) for the care and
 3 maintenance of the parent's minor child who has been placed by a court order under
 4 s. 938.183, 938.355, or 938.357 in a residential, nonmedical facility such as a group
 5 home, foster home, treatment foster home, residential care center for children and
 6 youth, or juvenile correctional institution shall be determined by the court by using
 7 the percentage standard established by the department of workforce development
 8 under s. 49.22 (9) and set out in s. DWD 40.03, Wis. Adm. Code, and by applying the
 9 percentage standard in the manner established by the department under par. (g).

History: 1995 a. 27 ss. 6361, 9126 (19); 1995 a. 77; 1997 a. 237; 1999 a. 103; 2001 a. 59.

10 **SECTION 19.** 301.12 (14) (cd) of the statutes is created to read:

11 301.12 (14) (cd) Upon request by a parent and after considering the factors
 12 under par. (c) 1. to 11., the court may modify the amount of child support payments
 13 determined under par. (b), subject to par. (cm), in the special circumstance specified
 14 in s. ^{DWD}40.04 (1), Wis. Adm. Code, by calculating child support payments in the manner
 15 provided in s. ^{DWD}40.04 (1), Wis. Adm. Code; in the special circumstance specified in s.
 16 ^{DWD}40.04 (2), Wis. Adm. Code, by calculating child support payments in the manner
 17 provided in s. ^{DWD}40.04 (2), Wis. Adm. Code; and in the special circumstance specified
 18 in s. ^{DWD}40.04 (3), Wis. Adm. Code, by calculating child support payments in the manner
 19 provided in s. ^{DWD}40.04 (3), Wis. Adm. Code. The court is not required to provide the
 20 information specified in par. (d) if the court determines child support payments
 21 under this paragraph.

22 **SECTION 20.** 301.12 (14) (cm) 1. of the statutes is amended to read:

23 301.12 (14) (cm) 1. Except as provided in subd. 2., if a parent who is required
 24 to pay child support under par. (b) ~~or~~ (c), [✓] or (cd) is receiving adoption assistance

1 under s. 48.975 for the child for whom support is ordered, the amount of the child
2 support payments determined under par. (b) ~~or~~, (c), or (cd) may not exceed the
3 amount of the adoption assistance payments.

History: 1995 a. 27 ss. 6361, 9126 (19); 1995 a. 77; 1997 a. 237; 1999 a. 103; 2001 a. 59.

4 SECTION 21. 767.085 (2) (b) of the statutes is amended to read:

5 767.085 (2) (b) The clerk of court shall provide without charge, to each person
6 filing a petition requesting child support, a document setting forth the percentage
7 standard established by the department under s. 49.22 (9) and listing the factors
8 ~~which~~ ^{that} a court may consider under s. 767.25 (1L) and (1m).

History: 1971 c. 220; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; 1979 c. 352 s. 39; Stats. 1979 s. 767.085; 1985 a. 29; 1987 a. 332 s. 64; 1987 a. 355, 403; 1989 a. 31, 56, 132; 1993 a. 78, 481; 1995 a. 27 s. 9126 (19); 1995 a. 201, 404; 1997 a. 191; 2001 a. 61.

9 SECTION 22. 767.23 (1n) of the statutes is amended to read:

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

History: 1971 c. 149; 1971 c. 211 s. 126; 1971 c. 220, 307; 1975 c. 283; Sup. Ct. Order, 73 Wis. 2d xxxi (1976); 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 111, 196; 1979 c. 352 s. 39; Stats. 1979 s. 767.23; 1983 a. 27; 1983 a. 204 s. 22; 1983 a. 447; 1985 a. 29 s. 3202 (9); 1987 a. 355, 364, 413; 1989 a. 212; 1991 a. 39; 1993 a. 78, 481, 490; 1995 a. 27 ss. 7100h, 9126 (19); 1995 a. 70, 404; 1999 a. 9; 2001 a. 16, 61.

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

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Amended by

1 767.25 (1j) Except as provided in sub. subs. (1L) and (1m), the court shall
2 determine child support payments by using the percentage standard established by
3 the department under s. 49.22 (9) and set out in s. DWD 40.03, Wis. Adm. Code.

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.

4 SECTION 24. 767.25 (1L) of the statutes is created to read:

5 767.25 (1L) Upon request by a party and after considering the factors under
6 sub. (1m) (a) to (i), the court may modify the amount of child support payments
7 determined under sub. (1j) in the special circumstance specified in s. ^{DWD}40.04 (1), Wis.
8 Adm. Code, by calculating child support payments in the manner provided in s. ^{DWD}40.04
9 (1), Wis. Adm. Code; in the special circumstance specified in s. ^{DWD}40.04 (2), Wis. Adm.
10 Code, by calculating child support payments in the manner provided in s. ^{DWD}40.04 (2),
11 Wis. Adm. Code; and in the special circumstance specified in s. ^{DWD}40.04 (3), Wis. Adm.
12 Code, by calculating child support payments in the manner provided in s. ^{DWD}40.04 (3),
13 Wis. Adm. Code. The court is not required to provide the information specified in sub.
14 (1n) if the court determines child support payments under this subsection.

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

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

and set out in s. DWD 40.03, Wis. Adm. Code.

1 in its order that the parent must make child support payments calculated under s.
2 767.25 (1j), (1L) or (1m) after the obligation to make payments ordered under this
3 paragraph ceases.

4 History: 1987 a. 413; 1993 a. 16, 481; 1995 a. 27 ss. 7105 to 7109, 9130 (4); 1995 a. 404; 1997 a. 191; 1999 a. 9.

SECTION 26. 767.32 (1) (b) 4. of the statutes is amended to read:

5 767.32 (1) (b) 4. A difference between the amount of child support ordered by
6 the court to be paid by the payer and the amount that the payer would have been
7 required to pay based on the percentage standard established by the department
8 under s. 49.22 (9) and set out in s. DWD 40.03, Wis. Adm. Code, or based on the
9 method of calculating child support provided in s. 46.10 (14) (cd), 301.12 (14) (cd), or
10 767.25 (1L), if the court did not use the percentage standard or the method provided
11 in s. 46.10 (14) (cd), 301.12 (14) (cd), or 767.25 (1L) in determining the child support
12 payments and did not provide the information required under s. 46.10 (14) (d), 301.12
13 (14) (d), or 767.25 (1n), whichever is appropriate.

History: 1971 c. 220; 1977 c. 105 ss. 38, 48, 49; 1977 c. 418; 1979 c. 32 ss. 50, 92 (4); Stats. 1979 s. 767.32; 1981 c. 20 s. 2202 (20) (m); 1981 c. 314 s. 146; 1983 a. 27; 1985 a. 176; 1987 a. 27, 355, 413; 1989 a. 212; 1991 a. 39; 1993 a. 16, 481, 491; 1995 a. 27 s. 9126 (19); 1995 a. 77, 201, 225, 279, 289, 404, 417; 1997 a. 27, 35, 105, 191, 237, 273; 1999 a. 9, 103; 2001 a. 16, 61, 105.

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

15 767.32 (2) Except as provided in sub. (2m) or (2r), if the court revises a
16 judgment or order with respect to child support payments, it shall do so by using the
17 percentage standard established by the department under s. 49.22 (9) and set out in
18 s. DWD 40.03, Wis. Adm. Code.

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.

19 **SECTION 28.** 767.32 (2m) of the statutes is renumbered 767.32 (2m) (a).

20 **SECTION 29.** 767.32 (2m) (b) of the statutes is created to read:

21 767.32 (2m) (b) Upon request by a party and after considering the factors under
22 s. 767.25 (1m) (a) to (i), the court may modify the amount of child support payments
23 determined under sub. (2) in the special circumstance specified in s. 40.04 (1), Wis.

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1 Adm. Code, by calculating child support payments in the manner provided in s. ^{DWD}40.04
 2 (1), Wis. Adm. Code; in the special circumstance specified in s. ^{DWD}40.04 (2), Wis. Adm.
 3 Code, by calculating child support payments in the manner provided in s. ^{DWD}40.04 (2),
 4 Wis. Adm. Code; and in the special circumstance specified in s. ^{DWD}40.04 (3), Wis. Adm.
 5 Code, by calculating child support payments in the manner provided in s. ^{DWD}40.04 (3),
 6 Wis. Adm. Code. The court is not required to provide the information specified in s.
 7 767.25 (1n) if the court determines child support payments under this paragraph.

8 **SECTION 30.** 767.45 (7) of the statutes is amended to read:

9 767.45 (7) The clerk of court shall provide without charge, to each person
 10 bringing an action under this section, except to the state under sub. (1) (g) or (6m),
 11 a document setting forth the percentage standard established by the department
 12 under s. 49.22 (9) and listing the factors ^{that} which a court may consider under s. 767.25
 13 (1L) and (1m).

History: 1979 c. 352; 1981 c. 20 s. 2202 (20) (m); 1983 a. 447; 1985 a. 29; 1987 a. 27, 355, 399, 413; 1989 a. 31, 212; 1993 a. 326, 481; 1995 a. 27 s. 9126 (19); 1995 a. 68, 100, 201, 275, 404; 1997 a. 191; 1999 a. 9; 2001 a. 61.

14 **SECTION 31.** 767.455 (6) of the statutes is amended to read:

15 767.455 (6) DOCUMENT. The summons served on the respondent shall be
 16 accompanied by a document, provided without charge by the clerk of court, setting
 17 forth the percentage standard established by the department under s. 49.22 (9) and
 18 listing the factors ^{that} which a court may consider under s. 767.25 (1L) and (1m).

History: 1979 c. 352; 1981 c. 314; 1983 a. 447; 1985 a. 29; 1987 a. 27, 413; Sup. Ct. Order, 171 Wis. 2d xix (1992); 1993 a. 16, 481; 1995 a. 27 ss. 7112, 7113b, 9126 (19); 1995 a. 100, 404, 417; 1997 a. 35, 191, 250; 1999 a. 9; 2001 a. 61, 105.

19 **SECTION 32.** 767.477 (2) of the statutes is amended to read:

20 767.477 (2) Before making any temporary order under sub. (1), the court shall
 21 consider those factors that the court is required to consider when granting a final
 22 judgment on the same subject matter. If the court makes a temporary child support
 23 order that deviates from the amount of support that would be required by using the

by using

1

percentage standard established by the department under s. 49.22 (9) or the method
2 of calculating child support provided in s. 767.25 (1L), the court shall comply with
3 the requirements of s. 767.25 (1n).

History: 1997 a. 191; 1999 a. 9.

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SECTION 33. 938.30 (6) (b) of the statutes is amended to read:

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

History: 1995 a. 27 s. 9126 (19); 1995 a. 77; 1997 a. 27, 35, 181, 237, 252; 1999 a. 32, 103; 2001 a. 38, 61.

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SECTION 34. 938.31 (7) (b) of the statutes is amended to read:

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

1 s. 49.22 (9) and listing the factors that a court may consider under s. 301.12 (14) (c)
2 and (cd). ✓

History: 1995 a. 27 s. 9126 (19); 1995 a. 77; 1997 a. 27, 35, 181, 237, 252; 1999 a. 32, 103; 2001 a. 38.

3 **SECTION 35.** 938.33 (4m) (intro.) of the statutes is amended to read:

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

History: 1995 a. 77, 417; 1997 a. 27, 35, 237, 252; 1999 a. 9; 2001 a. 59, 109.

10 **SECTION 36.** 938.33 (4m) (b) of the statutes is amended to read:

11 938.33 (4m) (b) A written explanation of how the parent may request that the
12 court modify the amount of child support under s. 301.12 (14) (c) or (cd). ✓

History: 1995 a. 77, 417; 1997 a. 27, 35, 237, 252; 1999 a. 9; 2001 a. 59, 109.

13 **SECTION 37.** 938.357 (5m) (a) of the statutes is amended to read:

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

1 the court shall determine the liability of the parent in the manner provided in s.
2 301.12 (14).

3 History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 75, 352; 1997 a. 27, 35, 80, 205, 237; 1999 a. 9, 103; 2001 a. 16, 103, 109.

SECTION 9359. Initial applicability; workforce development.

4 (1) CALCULATING CHILD SUPPORT IN SPECIAL CIRCUMSTANCES. The treatment of
5 sections 46.03 (18) (a) and (b), 46.10 (2) and (14) (a), (b), (cd), and (cm) 1., 48.30 (6)
6 (b), 48.31 (7) (b), 48.33 (4m) (intro.) and (b), 48.357 (5m) (a), 48.363 (1) (c), 301.03 (18)
7 (a) and (b), 301.12 (2) and (14) (a), (b), (cd), and (cm) 1., 767.085 (2) (b), 767.23 (1n),
8 767.25 (1j) and (1L), 767.295 (2) (c), 767.32 (1) (b) 4. and (2), 767.45 (7), 767.455 (6),
9 767.477 (2), 938.30 (6) (b), 938.31 (7) (b), 938.33 (4m) (intro.) and (b), and 938.357
10 (5m) (a) of the statutes, the renumbering of section 767.32 (2m) of the statutes, and
11 the creation of section 767.32 (2m) (b) of the statutes first apply to child support
12 orders that are granted on the effective date of this subsection, including orders in
13 actions or proceedings to modify a judgment or order that was granted before the
14 effective date of this subsection.

15 (END)

Insert 19-2

and (2m)(a)2.

, and 938.363 (1)(c)

D-note

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0021/?ins
PJK:.....

INSERT 13-8 ✓

1 SECTION 1. 767.085 (2m) (a) 2. of the statutes is amended to read:
2 767.085 (2m) (a) 2. Shall be accompanied by a document, provided without
3 charge by the clerk of court, setting forth the percentage standard established by the
4 department under s. 49.22 (9) and listing the factors ^{that} which a court may consider
5 under s. 767.25 (1L) and (1m).

History: 1971 c. 220; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; 1979 c. 352 s. 39; Stats. 1979 s. 767.085; 1985 a. 29; 1987 a. 332 s. 64; 1987 a. 355, 403; 1989 a. 31, 56, 132; 1993 a. 78, 481; 1995 a. 27 s. 9126 (19); 1995 a. 201, 404; 1997 a. 191; 2001 a. 61.

(END OF INSERT 13-8)

INSERT 19-2 ✓

6 SECTION 2. 938.363 (1) (c) of the statutes is amended to read:
7 938.363 (1) (c) If the proposed revision is for a change in the amount of child
8 support to be paid by a parent, the court shall order the juvenile's parent to provide
9 a statement of income, assets, debts, and living expenses to the court and the person
10 or agency primarily responsible for implementing the dispositional order by a date
11 specified by the court. The clerk of court shall provide, without charge, to any parent
12 ordered to provide a statement of income, assets, debts, and living expenses a
13 document setting forth the percentage standard established by the department of
14 workforce development under s. 49.22 (9) and listing the factors that a court may
15 consider under s. 301.12 (14) (c) and (cd).

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 275; 1997 a. 35, 80, 237, 252; 1999 a. 103; 2001 a. 38, 109.

(END OF INSERT 19-2)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0021/dn
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King

Special circumstance

1. Should the modification in support by using the method under s. DWD 40.04, Wis. Adm. Code, be based on consideration of the factors under s. 767.25 (1m) (a) to (i), as drafted? If not, do you want to specify any other basis for the modification, or is the ~~method~~ itself, the basis?

2. I did not add the administrative code section of the percentage standard to the various provisions that require the clerk of court to provide a document that sets forth the percentage standard. I assumed that the documents being used set forth s. DWD 40.03, Wis. Adm. Code. I do not know if they go further and include the calculations under s. DWD 40.04, Wis. Adm. Code. Do you think the addition of the administrative code citation is needed in those sections? (See s. 48.30 (6) (b), for example.)

(s. DWD 40.03)

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-0021/P1dn
PJK:kmg:pg

October 10, 2002

1. Should the modification in support by using the method under s. DWD 40.04, Wis. Adm. Code, be based on consideration of the factors under s. 767.25 (1m) (a) to (i), as drafted? If not, do you want to specify any other basis for the modification, or is the special circumstance, itself, the basis?
2. I did not add the administrative code section of the percentage standard (s. DWD 40.03) to the various provisions that require the clerk of court to provide a document that sets forth the percentage standard. I assumed that the documents being used set forth s. DWD 40.03, Wis. Adm. Code. I do not know if they go further and include the calculations under s. DWD 40.04, Wis. Adm. Code. Do you think the addition of the administrative code citation is needed in those sections? (See s. 48.30 (6) (b), for example.)

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

STATUTORY LANGUAGE REQUEST
2003-05 BIENNIAL BUDGET

TOPIC: Application of Child Support Percentage Standard in Shared Time, Serial Family
and Split Custody Cases

479

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TEAM: EDUC

ANALYST: Fath

AGENCY: DWD

NUMBER: 445

BB0187

CORRESPONDENCE/Memorandum

State of Wisconsin

Department of Administration

Date: October 14, 2002
To: Steve Miller, LRB
From: Erin Fath, DOA
Subject: Statutory Language Request

DWD request 5603-STAT#8: Application of Child Support Percentage Standard in Shared Time, Serial Family and Split Custody Cases

Attached is a request for a statutory language change that DWD claims it submitted to LRB prior to submitting it biennial budget request to DOA. However, an LRB draft associated with this request was not included with DWD's biennial budget submission to DOA. I do not know if that means the LRB is still working on this request, or if a draft was returned to DWD, but not included in its biennial budget request submission to DOA.

I am submitting this request now to get it into DOA's statutory language tracking system as a DOA statutory language request item.

If you have any questions, please call me at 6-8219, or send me an email at: erin.fath@doa.state.wi.us.

Thank you.

STATUTORY MODIFICATIONS

Department of Workforce Development
2003-2005 Biennial Budget Request

DIN Number: DIN5603STAT#8

Topic: Application of child support percentage standard in shared time, serial family and split custody cases

Description of Change:

Amend s. 767.25 to clarify that the use of the percentage standard is permissive in shared time, serial family and split custody cases.

Justification:

In the Randall v. Randall decision, the Court of Appeals held that the presumptive application of the percentage standard also applied to the shared time formula. The court stated that when parents have physical placement for a substantial number of overnights or the equivalent, they generally assume the variable costs for the children when they are with them. A parent does not need to demonstrate that he/she assumes a proportion of variable costs when having the children as a shared-time payer.

Although use of the percentage standard is presumptive under Wisconsin law, its application in shared time, serial family and split custody cases was intended to be permissive. This is substantiated by language in Administrative Rule DWD 40 that uses the terminology 'may'. The DWD Child Support Guidelines Advisory Committee reviewed this issue and recommended a statutory change to clarify that the use of the percentage standard in shared time, serial family and split custody cases was intended to be permissive.

If there is no change to the statute, the Randall decision will continue to be applied in shared-time arrangements resulting in an inconsistency between state law and administrative rule, and application of the law by the court. Courts are unlikely to consider special circumstances when ordering support. Shared time, serial families and split custody cases are the primary situations when special circumstances should be considered when determining support.

Kahler, Pam

From: Chesnik, Constance
Sent: Monday, October 14, 2002 12:21 PM
To: Kahler, Pam
Subject: Randall

Pam, would something along the lines of the attached work? I am proposing to completely repeal and recreate s.49.22(9)



randalllanguage.do

c

and then include a nonstatutory provision that the intent is to overrule Randall.

Connie M, Chesnik

Attorney

(608) 267-7295

(608) 267-2824 (fax)

connie.chesnik@dwd.state.wi.us

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

(9)(b) The rules promulgated under par. (a) may provide for adjustments to the percentage standard that a court, in its discretion, may use for determining child support in cases in which a child has substantial periods of physical placement with each parent or when a parent has a preexisting obligation to support a child.

767.25 (1j) Except as provided in subs (1L) and (1m), the court shall determine child support payments by using the percentage standard established by the department under s. 49.22(a).

(1L) The court may modify the amount of child support payments determined under sub. (1j), in the manner provided for by the Department under s.49.22(9)(b) in cases in which a child has substantial periods of physical placement with each parent or when a parent has a preexisting obligation to support a child.

*on req of party or on own motion
& don't have to provide reasons.*