2019 ASSEMBLY BILL 96

March 22, 2019 – Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Family Law.

1   AN ACT **relating to:** calculating the child support obligation.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Study Committee on Child Placement and Support. To reflect current practices, the bill reorganizes certain aspects of the Department of Children and Families administrative rules relating to commonly used child support formulas. The manner of calculating the amount of child support and the applicable formulas are not changed in the bill.

Under current DCF rules, the child support formula that applies in a shared physical placement arrangement is included among the formula for "special circumstances."

The bill moves the formula that applies in a shared physical placement arrangement to a new section of DCF's rules before all of the child support formula variations. The bill also specifies that, under DCF rules, the designated percentage that applies in a nonshared physical placement arrangement applies only if the conditions for the shared placement formula do not apply.

The bill creates a new defined term under DCF's rules for a "designated percentage," to mean the applicable percentage of a parent's monthly income, or adjusted

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monthly income, that is available for child support. The "designated percentage" phrase is then used within the calculations for a shared-placement arrangement and circumstances of a serial-family parent, split-placement parents, and combinations of special circumstances.

In addition, the bill does all of the following:

• Retitles the applicable DCF administrative code chapter from "Child Support Percentage of Income Standard" to "Child Support Standard."

• Removes the definition of the term "standard" or "percentage standard" from DCF's rules.

• Moves a Note appended to the definition of "standard" in DCF's rules to the new definition of the "designated percentage." The Note specifies that the standard is based on national studies and is adjusted downward to reflect costs incurred by a parent when a child is in the parent's care and costs to maintain a child's health insurance.

• Moves the listing of the designated percentage amounts, and the standard that applies to a request for a deviation from the percentage standard, to be placed with and follow the shared physical placement arrangement formula under DCF's rules. The new section is titled, "Determining the child support obligation."

• Updates cross-references within DCF's rules to reflect the reorganization of the shared physical placement and designated percentage provisions.

1   **SECTION 1.** Chapter DCF 150 (title) of the administrative code is amended to

2   read:

3   **CHAPTER DCF 150**

4   **CHILD SUPPORT ~~PERCENTAGE OF~~**

5   **~~INCOME~~ STANDARD**

6   **SECTION 2.** DCF 150.02 (9m) of the administrative code is created to read:

7   DCF 150.02 **(9m)** "Designated percentage" means the applicable percentage

8   of a parent's monthly income available for child support or adjusted monthly income

9   available for child support under s. DCF 150.035 (2) or 150.04 (4) or (5).

10   **SECTION 3.** DCF 150.02 (19) of the administrative code is amended to read:

11   DCF 150.02 **(19)** "Low-income payer" means a payer for whom the court uses

12   the monthly support amount provided in the schedule in Appendix C based on the

13   court's determination that the payer's total economic circumstances limit his or her

14   ability to pay support at the level provided under s. DCF ~~150.03 (1)~~ 150.035 and the

15   payer's income available for child support is at a level set forth in the schedule in

16   Appendix C.

1   **SECTION 4.** DCF 150.02 (26) of the administrative code is amended to read:

2   DCF 150.02 **(26)** "Shared–placement payer" means the shared–placement

3   parent who is determined to owe a greater support amount than the other parent

4   under the calculation in s. DCF ~~150.04 (2) (b)~~ 150.035 (1).

5   **SECTION 5.** DCF 150.02 (28) of the administrative code is repealed.

6   **SECTION 6.** DCF 150.02 (28) Note of the administrative code is renumbered

7   DCF 150.02 (9m) Note.

8   **SECTION 7.** DCF 150.03 (1) (intro) of the administrative code is renumbered

9   DCF 150.03 (1) and amended to read:

10   DCF 150.03 **(1)** DETERMINING INCOME AVAILABLE FOR CHILD SUPPORT ~~USING THE~~

11   ~~PERCENTAGE STANDARD~~.   The court shall determine a parent's monthly income

12   available for child support by adding together the parent's annual gross income or,

13   if applicable, the parent's annual income modified for business expenses; the parent's

14   annual income imputed based on earning capacity; and the parent's annual income

15   imputed from assets, and dividing that total by 12. This may be done by completing

16   the worksheet in Appendix B, although use of the worksheet for this purpose is not

17   required. ~~Except as provided in s. DCF 150.04 (4) and (5), the percentage of the~~

18   ~~parent's monthly income available for child support or adjusted monthly income~~

19   ~~available for child support that constitutes the child support obligation shall be:~~

20   **SECTION 8.** DCF 150.03 (1) (a) to (e) of the administrative code are renumbered

21   DCF 150.035 **(2)** (a) to (e).

22   **SECTION 9.** DCF 150.03 (1) (e) Note of the administrative code is renumbered

23   DCF 150.035 (2) (e) Note.

24   **SECTION 10.** DCF 150.03 (5) (a) of the administrative code is amended to read:

1   DCF 150.03 **(5)** (a) The court may consider a child's benefit under 42 USC 402

2   (d) based on a parent's entitlement to federal disability or old–age insurance benefits

3   under 42 USC 401 to 433 and adjust a payer's child support obligation by subtracting

4   the amount of the child's benefit received by the payee. In no case may this

5   adjustment require the payee to reimburse the payer for any portion of the child's

6   benefit. If the payer is receiving the child's benefit, the support amount is either the

7   designated percentage ~~standard~~ applied to the payer's income or the amount of the

8   child's benefit, whichever is greater.

9   **SECTION 11.** DCF 150.03 (5) (b) (intro.), 2. and 7. of the administrative code are

10   amended to read:

11   DCF 150.03 **(5)** (b) (intro.) If the shared–placement guidelines under s. DCF

12   ~~150.04 (2)~~ 150.035 (1) apply, the child's benefit is split between the parents in

13   proportion to the amount of time the child spends with each parent. Add the

14   proportion of the child's benefit that represents the proportion of time the child

15   spends with the parent not receiving the benefit to the support obligation of the

16   parent who is receiving the child's benefit. Support shall be determined as follows:

17   2. Multiply each parent's monthly income available for child support by the

18   ~~appropriate~~ designated percentage ~~standard under s. DCF 150.03 (1)~~.

19   7. Offset the resulting amounts against each other. The parent with the greater

20   child support obligation is the shared–placement payer. The shared–placement

21   payer shall pay either the greater of the amount determined in this subsection or the

22   amount determined using the ~~appropriate~~ designated percentage ~~standard under s.~~

23   ~~DCF 150.03 (1)~~.

24   **SECTION 12.** DCF 150.03 (5m) (intro.), (a), (b) and (g) of the administrative code

25   are amended to read:

1   DCF 150.03 **(5m)** (intro.) ADJUSTMENT FOR ADOPTION ASSISTANCE. The court may

2   consider adoption assistance received by either parent under s. 48.975 (3) (a), Stats.

3   If the shared placement guidelines under s. DCF 150.04 (2) 150.035 (1) apply, the

4   adoption assistance should be split between the parents in proportion to the amount

5   of time the child spends with each parent. Add the proportion of the adoption

6   assistance that represents the proportion of time the child spends with the parent

7   not receiving the adoption assistance to the support obligation of the parent who is

8   receiving the adoption assistance. Support shall be determined as follows:

9   (a) Determine each parent's monthly income available for child support under

10   s. DCF 150.03 (1) (intro.). If a parent has one or more previous child support

11   obligations, determine the parent's monthly income available for child support

12   adjusted for the previous obligations as provided in s. DCF 150.04 (1). Do not include

13   the adoption assistance under s. 48.975 (3) (a), Stats., in either parent's income.

14   (b) Multiply each parent's monthly income available for child support by the

15   appropriate designated percentage standard under s. DCF 150.03 (1).

16   (g) Offset the resulting amounts against each other. The parent with the

17   greater child support obligation is the shared-placement payer. The

18   shared-placement payer shall pay the lesser of the amount determined in this

19   subsection or the amount determined using the appropriate designated percentage

20   standard under s. DCF 150.03 (1).

21   **SECTION 13.** DCF 150.03 (7) of the administrative code is amended to read:

22   DCF 150.03 **(7)** CALCULATION OF FAMILY SUPPORT. When the standard under sub.

23   (1) designated percentage is used to calculate support under s. 767.531, Stats., the

24   amount determined shall be increased by the amount necessary to provide a net

1   family support payment, after state and federal income taxes are paid, of at least the

2   amount of a child support payment under the standard.

3   SECTION 14. DCF 150.03 (11) of the administrative code is renumbered DCF

4   150.035 (3) and amended to read:

5   DCF 150.035 **(3)** DEVIATION FROM THE PERCENTAGE STANDARD. (a) Upon request

6   by a party, the court may modify the amount of child support payments determined

7   under sub. (1) (2) if, after considering the factors in s. 767.511 (1m), Stats., as

8   applicable, the court finds by the greater weight of the credible evidence that use of

9   the designated percentage standard is unfair to the child or to any of the parties.

10   (b) If the court under par. (a) modifies the amount of child support payment

11   determined under sub. (1) (2), the court shall state in writing or on the record the

12   amount of support that would be required by using the designated percentage

13   standard under sub. (1), the amount by which the court's order deviates from that

14   amount, its reasons for finding that use of the designated percentage standard is

15   unfair to the child or the party, its reasons for the amount of the modification and the

16   basis for the modification as provided under s. 767.511 (1n), Stats.

17   SECTION 15. DCF 150.035 (title) and (2) of the administrative code are created

18   to read:

19   **DCF 150.035** (title) **Determining the child support obligation.**

20   **(2)** DETERMINING THE CHILD SUPPORT OBLIGATION OF NONSHARED PLACEMENT

21   PARENTS. If the conditions under sub. (1) (a) are not met, the child support obligation

22   is one of the following percentages of the parent's monthly income available for child

23   support or adjusted monthly income available for child support, except as provided

24   under s. DCF 150.04 (4) or (5):

1   **SECTION 16.** DCF 150.04 (1) (b) 1. and 3. a. and b. of the administrative code

2   are amended to read:

3   DCF 150.04 **(1)** (b) 1. Determine the parent's monthly income available for

4   child support under s. DCF 150.03 (1) (intro.).

5   3. a. If the parent is subject to an existing support order for that legal obligation,

6   except a shared-placement order under s. DCF 150.04 (2) 150.035 (1), the support

7   for that obligation is the monthly amount of that order.

8   b. If the parent is in an intact family or is subject to a shared-placement order

9   under s. DCF 150.04 (2) 150.035 (1), the support is determined by multiplying the

10   appropriate designated percentage under s. DCF 150.03 (1) for that number of

11   children by the parent's monthly income available for child support or, if applicable,

12   determine support under sub. (2), (3), (4), or (5) or s. DCF 150.035 (1).

13   **SECTION 17.** DCF 150.04 (1) (b) 5. a. and b. of the administrative code are

14   amended to read:

15   150.04 **(1)** (b) 5. a. If the parent is subject to an existing support order for that

16   legal obligation, except a shared-placement order under s. DCF 150.04 (2) 150.035

17   (1), the support for that obligation is the monthly amount of that order.

18   b. If the parent is in an intact family or is subject to a shared-placement order

19   under s. DCF 150.04 (2) 150.035 (1), the support is determined by multiplying the

20   appropriate designated percentage under s. DCF 150.03 (1) for that number of

21   children by the parent's monthly income available for child support or, if applicable,

22   determine support under sub. (2), (3), (4), or (5) or s. DCF 150.035 (1).

23   **SECTION 18.** DCF 150.04 (1) (b) 8. of the administrative code is amended to read:

24   DCF 150.04 **(1)** (b) 8. Multiply the appropriate designated percentage under

25   s. DCF 150.03 (1) for the number of children subject to the new order by the final

1 adjusted monthly income available for child support determined in either subd. 6. or

2 7. to determine the new child support obligation or if applicable, determine the new

3 child support obligation under sub. ~~(2),~~ (3), (4), or (5) <u>or s. DCF 150.035 (1)</u>. If

4 multiple child support obligations reduce a serial-family parent's income to a level

5 set forth in the schedule in ch. DCF 150 Appendix C, the court may combine the

6 provisions of this subsection with the provisions for determining the support

7 obligation of a low-income payer under s. DCF 150.04 (4).

8 **SECTION 19.** DCF 150.04 (2) of the administrative code is renumbered DCF

9 150.035 (1), and DCF 150.035 (1) (b) 1., 2. and 5., as renumbered, are amended to

10 read:

11 DCF 150.035 **(1)** (b) 1. Determine each parent's monthly income available for

12 child support under s. DCF 150.03 (1). In determining whether to impute income

13 based on earning capacity for an unemployed parent or a parent employed less than

14 full time under s. DCF 150.03 (3), the court shall consider benefits to the child of

15 having a parent remain in the home during periods of placement and the additional

16 variable day care costs that would be incurred if the parent worked more. If a parent

17 has one or more previous child support obligations, determine the parent's monthly

18 income available for child support adjusted for the previous obligations as provided

19 in ~~sub.~~ <u>s. DCF 150.04</u> (1).

20 2. Multiply each parent's monthly income available for child support by the

21 ~~appropriate~~ <u>designated</u> percentage ~~standard under s. DCF 150.03 (1)~~.

22 5. Offset resulting amounts under subd. 4. against each other. The parent with

23 a greater child support obligation is the shared-placement payer. The

24 shared-placement payer shall pay the lesser of the amount determined under this

25 ~~subd.~~ <u>subdivision</u> or the amount determined using the ~~appropriate~~ <u>designated</u>

1   percentage ~~standard under s. DCF 150.03 (1)~~. If the shared–placement payer is also

2   a low–income or high–income payer, the court may combine the provisions of either

3   ~~sub.~~ s. DCF 150.04 (4) or (5) with the provisions of this section.

4   **SECTION 20.** DCF 150.04 (3) (b) of the administrative code is amended to read:

5   DCF 150.04 **(3)** (b) Multiply the amount determined in par. (a) by the pro rata

6   percentage standard for the number of children in split placement who are placed

7   with the other parent. The pro rata percentage standard for the number of children

8   in split placement who are placed with the other parent is calculated by determining

9   the ~~appropriate~~ <u>designated</u> percentage ~~standard under s. DCF 150.03 (1)~~ for the total

10   number of children, dividing by the total number of children, and adding together the

11   percentages for the children in split–placement who are placed with the other

12   parent.

13   **SECTION 21.** DCF 150.04 (4) (a) of the administrative code is amended to read:

14   DCF 150.04 **(4)** (a) The court may use the monthly support amount provided

15   in the schedule in Appendix C as the support amount for a payer with a monthly

16   income available for child support at a level set forth in the schedule if the payer's

17   total economic circumstances limit his or her ability to pay support at the level

18   determined under s. DCF ~~150.03 (1)~~ <u>150.035</u>. If a payer's monthly income available

19   for child support is below the lowest income level in Appendix C, the court may set

20   an order at an amount appropriate for the payer's total economic circumstances.

21   This amount may be lower than the lowest support amount in Appendix C.

22   **SECTION 22.** DCF 150.04 (5) (b) of the administrative code is amended to read:

23   DCF 150.04 **(5)** (b) The court shall apply the percentages in s. DCF ~~150.03 (1)~~

24   <u>150.035 (2)</u> to a payer's monthly income available for child support that is less than

25    $7,000.

1   **SECTION 23.** DCF 150.04 (6) (b) 1. and 4. of the administrative code are

2   amended to read:

3   DCF 150.04 **(6)** (b) 1. Determine the pro rata percentage standard for the total

4   number of children for whom support is being established. The pro rata percentage

5   standard for the total number of children for whom support is being established is

6   calculated by determining the ~~appropriate~~ <u>designated</u> percentage ~~standard under s.~~

7   ~~DCF 150.03 (1)~~ for the total number of children and dividing by the total number of

8   children.

9   4. Add or offset the child support obligation for children placed with the other

10   parent full-time under subd. 2. with the child support obligation for children in

11   shared-placement under subd. 3. e. The parent with a greater child support

12   obligation is the payer. The payer shall pay the lesser of the amount determined

13   under this subdivision or the amount determined using the ~~appropriate~~ <u>designated</u>

14   percentage ~~standard under s. DCF 150.03 (1)~~. If the payer under this subdivision is

15   also a low-income payer, the child support obligation may be the lesser of the amount

16   determined under this subdivision or under sub. (4).

17   **SECTION 24.** DCF 150.04 (6) (c) 1. b. and 3. of the administrative code are

18   amended to read:

19   DCF 150.04 **(6)** (c) 1. b. If no court-ordered support obligation exists,

20   multiplying the ~~appropriate~~ <u>designated</u> percentage ~~under DCF 150.03 (1)~~ by the

21   parent's monthly income available for child support.

22   3. Multiply the ~~appropriate~~ <u>designated</u> percentage ~~under s. DCF 150.03 (1)~~ for

23   the number of children subject to the new order by the final adjusted monthly income

24   available for child support determined under subd. 2. to determine the new child

25   support obligation.

1   **SECTION 25. Effective date.**

2   (1) This act takes effect on the first day of the 7th month beginning after

3   publication.

4   **(END)**