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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2003-04

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on ... Children and Families (AC-CF)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
  (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (May 2012)

LEGAL ACTION OF WISCONSIN, INC.

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TO: Assembly Committee on Children and Families

FROM: Bob Andersen

RE: AB 250, Relating to calculating child support and creating committees to review the method of calculating child support

DATE: August 6, 2003

Legal Action of Wisconsin, Inc. (LAW) is a nonprofit organization funded by the federal Legal Services Corporation, Inc., to provide legal services for low income people in 39 counties in Wisconsin. LAW provides representation for low income people across a territory that extends from the very populous southeastern corner of the state up through Brown County in the east and La Crosse County in the west. Family law is one of the three principal areas in which LAW provides services (housing and public benefits are the other two). As a result, LAW is extensively involved in child support issues, on behalf of both payees and payers.

We are opposed to AB 250 because it reduces child support orders by too much for many situations, because Assembly Clearinghouse Rule 03-022 makes substantial reductions of child support orders in appropriate cases, and because AB 250 ignores the need to reduce child support orders for low income payers, as has been recommended by the federal ***Office of the Inspector General of the Department of Health and Human Services*** and the federal ***Office of Child Support Enforcement.***

On pages 18-19, AB 250 proposes two different schedules for reducing child support payments for parents whose combined gross monthly income falls between $4,000 and $20,000 and for parents whose gross monthly income exceeds $20,000 per month. The resulting child support orders would be less than what is required by current law: 17% of income for one child, 25% for two, 29% for three, 31% for four and 34% for five or more children. The current child support levels were based on a consideration of what parents pay in intact families for child support. The percentages that were arrived at are actually a little below what parents pay in intact families. These levels were slightly reduced to take into consideration the expenses that the person with the lesser physical placement would have in taking care of the child. So the 17%, 25%, etc., levels are actually a little below what intact families spend on child support and they do already take into account expenses of the person with the lesser physical placement.

Assembly Clearinghouse Rule 03-022 is preferable to AB 250, because it maintains these levels, except for incomes that are above $102,000 per year and above $150,000 per year. In these cases,

child support orders are reduced to reflect the reality that intact families with incomes at this level pay a lesser percentage of their income toward child support. Consequently, the proposed administrative rule reduces child support by 20% for incomes above $102,000 per year and 40% for incomes above $150,000 per year.

However, the biggest change in child support calculation is made in the same way by both AB 250 and the proposed administrative rule. Under both proposals, the incomes of both parents are considered in setting support when they each have physical placement at least 25% of the time.

Under current law, the income of both parents is not considered until both parents have physical placement at least 40% of the time. As a result, the change that is proposed by Assembly Clearinghouse Rule 03-022 is responsive to the greatest concern that has been raised by proponents of AB 250 – which is to allow for the consideration of both parents incomes. The proposed administrative rule (and the bill) draw the line at 25% physical placement, in determining whether to consider both parents income. Physical placement that falls below that level is not considered to be significant enough to warrant reducing child support by taking into account the other parent's income. The expenses that a parent has are not that great, if the parent has physical placement below 25% of the time. Above that level, expenses rise because of the need to provide more for the child, especially in living accommodations.

This is a very significant change in the law that is being proposed by Assembly Clearinghouse Rule 03-022. It will have a dramatic effect on child support orders, including cases where income is imputed for mothers with children who have been unemployed or underemployed because of child care responsibilities. It will also have a dramatic effect on the number of people who will be going back to court to increase their periods of physical placement to 25% of the time, in order to benefit from the new law. This should resolve many of the complaints that have been made by child support payers over the years.

We also oppose AB 250, because it does nothing to resolve a serious problem for low income payers. In fact, it makes matters worse. The problem with current law is that, for persons with incomes that are below their earning capacity, current administrative rules allow for the imputation of their income by either (a) evaluating their earning capacity or (b) setting an order at 40 times the federal minimum wage. ***Because it is simpler, unfortunately, most jurisdictions impute income by simply setting orders at 40 times the federal minimum wage.*** The result is that unrealistic orders are set that payers can never reach, result in huge arrearages being accumulated, result in incarceration, and result in a people losing their jobs. AB 250 is worse than current law, because, instead of the criteria used under current law to assess whether someone is not meeting their capacity – which considers education, training, work experience – on page 16, AB 250 appears to require an order based on a 40 hour work week, considering only whether the parent is "able and available" to work.

The problems with current law have been attested to by obligors. They say the result of such policies is that low income payers suffer a never ending cycle of incarceration and joblessness that feed off of each other. Inmates in county jails, some with Huber law privileges, give anecdotal reports of the failure of the current system, including –

-- high child support orders that are imposed against them even though they have no ability to get the jobs that would be necessary to abide by the orders;

-- losing jobs that helped them make some payments because they are arrested on child support warrants;

-- child support orders that do not commence until they are incarcerated after having been removed from their families on some other violations;

-- contempt orders for nonpayment of child support that are entered against them for failing to appear in court while they are incarcerated;

-- arrearages that snowball against them that make it impossible for them ever to catch up on their orders;

-- the uneven enforcement of orders among the counties, resulting in automatic incarceration in places like Dane County, while other counties do not have a policy of automatic incarceration.

The kind of process that Wisconsin uses has recently come under sharp criticism at the federal level. The federal ***Office of Inspector General of the Department of Health and Human Services*** filed a report in July, 2000, that contained some remarkable conclusions:

- "the policies reviewed do not usually generate child support payments by low income non custodial parents."

- "the greater the length of time for which non-custodial parents are charged retroactive support, the less likely they are to make any payments on their child support order, once established

- ***"In order to increase payments, States must exercise every possible means to base awards on actual, rather than imputed income***" [emphasis added]

As a result, the federal ***Office of Child Support Enforcement (OCSE)*** produced a publication – Policy Interpretation Question, PIQ-00-03 – outlining several options for the states, in the wake of the OIG report –

- arrearages may be reduced by participation in fatherhood or employment programs, may be excused by amnesty programs, or may be postponed.

- ***the imputation of income should be limited to cases in which the noncustodial parent has the ability to pay, but is uncooperative.***

- states are encouraged to respond appropriately to modifications of child support where circumstances change significantly, particularly in cases of incarceration, in order to ensure that the orders are based on a current ability to pay.

- states may choose not to establish retroactive child support for low income obligors in public assistance cases.

Our initial reaction to these recommendations was to recommend that Wisconsin also not impute income unless the payer is being uncooperative. This was the law in the state not long ago. However, because we did not feel it appropriate for mothers who are not represented by child support agencies to have the burden of proving ***shirking***, we decided instead on a recommendation for changing the law on the imputation of income and a recommendation for a reduced child support calculation for low income payers.

We support the changes to current law that are made by Assembly Clearinghouse Rule 03-022, in requiring a more realistic assessment of a person's earning capacity in imputing income. Under the proposed rule, courts are required to exercise due diligence to ascertain a person's ***real earning capacity***.

In addition, we propose that Assembly Clearinghouse Rule 03-022 include the following methodology for calculating child support for low income payers.

The proposed rules should contain either a mathematical formula or a chart setting forth a minimum child support obligation of $50 for all payers and then setting a requirement that payers pay a graduated amount of one half of the current percentage support amount beginning at 75% of the FPL up to an amount based upon current percentages at 125% of the FPL. Whether a chart or formula is selected, it should result in removing any "cliffs" for payers with income between 75% and 125% of poverty. (If a chart is selected, we suggest that it be drafted in $25 income increments, similar to one that was done for the DWD Child Support Advisory Committee. Such a chart would be simpler and give a better idea at a glance what the proposal entails. Courts would have discretion to set amounts within those increments.) This would mean that at 75% of poverty: parents of one child would pay 8.5% of the current amount (amounting to $49 under the current FPL, which would amount to $50 under our minimum); parents of two children would pay 12.5% of the current amount; parents of three children would pay 14.5% of the current amount, and so on.


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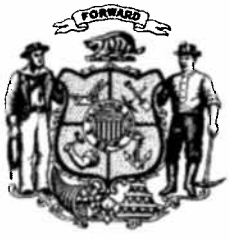
FORWARD

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Representative Steve Kestell
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August 6, 2003

Senator Carol Roessler
Committee on Health, Children, Families, Aging and Long-Term Care
Box 7882
Madison, WI 53707
fax number 608-266-0423

RE: DWD 40 Low Income Provisions

Dear Rep. Kestell and Senator Roessler:

I am writing to you on behalf of the Committee of Chief Judges and District Court Administrators of the Wisconsin courts to express concern about the low-income standard for child support.

We believe that the minimum payment for low-income payers needs to be set at a level high enough to make a realistic contribution to the child's support. Low support orders favor the noncustodial parent over the child and the custodial parent. A low-income custodial parent with children to support must find a way to do it somehow, often by working two or three jobs, in addition to paying child care costs and bearing the responsibility of raising the children. Low payments give the non-custodial parent the option of working little or not at all, thereby escaping the responsibility for supporting the children.

We generally support the Department's proposed changes to DWD Rule 40. Other proposals have suggested that the payments for low-income payers could be set as low as $21 to $50 per month for the first child. These proposals do virtually nothing to support the child and send a poor message to all parties. We understand the theory behind these proposals, that setting a lower level of support results in higher rates of compliance, has not been borne out by recent research.

If the low-income standard must be lowered, we recommend a figure in the neighborhood of $94 per month. This figure represents application of the usual 17% standard to a payer earning minimum wage for 25 hours per week. Our observation of the families we see is that most people can put together at least 25 hours per week of minimum wage work.

We believe that the rule should encourage adherence to the current percentage standards while leaving room for judicial discretion to deviate in appropriate circumstances. Judges should be able to deviate after taking into account local economic circumstances and the individual characteristics of the payer, such as physical and mental health and employability. Judges can and should deviate when the low-income payer genuinely cannot contribute more to the child's support.

We hope that the Legislature will approve a low-income standard that reflects a meaningful contribution to the child's welfare, balances the burden of support fairly between the custodial and noncustodial parents, and gives the judge flexibility to respond to unusual circumstances. If you have any questions about our position, please feel free to call me.

Sincerely,

James Evenson JEV

James Evenson
Chief Judge, Sixth Judicial District
Chair, Chief Judges Subcommittee on Child Support

JE/jl


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MEMORANDUM

TO: Members, Assembly Committee on Children and Families
Aging and Long-Term Care

FROM: John Short, Family Law Section of the State Bar

RE: **Support for Clearinghouse Rule 03-022 , revisions to DWD 40, Wis. Administrative Code (Child Support Guidelines)**

DATE: August 7, 2003

I am the current Chair of the Family Law Section and have served on the Family Law Section Board since 1995 in a variety of capacities. I am an attorney in private practice. I have been a solo practitioner and small firm practitioner since 1970 and have always been in Fort Atkinson (Jefferson County). My practice has always emphasized family law, and I have representing both men and woman, payers and payees. I have been a frequent lecturer on family law-related topics and have taught at the Judicial College for the past four years on family law topics.

In addition, I have closely followed the work of the Child Support Advisory Committee formed by the Department of Workforce Development to recommend changes to the child support law. The proposed rule before you today (CR 03-022) is a product of that committee.

The DWD Advisory Committee worked for a year and spent close to 100 hours in meetings discussing and studying child support issues in Wisconsin, not to count the many hours that Committee members spent on their own time reading the many reports and analyses put forth to the Committee by DWD and by other experts. The DWD Committee was a well-rounded group with members of the judiciary, Family Court Commissioners, fathers', grandparents' and children's rights advocates, advocates for those who have been victims of domestic violence, and those who represent clients with low, middle and high incomes. The Committee did not start with a predetermined agenda and the well-rounded recommendations from the Committee ultimately surprised many of us on it.

The Family Law Section **supports** the DWD proposal before you. Clearinghouse Rule 03-022 corrects many of the problems with the current child support formula and it balances the interests of the payer and payee without losing sight of the children.

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The proposed rule would, in the opinion of the Board of Directors of the Family Law Section, reduce litigation over children in divorce both on child support and on placement issues. It should also lead to more equitable results in situations where families have shared placement.

The proposed rule lowers the threshold for shared time placement to a 25% threshold. All payer parents with over 25% time would then receive a reduction in child support based upon significant time with their children. Because many cases involve placement time over 25% for the payer parent, more parents would get this reduction than under the current rule. This should also reduce fighting over children in divorce.

The proposed rule eliminates the two thresholds for comparing income in a shared placement situation that occur first at 30% and then again at 40% overnight time. This should reduce the litigation over children in divorce that occurs in some cases to reduce the child support obligation of the parent with less time. A parent who receives time with the children over either the 30% or 40% threshold receives a reduction in child support, with a much greater reduction occurring at 40% time because the two parent's incomes are compared once 40% time is reached.

In addition, the proposed rule addresses the need to allocate expenses for such things as childcare, clothing and extra-curricular activities in situations where a child spends a significant proportion of overnight time with each parent. The revisions to the shared-time formula expressly require the court to order parents to assume these "variable costs" in addition to the child support amount under the shared time formula. The proposed revisions to the definition of "variable costs" should also reduce litigation over payment for these items, which is not uncommon.

CR 03-022 also adds new special circumstance provisions for high- and low-income payers that should address many of the problems identified with the current guidelines.

The proposed rule clarifies that child support may be ordered into a trust for a child's education when the amount of child support ordered exceeds the child's needs for current support.

It is my understanding that you have received a letter from Mr. Jan Raz, the President of the Wisconsin Fathers for Children and Families, asking that you request the Department to make a number of modifications to the proposed rule.

On behalf of the Family Law Section I would like to respond to each of those requests.

A. Section 1: Effect of Rule Change.

This proposal was considered by the Child Support Guidelines Advisory Committee and was rejected. Under current statute, the passage of 33 months (since the date the last child support order is entered) creates a rebuttable presumption of a substantial change in circumstances sufficient to justify the revision of a child support order. (See s. 767.32(1) b.2., Wis. Stats.)

This proposed change would actually impose a new requirement on those seeking a modification to a child support order. Not only would 33 months have to pass from the effective date of the last child support order, but an order calculated under the new formula would also have to differ from the last order by at least 20% of the amount of the last order of by at least $60 per month in order to constitute a substantial change of circumstances sufficient to justify the revision of a child support order under s. 767.32, Stats.

Courts have consistently held that a change in circumstances sufficient to justify a revision of a child support order under s. 767.32, Stats., must be a change in the financial circumstances of the parties, **not** a change in the law. As a practical matter, courts will be able to implement this change in the law in a gradual, staggered manner rather than being flooded with requests for modifications following a rule change.

B. Section 7: Item 10: Definition of Income.

The definition of income available for child support is well-settled; therefore, retaining the definition in the rule would **not** lead to increased litigation. The current child support guidelines (in DWD 40.02 (13) i., Wis. Admin. Code) contain essentially the same language this request seeks to alter. Ironically, the language in the proposed rule actually tightens up the definition and excludes more from the definition of gross income than the existing rule does.

This requested change could fundamentally increase the likelihood that some child support payers will manipulate their income in order to manipulate the amount of support. It could prevent a court from considering a significant portion of a payers cash flow without regard to the best interest of the child.

This request is not centered on meeting the needs of children; instead, it places the interest of the payer ahead of the child. It imposes blanket restriction on what the court can consider as income in fashioning a child support order without any justification.

C. Section 27: Item (6): Determine Child Support Before Maintenance.

The Advisory Committee made no specific recommendation on this issue.

D. Sections 29, 30, 31 32: Special Circumstance Provisions.

This proposal was considered by the Child Support Guidelines Advisory Committee and was rejected. It is argued that Circumstances vary from case to case. The Family Law Section believes each case should be looked at on its merits and the court should be guided by the best interest of the child in fashioning child support orders. Uniformity is not necessarily desirable. Requiring the court to follow a rigid formula in these cases will tie the hands of the court in cases where flexibility is needed to fashion an order that best meets the needs and best interests of the child. The court should have the discretion to craft an order that best suits the family before the court in each particular case.

E. Section 32: Provision for High-Income Payers

This proposal was considered by the Child Support Guidelines Advisory Committee and was rejected. The requested change would treat families where the combined annual income of both parents exceeds $48,000 as high income. The Family Law Section does not believe combined income of $48,000 should be considered high income or given special treatment. According to the federal Department of Housing and Urban Development, median annual family income in Wisconsin in 2002 was $59,200. Setting the initial thresholds as low as $48,000 would result in the special circumstance provision for high income payers being used more often than is appropriate, and for families who are not, in fact, high income.

Child support should meet more than just the basic needs of the child. The basic premise of the child support formula is that a child's standard of living should, to the degree possible, not be adversely affected because his or her parents are not living together. The child support formula attempts to provide children with what is as close as possible to the same state standard of living the child enjoyed when the parents were living together, or if they never did, then the standard of living they would have enjoyed together, taking into account the fact that it is more expensive to maintain two households than one.

The Family Law Section strongly opposes Senate Bill 156 and Assembly Bill 250 to which the request refers. Those companion bills would treat combined annual incomes of $48,000 as high income cases and would impose an entirely new method of calculating child support in all such cases. Within the past year county child support agencies have had to recalculate tens of thousands of cases from percentage-expressed orders to fixed dollar orders. To force them to adopt a new formula for calculating child support for more than half of all families would create an additional and unnecessary workload on child support agencies without a valid public policy basis to do so.

The Family Law Section believes the straight percentage standards should still be used in the majority of cases not involving shared placement.

F. "Serial Family Payer" Provision.

Serial Family provisions are discretionary. While these provisions might be found unconstitutional if they were presumptive, they are not presumptive but are permissive. This permissive element recognizes that it costs more to raise children in separate households than in a single household.

Serial family situations pose difficult questions. In these situations, the payer, by definition, has a child support order for a child or children from a previous marriage or relationship and now faces a support order for later born children from a different marriage or relationship.

If one follows the percentage standard in each successive case, there is a possibility the payer will simply run out of money and be unable to afford to pay the amount indicated under the

percentage in each case. The rule attempts to balance the needs of the children and the obligations of the payer so that each is treated fairly.


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MEMORANDUM

TO: Members, Assembly Committee on Children and Families
Aging and Long-Term Care

FROM: John Short, Family Law Section of the State Bar

RE: **Opposition to Assembly Bill 250, relating to calculating child support**

DATE: August 7, 2003

I am the current Chair of the Family Law Section and have served on the Family Law Section Board since 1995 in a variety of capacities. I am an attorney in private practice. I have been a solo practitioner and small firm practitioner since 1970 and have always been in Fort Atkinson (Jefferson County). My practice has always emphasized family law, and I have representing both men and woman, payers and payees. I have been a frequent lecturer on family law-related topics and have taught at the Judicial College for the past four years on family law topics.

The Family Law Section of the State Bar of Wisconsin **strongly opposes** Assembly Bill 250 for a number of reasons.

First and foremost, Assembly Bill 250 would immediately and dramatically reduce child support for the vast majority of Wisconsin families. The child support formula changes in AB 250 would harm children by making less money available for their care and support.

Second, Assembly Bill 250 would regard all families where the combined annual income of both parents exceeds $48,000 as "high income" and would significantly reduce child support in all cases where combined annual income exceeds $48,000. (See attached charts.)

- For these families the bill would substitute a completely new and far more complex way of calculating child support. The text of the bill acknowledges how much more complex the new formula would be. It requires DWD to prepare and make available to judges and other court personnel computer software, as well as tables and instruction manuals, to help with calculating child support under the new method provided in the bill.

- Making such a dramatic change in the way child support is calculated is likely to increase litigation because it would negate decades of case law decided under the existing formula.

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- Just last year, thousands of Wisconsin parents, as well as courts and county child support agencies had to wrestle with the impact of changing child support orders from percentage-expressed orders to fixed-dollar orders in response to federal pressure. Assembly Bill 250 would force a whole new set of changes in the way child support is calculated on a system that is still recovering from last year's changeover.

A family with a combined annual income of $48,000 could easily be two parents earning $24,000 per year. Each of these parents would have less than $1800 of monthly disposable income after taxes. This should hardly be considered high income.

Based on current data, combined income of $48,000 is not high income and should not be given special treatment. According to the federal Department of Housing and Urban Development, median annual family income in Wisconsin in 2002 was $59,200.
Setting the initial threshold as low as $48,000 would result in the special circumstance provision for high income payers being used more often than is appropriate, and for families who are not, in fact, high income.

Third, Assembly Bill 250 is not the product of consensus. In fact, it attempts to nullify the consensus process. The Child Support Guidelines Advisory Committee created by former Department of Workforce Development Secretary Jennifer Reinert explicitly considered 2001 Senate Bill 151, the bill upon which 2003 Assembly Bill 250 is based. The Advisory Committee opted not to accept the approach in Assembly Bill 250. Instead it recommended the approach reflected in the proposed rule before the committee. (More on the proposed rule follows.)

Fourth, it is not necessary to dramatically change the way child support is calculated in order to take into consideration the income of both parents. Current law already considers both parties' incomes once the amount of time the parent with less placement has with the child reaches 40% of overall placement. The proposed rule before the committee, which revises DWD 40, calls for considering both parties' incomes once the amount of time the parent with less placement has with the child reaches **25%** placement) Most cases fall under this threshold. Therefore, if the proposed rule is adopted there is little need to make a dramatic change in the formula that AB 250 proposes.

Fifth, child support should meet more than just the basic needs of the child. The basic premise of the child support formula is that a child's standard of living should, to the degree possible, not be adversely affected because his or her parents are not living together. The child support formula attempts to provide children with what is as close as possible to the same state standard of living the child enjoyed when the parents were living together, or if they never did, then the standard of living they would have enjoyed together, taking into account the fact that it is more expensive to maintain two households than one. Assembly Bill 250 focuses too much on the interests of the child support payer and loses sight of the best interest of the children.

Sixth, Assembly Bill 250 does not address concerns of low-income payers. For low-income payers a primary concern is ability to pay. For many truly needy low-income payers meeting even a minimal amount of support may make it difficult to have sufficient money for daily

needs. Assembly Bill 250 not only fails to address such situations, it makes them worse by taking away flexibility from the courts in fashioning orders in these circumstances.

- For example, the provisions on imputing income for low-income payers would **require** the court to impute income based on a 40–hour work week to a parent who is not working at least 40 hours per week if the court determines that the parent is able to work and that work is available in the parent's community.

Seventh, Assembly Bill 250 does not address the *Randall* decision, which held that the presumptive application of the percentage standards applied to what most observers and practitioners thought was a discretionary shared time formula for child support. The Family Law Section is working with Senator Roessler to prepare legislation to address this.

Eighth, Assembly Bill 250 does not address the results of the *Luciani* decision where the court applied the percentage standard to a payer where the custodial parent had significantly higher income. The Family Law Section is working with Senator Roessler to prepare legislation to address this.

Ninth, a provision in Assembly Bill 250 would actually make it harder for parents to modify an existing child support order to take into account the formula changes this committee is considering. Under current statute, the passage of 33 months (since the date the last child support order is entered) creates a rebuttable presumption of a substantial change in circumstances sufficient to justify the revision of a child support order. (See s. 767.32(1) b.2., Wis. Stats.)

This proposed change would actually impose an additional requirement on those seeking a modification to a child support order. Under AB 250, not only would 33 months have to pass from the effective date of the last child support order, but an order calculated under the new formula would also have to differ from the last order by at least 20% of the amount of the last order or by at least $60 per month in order to constitute a substantial change of circumstances sufficient to justify the revision of a child support order under s. 767.32, Stats.

> (Phrased a different way, Assembly Bill 250 changes the circumstances that constitute a rebuttable presumption of a substantial change of circumstance from the expiration of 33 months since the last support order to a more restrictive or higher standard of expiration of 33 months if the amount of support under the new approach exceeds the amount of the last order by 20% of the last order or at least $60 per month.)

Limiting the circumstances that create the rebuttable presumption for a substantial change of circumstances limits the opportunity for payees to address the courts for needed changes in support. The figures are also completely arbitrary. A 20% change in amount or at least $60 per month will be substantial in some cases but certainly not others.

> Note: Courts have consistently held that a change in circumstances sufficient to justify a revision of an order under s. 767.32, Stats., must be a change in the circumstances of the parties, **not** a change in the law. This serves the practical purpose of allowing courts to

implement a change in the law in a gradual, staggered manner rather than being flooded with requests for modifications following a law change.

The Family Law Section **greatly prefers and strongly supports** the approach taken in Clearinghouse Rule 03-022. That approach was the product of a consensus process. An advisory committee formed by the Department of Workforce Development worked for a year and spent close to 100 hours in meetings discussing and studying child support issues in Wisconsin, not counting the many hours that Committee members spent on their own time reading the many reports and analyses put forth to the Committee by DWD and by other experts.

The DWD Committee was a well-rounded group with members of the judiciary, Family Court Commissioners, fathers', grandparents' and children's rights advocates, advocates for those who have been victims of domestic violence, and those who represent clients with low, middle and high incomes. The DWD Committee heard from national experts, considered a variety of proposals and in the end produced the proposed rule that is before you here today in a form that led to a nearly unanimous consensus.

The proposed rule would, in the opinion of the Board of Directors of the Family Law Section, reduce litigation over children in divorce both on child support and on placement issues. It should also lead to more equitable results in situations where families have shared placement.

These are things that Assembly Bill 250 attempts to do. The proposed rule simply does these things better ... and in a fairer and more balanced way than Assembly Bill 250 does.

- Clearinghouse Rule 03-022 represents a consensus with all stakeholders participating, while Assembly Bill 250 can be seen as an attempt to nullify the consensus process.

- Clearinghouse Rule 03-022 corrects many of the problems with the current child support formula and it balances the interests of the payer and payee without losing sight of the children.

- The attached charts clearly illustrate that Clearinghouse Rule 03-022 would not drastically reduce child support the way that Assembly Bill 250 would.

Clearinghouse Rule 03-022 is the consensus approach for a reason. It is a better proposal. The committee should advance Clearinghouse Rule 03-022. The committee **should not** recommend Assembly Bill 250 for passage.

Thank you for your time and your attention. I would be happy to answer any questions that you might have.

Attachments:
Charts Illustrating Current Law vs. CR03-022 vs. AB 250


FORWARD

IN MKE - ... In CRule 03-022 Folder

WISCONSIN CHILD SUPPORT ENFORCEMENT ASSOCIATION

Memorandum

TO : Assembly Committee on Children and Families

FROM : Janet Nelson, Chair, Legislative Committee,
Wisconsin Child Support Enforcement Association

DATE : August 7, 2003

SUBJECT : Testimony on the Child Support Guidelines within Clearinghouse Rule 03-022 and Assembly Bill 250

The Wisconsin Child Support Enforcement Association represents Wisconsin's county and tribal child support agencies. Our members manage approximately 340,000 support cases each year. The WCSEA supports the proposed revisions to the child support guidelines within Chapter DWD 40 and opposes AB 250.

To be effective, child support guidelines must balance three criteria:

1. They must be fair. Support collection occurs more efficiently when payers voluntarily comply with support orders, and payers are more likely to voluntarily comply with orders they see as fair. To be perceived as fair, the guidelines themselves must take into account the variety of circumstances that families find themselves in, and the courts and the commissioners who apply the guidelines must have the discretion to fashion support orders that fit those circumstances.

2. They must be predictable. Those who pay support should be able to reasonably anticipate what his or her obligation will be, without regard to what county or court hears his or her case.

3. They must be easy to administer. Because of the large volume of support cases within the State, the child support agencies must be able to calculate support requests quickly and efficiently.

Additionally, it is important to remember that Wisconsin has a history of establishing child support orders based upon the philosophy that children of parents who do not live together deserve no less support than children of parents in an intact family. First and foremost, this philosophy supports families by encouraging parents to stay together for the benefit of their children, but it protects the innocent bystanders (the children) when parents' relationships break down.

The WCSEA supports the DWD rule revisions over AB 250 because the revisions better maintain this philosophy. The revisions also do a better job of balancing fairness with predictability and ease of use than does AB 250.

Fairness. In order to generate the revisions to the rules, the Department of Workforce Development created an advisory committee composed of members who represented a wide variety of interests in the state's child support system. The fact that the courts, the Wisconsin Bar, the child support agencies and a number of community–based organizations (representing both payers and payees) participated in this process helps assure that the final product can be viewed as fair.

In addition, fairness requires that courts have latitude to evaluate families' particular circumstances to determine whether the application of the guidelines in any individual case may be unfair. Any standard for setting support, no matter how well thought-out, cannot account for every possible family situation. To maintain fairness in Wisconsin's child support system, the law must balance a courts' ability to exercise discretion with the need for predictability. This balance is better struck by the revisions than the all-or-nothing nature of AB 250.

Predictability. The adjustments to the shared-time formula and the addition of provisions for low-income and high-income payers in the rule will give courts clearer guidance for these situations. In the past, deviations from the percentage standards under these circumstances were unpredictable. While AB 250 addresses high income issues, it does nothing to assist courts in dealing with the vast number of low income cases that the child support agencies see.

Ease of use. While the rules are somewhat more complex to administer than the present guidelines, the child support agencies recognize that this complexity is warranted by the variety of circumstances in which Wisconsin's families find themselves. With training, the WCSEA believes that individual agencies will be able to effectively apply the new rules in short order. Child support calculations under AB 250 are a great deal more complex. So complex, in fact, that the bill requires DWD to generate computer software to help courts calculate support orders under its provisions.

The philosophy behind child support orders in Wisconsin. The revised guidelines in CR 03-22 maintain the philosophy that children should be supported by both parents as closely as possible as had the parents had an intact relationship. By lowering the amount of support that can be ordered in a broad number of cases, AB 250 provides little encouragement for parents to work together for their children's benefit. The philosophy behind the bill seems to be that children of parents who live apart from one another are only entitled to a subsistence level of support from each parent, rather than a lifestyle closer to that they would have had had their parents lived together.

The Changes to DWD 40

Shared time situations. A shared placement situation is recognized once placement for each parent is at least one-quarter of the year, or 92 days. The revised formula recognizes the duplicate costs incurred when both parents have substantial placement time, allowing both parents to reasonably support their children when they have placement. While there are a couple of concerns with this formula - as a result of this change, child support agencies will have to use the shared-time calculation much more frequently than they do now, and such use will reduce the amount of child support paid in a number of cases - this is a reasonable attempt to accommodate the concerns of parents who have substantial placement, yet do not qualify for an adjusted order under the present regulations.

Low income payers. The new provision regarding low-income payers recognizes that outside circumstances can limit a parent's ability to pay child support. The proposal allows a court to impute income at less than 40 hours per week at minimum wage when a parent does not have a high school education, nor a stable work history, and community employment opportunities are limited. While some members of the Association are concerned that this provision does not go far enough in making realistic (and affordable) support orders for low-income payers, it is an improvement over the present regulations' lack of any consideration for the low-income payer.

High income payers. The creation of this special provision for high-income payers accounts for the reality that parents with higher incomes spend a somewhat lower percentage of their income on their children. Presently, high–income payers may perceive their child support orders under the current regulations as a disguised form of support for the other parent, rather than support for the child. The reduction of the percentage assessed as support at incomes over $102,000 should alleviate this perception without substantially reducing support for Wisconsin's children or encouraging parents to live apart to lower their support obligations.

The WCSEA applauds DWD's diligent efforts at accommodating the concerns of all of the participants in Wisconsin's child support system as it revises the child support regulations, and we encourage this committee to support CR 03-22.

Thank you for your time and attention.

Janet Nelson
Chief Legal Counsel
Milwaukee County
Department of Child Support Enforcement
901 N. 9th Street
Milwaukee WI 53233

Telephone: (414) 278-5269
E-mail: jntnlsn@yahoo.com


FORWARD
E PLURIBUS UNUM

AB250

Kestell, Steve

From: pebarkhaus@pol.net
Sent: Friday, August 08, 2003 7:35 AM
To: rep.kestell@legis.state.wi.us
Cc: rep.wasserman@legis.state.wi.us
Subject: Child Support Reform

Typo??

Rep. Kestell,
I attended the Committee Hearings on the above yesterday but did not speak in favor of AB251, but registered and left written comments. The hour was late and everyone was tired. I compliment you and your colleagues on an arduous day well-done.

I plead that you and the Comm accept 251's premise that the legislature should have the responsibility for ongoing reform of Child Support- not the DWD. That maintains a better check and balance system. Otherwise there tends, from my perception, to be too much old buddy system between vested parties such as Fam Law, DWD, etc. This is not to say I do not favor colleagiality and cooperation. But I can tell you at bare basics that as the payers AND as your consituents, we want you involved as an impartial third party, rather than being exclusively relegated to our "guardians". This simply makes sense as a check and balance in the system. DWD was minimally, if at all, inclusive of any payers, etc. in their efforts.

I am troubled by the ostensibly disparate numbers provided by different individuals testifying. At least at the Hearing there was data that somehow was not cited in the DWD Task Force report that I read. I think it regrettable with the Fam Bar Rep resorted to such argumentum ad hominem against Mr. Raz. I really don't know either of them myself. I also do not find charts of individual cases that another attorney colleague of his drew up as cogent evidence. I am a physician and scientist and I know some math. My bias is to believe an engineer over an attorney, assuming standard education backgrounds. I find highly emotive displays counter-productive. I guess I'm also skeptical when an apparent entire section (i.e., Family Law) of the WI Bar is against something. Please note they did not say unanimous- I know it is not. I trust the Comm will have an independent advisor with skills in this area to advise you on any apparent discrepancies.

AB251 is meant to ease the burden on high income earners. In such cases most couples have reasonable education and capability to work and must be compelled (mainly payee) to work to their ability. Hence the need for considering both incomes and imputation fo such if needed. This is important. I made that point of accountability in my comments.

The Court Commissioner from Rock Cty made appropriate comments, however I respectfully suggest that formula complexity should not be an issue. AB 251 is not that tough, and the State will have to make available resources for pro se individuals to utilize. The corollary would be that we'll need tax reform because most individuals, including me, do not understand the tax rules. This is not an acceptable objection.

I appreciate your sentiment about the "government telling you how to spend your money". This is directed toward the child support payer: the corollary is there is no stipulation whatsoever to the payee- it is simply given. As support payers I think most of us at higher income payments certainly do not object to the basic eeds of our children. It is what the Rep from the family law section of the WI Bar articulated, as well as Carol (?) who want that added buffer of child support maintained to balance the children's life style between the homes. This is again ideal, but fictive thinking. Both sides, like myself, can live with some "fudge factor", but if it has to be higher than AB 251, then it has to be lower

than DWD Admin Rule. This again is directed toward the middle and certainly upper income earners.

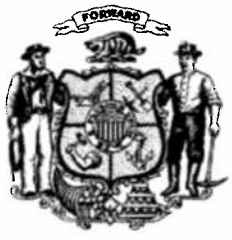
Lastly, I ask that you and the Comm members do a simple exercise: assume that each of you are, heaven forbid, divorcing and must pay at least Child Support- let's leave maintenence alone. Assume you have an average American family of two children, say ages 5 and 10. Assume 2 scenarios- one with maximum maintentence of 25% and another with 50:50 placement which should be the current standard for most families. Run the numbers yourselves or with assistance based on your incomes and what you know from experience is needed. You can make it more fair by figuring what your spouse would owe as well assuming shared placement. This might help develop some better empathy for this issue.

I feel that children will not be harmed by reducing the added cushion to Child Support for higher income earners. Please do not be afraid to endorse this concept.

Again, many thanks for your and the Committee's time and interest in this very important matter.

Paul E. Barkhaus, M.D.
Professor of Neurology

WISCONSIN STATE LEGISLATURE



Matzen, David

From: Jan Raz [jraz@wi.rr.com]

Sent: Friday, August 08, 2003 12:37 PM

To: steve kestell; sheryl albers; Rep.Ladwig@legis.state.wi.us; Rep.Miller@legis.state.wi.us; Rep.Krug@legis.state.wi.us; Rep.Sinicki@legis.state.wi.us; Rep.Jeskewitz@legis.state.wi.us; Rep.Vukmir@legis.state.wi.us

Cc: terry musser; gary george; dave zien

Subject: AB 250 - New child support standard- Hearing followup

To members of the Children and Families Committee

Below is an article regarding Child Support from the August 2003 issue of the ABA journal. In the last three paragraphs it points out that **the chair of the child support committee of the American Bar Association's Family Law Section is suggesting that the percentage of only a non custodial parents income child support guideline models should be dropped**. AB250 is consistant with this suggestion since it drops the consideration of only the non-custodial parent's gross income and requires the courts to consider the incomes of both parents in all cases.

I would also like to just briefly address the following criticizms of AB 250, which were noted at the August 7th hearing.

1. Criticism: AB 250 is not the result of consensus.
   a. The formula for shared placement cases in AB250 was modified from earlier versions to be identical to the one in the DWD proposal CR03-022, and is the result of consensus.
   b. The basic formula for considering the income of both parents is designed to be in line with the consensus reached in 33 states. The current use of a percentage of only a non custodial parent's gross income, regardless of the income level, has not been accepted or being used in any other state. Thus, outside of the influences of the Wisconsin DWD administrators, the results of the method proposed in AB250 is supported by a consensus of 33 to 1.

2. Criticism: AB 250 will reduce child support orders in almost all cases and will lead to greater need for public assistance.
   a. AB250 does not start to reduce the obligation of parents unless the annual income of both parents exceeds $48,000. (After the support amount is $680/month for 1 child, $1,000/month for two children). Thereafter the obligation will slowly be reduced to be in line with economic data. This is far in excess of the state allocation of about $350/month for caring for a foster child and would not increase the need for public assistance. It will not change the obligations in about 40-50% of all cases, and only minor adjustment in about 30% of the cases that may have a combined income in the $48,000-$72,000 range.
   b. Reducing child support amounts in above average income families to be consistent with realistic economic needs of children will continue to provide adequate funds for the children and will reduce conflicts between parents.

3. Criticism: AB 250 is too complicated and will require the use of software.
   a. In cases where the combined income will be less that $48,000 the method is the same as the current and proposed DWD rule. Thus in these cases, which are the bulk of the child support enforcement cases, it is not more complicated.
   b. The method and complexity of calculating support orders is shared placement cases is the same as that proposed by the DWD in CR03-022.
   c. Tables and calculators can be established to simplify the application of the calculations in above average income families.
   d. 33 states currently use a method similar to the one defined in AB250, so why would Wisconsin not be able to similarly apply this method?

4. Critcism (by Carol Medaris) High income is defined by most other states as well above $100,000, not as $48,000 in AB250.

a. Most of the states use tables that define the correct amount of child support for families with different incomes. These tables do end at $120,000 to $240,000, as noted by Ms. Medaris. These tables however consider the incomes of both parents and reduce the percentage of gross income as the combined incomes of both parents increase (This is the red bar chart shown on the color charts I handed out.)

b. AB250 provides a adjustment to the basic percentages for families with combined incomes between $48,000-$240,000 to be consistant with the results defined in these tables that are used by most states. It provides an additional adjustment for families with combined incomes over $240,000 to be reasonably consistant with what other states are doing.

If you or the committee members have any further question, please do not hesitative to contact me.

Jan Raz - President
Wisconsin Fathers for Children and Families
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FROM THE AUGUST ABA JOURNAL
- THE NATIONAL PULSE -
COSTLY KIDS
from: http://www.abanet.org/journal/redesign/08ndads.html

Several Cases Claim Child Support Formulas Are Unconstitutional

BY STEPHANIE FRANCIS WARD

They may seem like only a few flakes, but five state cases challenging child support laws on constitutional grounds may foster a flurry of such suits, advocates for noncustodial parents say.

They say child support models are grossly unfair and some day may be struck down, despite recent losses in Tennessee and Georgia.

"Eventually, there will be a situation where the outcome will be egregious enough that the courts will take notice," says Michael L. Oddenino, an Arcadia, Calif., attorney who handles family law matters. Child support guidelines, he says, were hastily drafted to comply with the Federal Family Support Act, a 1988 law that requires each state to set numerical child support guidelines.

However, other experts see less than a snowball's chance for such claims. Erwin Chemerinsky, a constitutional law professor at the University of Southern California, doubts they will succeed past trial.

"The bottom line is courts have to award child support to ensure care for children," Chemerinsky says. "So long as it's not gender discrimination, and it's rational, it's going to be upheld."

Still, Oddenino believes some state statutes are vulnerable. "Some weren't drafted with the most care in terms of compliance and constitutional due process requirements," he says. "Eventually, because of a well-crafted constitutional challenge, where the facts work well, you will see something adjusted in the guidelines, or you will see legislation come around."

While constitutional arguments worked at the trial level in Tennessee and Georgia, the states' high courts recently rejected them.

In the Tennessee case, a married man who fathered a child out of wedlock had argued the support order did not give him credit for the amount he spends to support three children who live with him. Yet he would get credit if an

existing decree required support. The Tennessee Supreme Court found that the state has a rational basis for this distinction because children who live with their parents benefit from the parent's lifestyle.

The court also found no due process problem, since no fundamental right is implicated and it is rational to base support payments only on income. Gallaher v. Elam, No. E2000-02719-SC-R11-CV (May 2).

VIOLATION OF PRIVACY? in the georgia case, a noncustodial mother of three also had claimed that guidelines violate her privacy rights because they dictate how much money she must spend to support her children. The Georgia Supreme Court said there is no privacy interest in the way support is determined. It also found that custodial and noncustodial parents are not similarly situated, so there is no equal protection violation. Georgia Department of Human Resources v. Sweat, No. SO3A0179 (April 29).

Two Minnesota cases are pending in the state's district court with Burnsville lawyer Mark A. Olson representing both noncustodial parents. Olson did not return phone calls seeking comment. A trial judge recently dismissed a third case handled pro se. The litigant filed an appeal and sought pauper relief with the court, which denied his request.

Janice Allen, chief attorney of the Anoka County, Minn., family law division, works on one of the pending cases. "I am befuddled, quite frankly, that they're still bringing the challenge because I don't know what in the world they can succeed on that they didn't succeed on in Tennessee and Georgia," she says.

So far, most of the constitutional challenges are filed in states where the award is based on a percentage of the noncustodial parent's income. The alternative method is a shared-income model, under which the court asks for both parents' incomes. The award is usually the same with both calculations, says Charlottesville, Va., lawyer Laura Morgan, because the percentage model also considers both incomes.

Morgan, who chairs the child support committee of the ABA's Family Law Section, says the constitutional arguments will not succeed. However, she suggests that perhaps the percentage-income model should be dropped since it is perceived as more unfair.

"When you have a greater perception of fairness, you have a greater compliance rate," Morgan says. "I am enough of an idealist to think that most noncustodial parents love their kids and want to do right by them. And they want to be treated fairly."


FORWARD

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August 8, 2003

Representative Steve Kestell, Chair
Assembly Committee on Children and Families
P.O. Box 8952
State Capitol
Madison, WI 53708-8952

Re: AB 250

Dear Representative Kestell,

I enclose a copy of the testimony I presented at yesterday's hearing on AB 250. Thank you for your consideration.

Cordially,

Carol W. Medaris
Senior Staff Attorney

cc. Representative Bonnie Ladwig
Representative Sheryl Albers
Representative Suzanne Jeskewitz
Representative Leah Vukmir
Representative Christine Sinicki
Representative Mark Miller
Representative Shirley Krug

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ASSEMBLY COMMITTEE ON CHILDREN AND FAMILIES

Testimony on AB 250
Relating to Calculation of Child Support
August 7, 2003

Carol W. Medaris
Senior Staff Attorney

I am testifying for the Wisconsin Council on Children and Families, a statewide, non-profit, non-partisan child advocacy organization that works to improve the health and well-being of children and families, particularly vulnerable children.

In my testimony earlier today, I indicated that I served on the Department's Child Support Advisory Committee, and I appeared in favor of the Department's Clearinghouse Rule with changes to one portion of the rule – that dealing with low-income payers. In contrast, I am testifying in total opposition to AB 250.

The Council opposes AB 250 because it is likely to substantially lower child support orders in a great many cases. The bill adopts the premise that child support percentages should decrease whenever the income of both parents together exceeds $48,000 per year. That is hardly a high income. in fact it is well below Wisconsin's median income for families with children, which was $56,000 in the year 2000. (2003 KIDS COUNT Data Book, State Profiles of Child Well-being, Annie E. Casey Foundation.)

Children whose parents separate or divorce already suffer a reduction in their standard of living. AB 250 would exacerbate that result by standardizing lower child support orders, beginning with incomes well below the median; as such it is likely to affect the majority of cases coming before the family court.

The Guidelines Committee looked well at this proposal. Mr. Raz was on the Committee and proposed it there. But Committee members decided that children and families would not benefit from this scheme but would be

harmed instead; only non-custodial parents are likely to benefit, and more as their income increases. As detailed in the fiscal note, and as set forth in the charts presented by attorney John Short of the State Bar Family Law Committee, especially dire results occur when the custodial parent's income is fairly low compared to that of the non-custodial parent.

And, these are not cases, as with low-income payers, where a parent lacks the ability to pay the standard percentage amount; the proposal is based solely on the notion that children of divorce are due far less than this state has historically provided.

Wisconsin child support has been based on the idea that children should be protected when parents separate or divorce – that they should be maintained as much as possible at the standard of living they would have had if the parents stayed together. AB 250 bases the obligation the non-custodial parent owes at what a child absolutely needs; as such it is set very low – as indicated, even below the state's median income for families with children.

Other states begin to lower their percentage orders at much higher rates than is suggested in AB 250. I have submitted a chart compiled by the National Conference of State Legislatures, which describes how other states treat high income for purposes of child support orders. (NCSL, Child Support Project: States' Treatment of High Income, 11/99) Where the point of deviation is listed as a specific amount, of those states that look at parents' combined incomes when determining when to deviate from their standard schedule, as is proposed in AB 250, high income is defined as low as $70,000 per year and as high as $208,000, with most falling in the range of $120,000 to $150,000 per year. Clearly AB 250 is reaching very low in proposing that reductions start at combined incomes of $48,000 per year.

(For states that look only at payers' income to determine the point to deviate from the regular schedule, high income is defined as low as $39,000 per year by one state and as high as $180,000 by another. Most states deviate when the payer's income reaches $72,000 to $120,000. The Department's child support guidelines suggest that courts may deviate at $102,000 – around the middle of what most other states do.)

Other parts of the bill are also likely to be harmful for children. For example, a section on imputation of income from earnings may result in greatly reduced child support in families where one parent has worked less than full time in order to care for the family's children. (Proposed sec. 767.251(2)(f).) Any time the court finds a parent able and available for

work and that work opportunities in the community exist, the court must impute income to the parent based upon a 40 hour work week, the parent's education and work experience, and the work opportunities in the community for which the parent is qualified. When that parent's imputed income is taken into consideration, the combined income will be greatly inflated from the family's actual income leading to lowered support under AB 250's high income standard. If shared placement provisions apply, the child support will be subject to a further reduction, despite the lack of actual income, and regardless of the desirability of the primary custodian staying at home part-time with the children.

The Council is also concerned with the complexity of AB 250 which, in a nod to that complexity, includes a provision requiring the Department to prepare and make available to judges "forms, tables, computer software and instruction manuals." (Proposed sec. 49.22(9).) Pro se litigants, which comprise a large percentage of family court participants, will be generally unable to protect their interests in the midst of such a complicated process.

But our primary concern is with the reduction in the percentage of income ordered as income grows, despite studies generally tending to show that parents continue to share their income with their children at about the same levels until, perhaps, income gets very high – not the level aimed at in AB 250. It is the Council's considered opinion that this bill would be bad for kids, bad for families, and bad public policy for Wisconsin.


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MEMORANDUM

TO: Members, Assembly Committee on Children and Families

FROM: Family Law Section of the State Bar of Wisconsin

RE: **Family Law Section Positions on Child Support Measures**

DATE: August 26, 2003

BACKGROUND

It is our understanding that Rep. Kestell has asked committee members to provide him with input on issues surrounding CR 03-022 and Assembly Bill 250, both of which related to child support.

We would like to take this opportunity to make clear make the position of the Family Law Section of the State Bar concerning these proposals.

1. The Family Law Section of the State Bar of Wisconsin **strongly opposes** Assembly Bill 250.

2. The Family Law Section **greatly prefers and strongly supports** the approach taken in Clearinghouse Rule 03-022.

Reasons Why the Family Law Section Supports the Rule

1. The proposed rule will, in the opinion of the Board of Directors of the Family Law Section, reduce litigation over children in divorce both on child support and on placement issues.

2. The proposed rule will, in the opinion of the Board of Directors of the Family Law Section, also lead to more equitable results in situations where families have shared placement.

These are things that Assembly Bill 250 attempts to do. The proposed rule simply does these things better ... and in a fairer and more balanced way than Assembly Bill 250 does. To summarize:

- Clearinghouse Rule 03-022 represents a consensus with all stakeholders participating, while Assembly Bill 250 can be seen as an attempt to nullify the consensus process.

- Clearinghouse Rule 03-022 corrects many of the problems with the current child support formula and it balances the interests of the payer and payee without losing sight of the children.

- The charts provided by the Family Law Section at the hearing clearly illustrate that Clearinghouse Rule 03-022 would not drastically reduce child supporting a broad range of cases the way that Assembly Bill 250 would.

- The proposed rule will reduce child support payments in high income cases above the thresholds in the rule. It will also reduce child support payments in shared time placements situations (i.e. where the placement time of the parent with the lesser amount of placement exceeds 25%).

3. Proponents of Assembly Bill 250 have suggested that Wisconsin child support orders for high income parents are higher than in surrounding states. This may be comparing apples to oranges. Surrounding states, such as Illinois, require high- income payers to provide (i.e., make payments) for their children's higher education. All the states surrounding Wisconsin promote assistance from high income payers for college expenses in some form or another. To look simply at dollar amounts awarded can be misleading.

Reasons Why the Family Law Section Opposes Assembly Bill 250.

1. Assembly Bill 250 would immediately and dramatically reduce child support for all families where the parents have combined incomes of $48,000 per year-- the vast majority of Wisconsin families. The child support formula changes in AB 250 would harm children by making less money available for their care and support. The changes in Clearinghouse Rule 03-022 will also tend to lower child support in most cases; however, the reductions are much more modest than under Assembly Bill 250

2. Assembly Bill 250 would dramatically change the child support formula used to calculate child support for all families where the combined annual income of both parents exceeds $48,000.

- For these families the bill would substitute a completely new and far more complex way of calculating child support. The text of the bill acknowledges how much more complex the new formula would be. It requires DWD to prepare and make available to judges and other court personnel computer software, as well as tables and instruction manuals, to help with calculating child support under the new method provided in the bill.

- In many counties 70 to 75 % of family court cases are *pro se* cases in which the parties represent themselves without an attorney. Adopting a new and more complicated formula will place burdens on these families and on court personnel who will be called upon to inform unrepresented parties of the new formula. (They may also have to explain the old formula, depending on the circumstances.)

- Making such a dramatic change in the way child support is calculated is likely to have the unintended consequence of **increasing** litigation because it will negate decades of appellate case law decided under the existing formula. Parties and the courts would be starting from scratch in trying to interpret the new formula.

- Just last year, thousands of Wisconsin parents, as well as courts and county child support agencies had to wrestle with the impact of changing child support orders from percentage-expressed orders to fixed-dollar orders in response to federal pressure. Senate Bill 156 would force a whole new set of changes in the way child support is calculated on a system that in some ways is still recovering from last year's changeover.

4. Assembly Bill 250 would inappropriately regard all families where the combined annual income of both parents exceeds $48,000 as "high income."

The $48,000 figure used in Assembly Bill 250 is far too low a combined income figure at which to be making reductions in child support. The proponents of AB 250 try to argue that a $48,000 annual combined family income reflects a high-income level above which child support payments should be reduced. The truth is that in many parts of the state a $48,000 family income is actually regarded as low-income by the federal government.

The federal Department of Housing and Urban Development (HUD) sets standards to determine eligibility for low-income housing assistance. The HUD "low income" standard is set at an income level less than or equal to 80% of county median income (CMI). County median family income is the income level at which half the families are above and have the families are below. Obviously, 80% of that income level is a lower figure.

According to HUD, a $48,000 combined family income would be below the 80% of county median income (CMI) low-income standard for a household of **three** in Dane County ($50,850), Milwaukee-Waukesha ($48,400), and Minneapolis-Saint Paul (which includes the Hudson area) ($50,850); and would be at the margin in Iowa County ($47,990).

Similarly, $48,000 is low income for a household of **four** in the Fox Valley (Appleton-Oshkosh-Neenah area) ($49,500) and in Green Bay ($49,500), Kenosha ($50,250), **Racine** ($52,000), Sheboygan ($50,150). (In **Dodge** County, an income of $46,400 is considered low-income for a family of **four**, while in **Jefferson** County $47,750 is considered low-income for a family of four, neither of which is far from the $48,000 figure used in the bill.)

It should be noted that these figures reflect the income needed for families living in a single household not two households.

According to the federal Department of Housing and Urban Development, median annual family income in Wisconsin in 2002 was $59,200. Especially, in urban and suburban areas where median income tends to be higher, $48,000 is "low income" under HUD standards.

A family with a combined annual income of $48,000, an amount considerably below the state median income, could easily be two parents earning $24,000 per year or $2,000 a month. Each of these parents would have less than $1800 of monthly disposable income after taxes. This should hardly be considered high income.

Setting the initial threshold as low as $48,000 (as AB 250 does) will cause the special circumstance provision for high income payers to be used far more often than is appropriate, and for families who are not, in fact, high income.

5. It is not necessary to dramatically change the way child support is calculated in order to take into consideration the income of both parents.

Current law (i.e., the existing DWD 40) already considers both parties' incomes in setting child support once the amount of time the parent with less placement has with the child reaches 40% of overall placement. The proposed rule before the committee, which revises DWD 40, calls for considering both parties' incomes once the amount of time the parent with less placement has with the child reaches **25%** placement) Most cases will fall under this threshold. Therefore, if the proposed rule is adopted there is little need to make a dramatic change in the formula that AB 250 proposes.

6. Wisconsin law has consistently reflected that child support should meet more than just the basic needs of the child.

Proponents of the bill argue that the only thing that should be considered is the basic economic needs of the child. However, the basic premise of Wisconsin's child support formula has always been that a child's standard of living should, to the degree possible, not be adversely affected because his or her parents are not living together. The child support formula attempts to provide children with what is as close as possible to the same state standard of living the child enjoyed when the parents were living together, or if they never did, then the standard of living they would have enjoyed together, taking into account the fact that it is more expensive to maintain two households than one. Assembly Bill 250 focuses too much on the interests of the child support payer and loses sight of the best interest of the children.

Clearinghouse Rule 03-022 is the consensus approach for a reason. It is a better proposal.

If you have any questions or if you would like additional information, please feel free to contact Dan Rossmiller, State Bar Public Affairs Director, by phone at (608) 250-6140 or by email at drossmiller@wisbar.org.


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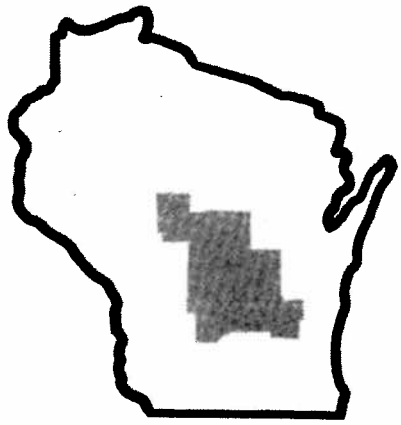

August 26, 2003

Senator David Zien
Committee on Judiciary, Corrections, and Privacy
Box 7882
Madison, WI 53707

RE: SB 156, AB 250, DWD Rule 40

Dear Sen. Zien:

I am writing to you on behalf of the Committee of Chief Judges regarding SB 156 and AB 250, relating to calculation of child support, and DWD Rule 40, the related administrative rule.

We do not believe that the administrative rule should be repealed in favor of an entirely new method of child support calculation. The proposed DWD rule has undergone extensive public review and revision, and appears to be a balanced approach to the many kinds of cases that present themselves. We believe this rule should be allowed to go into effect and given a chance to work. We find the proposed rule much preferable to SB 156, which creates unnecessary distinctions between case types and reduces the level of support available to children in middle and upper income families.

With respect to low-income families, we believe that the minimum payment needs to be set at a level high enough to make a realistic contribution to the child's support. Low support orders favor the noncustodial parent over the child and the custodial parent. A low-income custodial parent with children to support must find a way to do it somehow, often by working two or three jobs, in addition to paying child care costs and bearing the responsibility of raising the children. If the low-income standard must be lowered, the amounts chosen should reflect these considerations. We are not opposed to a reasonable compromise figure if the rule stays generally intact.

We believe that whatever standards are adopted should encourage adherence to the current percentage standards while leaving room for judicial discretion to deviate in appropriate circumstances. Judges should be able to deviate after taking into account local economic circumstances and the individual characteristics of the payer, such as physical and mental health and employability.

We hope that the Legislature will approve standards that reflect a meaningful contribution to the child's welfare, balance the burden of support fairly between the custodial and noncustodial parents, and give the judge flexibility to respond to unusual circumstances

Sincerely,

James Evenson mv

James Evenson
Chief Judge, Sixth Judicial District
Chair, Chief Judges Subcommittee on Child Support

JE/jl
cc: Senator Carol Roessler
Representative Steve Kestell