

## Clearinghouse Rule 23-011

**State of Wisconsin**  
**Department of Children and Families**  
**Child Support Guidelines Quadrennial Review**  
**Chapter DCF 150**

The Wisconsin Department of Children and Families proposes to repeal s. DCF 150.02 (10); to amend ch. DCF 150 (preface) and ss. DCF 150.02 (17), (19), and (21), 150.035 (1) (b)(Note), and 150.04 (1) (b) 3. a. and (4) (a); to repeal and recreate ss. DCF 150.02 (14), 150.03 (3), and 150.035 (1) (a); and to create ss. DCF 150.02 (15m), 150.03 (3m), and 150.035 (1) (ag), (ar), and (b) (title), relating to the child support guidelines quadrennial review.

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### Analysis Prepared by the Department of Children and Families

**Statutory authority:** Section 49.22 (9), Stats.

**Statutes interpreted:** Section 49.22 (9), Stats.

**Related statutes and rules:** Section 767.511, Stats.

### Explanation of Agency Authority

Section 49.22 (9), Stats., states that the department shall promulgate rules that provide a standard for courts to use in determining a child support obligation based upon a percentage of the gross income and assets of either or both parents. The rules shall provide for consideration of the income of each parent and the amount of physical placement with each parent in determining a child support obligation in cases in which a child has substantial periods of physical placement with each parent.

### Summary of the Proposed Rules

Federal regulations require that states review their child support guidelines every 4 years to determine whether the use of the guidelines results in appropriate child support order amounts. What is considered appropriate changes over time as states continue to research and analyze case data, labor market data, and other economic factors.

As part of this federally-required review, the department established a Child Support Guidelines Review Advisory Committee to provide input and recommendations on the use of the child support guidelines in ch. DCF 150. The committee included representatives from the judiciary, the Wisconsin bar, county child support agencies, and organizations representing parents and children. The proposed rules are based on the committee's recommendations.

### Federal Rule and Imputation of Income

Income imputed based on earning capacity. On December 20, 2016, a final federal rule, entitled *Flexibility, Efficiency, and Modernization in Child Support Enforcement Program*, was published that requires states to revise their child support guidelines on imputation of income.

The federal rule provides that a child support order must be based on evidence of the parent's ability to pay. If income imputation is authorized, the specific circumstances of the parent must be considered to the extent known, including various factors specified in the rule.

The proposed rules repeal and recreate the income imputation provision in s. DCF 150.03 (3) based on the 2016 federal rule. The proposed language is intended to provide objective factors that will be helpful in determining a parent's earning capacity and that can be applied fairly to parties across the state.

The proposed rules provide that if a parent is voluntarily unemployed or underemployed without good cause, the court may impute income to the parent based on the parent's earning capacity. A parent's incarceration may not be treated as voluntary unemployment for purposes of establishing or modifying a child support order. In determining a parent's earning capacity, the court may consider the following factors:

- The parent's recent work experience.
- The parent's earnings during previous periods of employment.
- The parent's job skills and training.
- The parent's education.
- A vocational evaluation of the parent, if available.
- The parent's diligence in seeking appropriate employment.
- Employment barriers the parent faces, such as homelessness, lack of a driver's license, alcohol or other drug dependence, or immigration status.
- The parent's criminal history and history of incarceration.
- If the parent is unemployed, whether the unemployment is due to the parent's job-related misconduct.
- If the parent is the caretaker of a child common to the parties, the relationship between the parent's earning capacity and the child care costs that would be incurred if the parent obtained paid employment.
- If the parent is the caretaker of a child common to the parties who has unusual emotional or physical needs, whether the child requires that parent's presence in the home.
- The parent's participation in reasonable career or occupational training to establish basic skills or enhance earning capacity.
- The parent's age.
- The parent's assets.
- The location of the parent's residence.
- The parent's receipt of Wisconsin Works cash assistance.
- The parent's receipt of Supplemental Security Income.
- Any other factor that the court determines is relevant.

Under the current rules, the court may impute income to the parent at an amount that represents the parent's ability to earn, based on the parent's education, training and recent work experience, earnings during previous periods, current physical and mental health, history of child care responsibilities as the parent with primary physical placement, and the availability of work in or near the parent's community.

Income imputed when no information is known. The proposed rules continue to allow imputation of income if evidence is presented that due diligence has been exercised to ascertain information on the parent's actual income or ability to earn and that information is unknown. Under the current rules, the court may impute the income to the parent that a person would earn by working 35 hours per week for the higher of the federal or state minimum hourly wage. Under the proposed rules, the court may impute income to the parent that an individual would earn by working 10 to 35 hours per week for the higher of the federal or state minimum hourly wage.

### Shared Placement and Equivalent Care

The proposed rules clarify when credit for equivalent care may be given when calculating a parent's period of placement for purposes of determining the child support obligations of parents who have shared placement.

A parent's period of placement is determined by calculating the number of overnights or equivalent care provided by the parent. Credit for equivalent care is given when a parent is caring for the child during a period that is not overnight, but is determined by the court to require the parent to assume basic support costs that are substantially equivalent to what the parent would spend to care for the child overnight.

Under the current rules, parents are sometimes receiving equivalent care credit for care during periods that were intended to be part of overnight care, resulting in duplicate credit for that care. The proposed rules provide that a parent may not receive credit for equivalent care during a period that is within 24 hours of a period for which the parent receives credit for overnight care of the child, unless the other parent is providing overnight care the night before and night after the period when the equivalent care is provided.

The proposed rules also move information currently in the definition of "equivalent care" in s. DCF 150.02 (10) to the shared-placement provision in s. DCF 150.035 and correct a typo in the shared placement example.

### Serial-Family Parent

Under the current rules, the court may determine a serial-family parent's monthly income available for support of a child in a subsequent family by calculating the parent's monthly income available for child support under s. DCF 150.03 (1) and subtracting the monthly amount of the existing support order for the child in the first family. The proposed rules provide that the court may subtract the higher of the monthly amount of the existing support order or the amount that would currently be determined under the child support guidelines.

The proposed change is intended to reduce the need for multiple court actions to determine and modify the child support obligations of a serial-family parent.

### General

The proposed rules also remove pronouns from the rule chapter.

### Summary of Factual Data and Analytical Methodologies

The proposed rules are based on the recommendations in the 2021 Child Support Guidelines Review Advisory Committee Report to the department.

A statutory change is needed before the medical support provision in s. DCF 150.05 can be updated to conform to federal requirements. Under 45 CFR 302.56 (c) (2), a state's child support

guidelines must allow for provision of a child's health care needs through private or public health care coverage or through cash medical support. Under s. 767.513 (1), Stats., and the current s. DCF 150.05, the definition of health insurance does not include medical assistance provided under ch. 49, Stats.

### **Summary of Related Federal Law**

45 CFR 302.56 (a) provides that, as a condition of approval of its state plan, each state must establish one set of child support guidelines for setting and modifying child support order amounts within the state.

45 CFR 302.56 (c) provides that a state's child support guidelines must at a minimum do all of the following:

- (1) Provide that the child support order is based on the noncustodial parent's earnings, income, and other evidence of ability to pay that:
  - (i) Takes into consideration all earnings and income of the noncustodial parent.
  - (ii) Takes into consideration the basic subsistence needs of the noncustodial parent who has a limited ability to pay by incorporating a low-income adjustment, such as a self-support reserve or some other method determined by the state.
  - (iii) If imputation of income is authorized, takes into consideration the specific circumstances of the noncustodial parent to the extent known, including such factors as the noncustodial parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors in the case.
- (2) Address how the parents will provide for the child's health care needs through private or public health care coverage or through cash medical support, or both.
- (3) Provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders.
- (4) Be based on specific descriptive and numeric criteria and result in a computation of the child support obligation.

45 CFR 302.56 (e) provides that a state must review, and revise, if appropriate, its child support guidelines at least once every 4 years to ensure that their application results in the determination of appropriate child support order amounts.

### **Comparison to Adjacent States**

#### Iowa

Effective January 1, 2022, the Iowa Supreme Court ordered an amendment to the Iowa child support guidelines to conform to changes to 45 CFR 302.56 made in the 2016 federal rule. Under IA Rule 9.11 (4), the court may impute income in appropriate cases by determining a parent's earning capacity based on factors that appear to be essentially the same as the federal factors in 45 CFR 302.56 (c) (1) (iii). Under IA Rule 9.5 (3) *d.*, imputation of income is only allowed pursuant to agreement of the parties, or upon request of a party and a written determination made by the court that a parent is voluntarily unemployed or underemployed without just cause.

Under IA Rule 9.14, there is no credit for care that is equivalent to overnight care when determining the obligations of parents who have shared placement.

IA Rule 9.5 (2) defines “net monthly income” as gross monthly income less various deductions, including a prior obligation of child support actually paid pursuant to court or administrative order for other children not in the pending matter.

### Michigan

Effective January 1, 2021, the Michigan Friend of the Court Bureau updated the Michigan Child Support Formula Manual to conform to the 2016 federal rule. Under 2021 MCSF 2.01(G), if a parent is voluntarily unemployed or underemployed, or has an unexercised ability to earn, income includes the potential income that a parent could earn, subject to that parent’s actual ability. The court determines a parent’s potential income based on factors that include factors that are essentially the same as the federal factors in 45 CFR 302.56 (c) (1) (iii) and the following additional factors: the reasons for any termination or changes in the parent’s employment; physical and mental disabilities that may affect the parent’s ability to work; the parent’s availability for work, excluding periods the parent could not work or seek work due to hospitalization or debilitating illness; the parent’s means of support; the parent’s ability to drive and access to transportation; the presence of the parties’ children in the parent’s home and its impact on that parent’s earnings; any significant reduction in the parent’s income compared to the period that preceded the filing of the initial complaint or the motion for modification; and any additional costs associated with the parent earning the potential income, such as child care and taxes that the parent would pay on the imputed income.

Under 2021 MCSF 3.03, there is no credit for care that is equivalent to overnight care. A parental time offset to the base support obligation is based on the approximate annual number of overnights that a child will likely spend with each parent.

Under 2021 MCSF 2.08B, net income for calculating support in a case does not include monies for children not in common with the other parent in the case.

### Minnesota

Under Minn. Stat. sec. 518A.32, if a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income, child support must be calculated based on a determination of potential income. It is rebuttably presumed that a parent can be gainfully employed 40 hours per week.

Determination of potential income must be made according to one of three methods, as appropriate: the parent’s probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community; the actual amount of the unemployment compensation or workers’ compensation the parent is receiving; or the amount of income a parent could earn working 30 hours per week at the higher of the federal or state minimum wage.

A parent is not considered to be voluntarily unemployed, underemployed, or employed on a less than full-time basis if the parent shows that the unemployment or underemployment will ultimately lead to an increase in income or that it represents a bona fide career change that outweighs the adverse effect of that parent’s diminished income on the child. The unemployment or underemployment is also not considered voluntary if the parent is physically or mentally incapacitated or incarcerated.

No income may be imputed to a parent who receives Temporary Assistance for Needy Families.

If a parent stays at home to care for a child who is subject to the child support order, the court

may consider the parties' parenting and child care arrangements before the child support action; the stay-at-home parent's employment history, recency of employment, earnings, and the availability of jobs within the community for an individual with the parent's qualifications; and the relationship between the employment-related expenses, including child care and transportation costs, and the income the stay-at-home parent could receive from available jobs within the community for an individual with the parent's qualifications; the child's age and health, including whether the child is physically or mentally disabled; and the availability of child care providers.

Under Minn. Stat. sec. 518A.36, the number of overnights or overnight equivalents that a parent spends with a child pursuant to a court order may be considered in determining the parent's percentage of parenting time for the parenting expense adjustment. Overnight equivalents are significant time periods on separate days where the child is in the parent's physical custody and under the direct care of the parent but does not stay overnight. The court may consider the age of the child in determining whether a child is with a parent for a significant period of time.

Minn. Stat. sec 518A.33 provides for a deduction from a parent's gross income for court-ordered child support for a nonjoint child or a deduction of 75 percent of the guideline amount for support of a nonjoint child if there is no court order.

### Illinois

Under 750 ILCS 5/505 (a) (3.2), if a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of the parent's potential income and probable earnings level. This determination is based on the parent's work history, occupational qualifications, prevailing job opportunities, the ownership by a parent of a substantial non-income producing asset, and earnings levels in the community. If there is insufficient work history to determine employment potential and probable earnings level, there shall be a rebuttable presumption that the parent's potential income is 75 percent of the most recent federal poverty guidelines for a family of one person.

Under 750 ILCS 5/505 (a) (3.8), the shared physical care provision is based on overnights with no mention of equivalent care.

Under 750 ILCS 5/505 (a) (3) (F), the determination of net income includes a multi-family adjustment. If a parent is also legally responsible for support of a child not shared with the other parent, the court shall deduct from the parent's net income the amount of child support actually paid by the parent pursuant to a support order, unless the court makes a finding that it would cause economic hardship to the child. If there is no court-ordered support, upon the request or application of a parent actually supporting a presumed, acknowledged, or adjudicated child living in or outside of that parent's household, the court shall deduct from the parent's net income the amount of financial support actually paid by the parent for the child or 75% of the support the parent should pay under the child support guidelines (before this adjustment), whichever is less, unless the court makes a finding that it would cause economic hardship to the child.

### **Effect on Small Businesses**

The proposed rules will not affect small businesses as defined in s. 227.114 (1), Stats.

### **Analysis Used to Determine Effect on Small Businesses**

The proposed rules apply to temporary and final orders for child support of a marital or non-marital child in any action affecting the family under ch. 767, Stats., including stipulated child support settlements under s. 767.34, Stats.

### **Agency Contact**

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**Place Where Comments are to be Submitted and Deadline for Submission**

Comments may be submitted to Elaine Pridgen, Department of Children and Families, 201 W. Washington Ave, P.O. Box 8916, Madison, WI, 53708-8916 or [dcppublichearing@wisconsin.gov](mailto:dcppublichearing@wisconsin.gov). The comment deadline is May 23, 2023.

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**RULE TEXT**

**SECTION 1. Chapter DCF 150 (preface) is amended to read:**

Section 49.22 (9), Stats., requires the department to adopt and publish a standard to be used by courts in determining child support obligations. The standard is to be based on a percentage of the gross income and assets of either or both parents.

The ~~percentage standard~~ percentages established in this chapter ~~is~~ are based on an analysis of national studies, including a study done by Jacques Van der Gaag as part of the Child Support Project of the Institute for Research on Poverty, University of Wisconsin, Madison, entitled "On Measuring the Cost of Children," which disclose the amount of income and disposable assets that parents use to raise their children. The child support standard is based on the principle that a child's standard of living should, to the degree possible, not be adversely affected because ~~his or her~~ the child's parents are not living together. It determines the percentage of a parent's income and potential income from assets that parents should contribute toward the support of children if the family does not remain together. The child support standard determines the minimum amount each parent is expected to contribute to the support of their children. It expects that the custodial parent shares ~~his or her~~ income directly with their children. It also presumes that the basic needs of the children are being met. This latter presumption may be rebutted by clear and convincing evidence that the needs of the children are not being met.

The rules also prescribe procedures for determining equitable child support obligations under a variety of financial and family circumstances.

**SECTION 2. DCF 150.02 (10) is repealed.**

**SECTION 3. DCF 150.02 (14) is repealed and recreated to read:**

**DCF 150.02 (14)** "Income imputed based on earning capacity" means the amount the court determines under s. DCF 150.03 (3) if the parent has no other income or the difference between the amount the court determines under s. DCF 150.03 (3) and the parent's gross income or income modified for business expenses if the parent has actual income.

**SECTION 4. DCF 150.02 (15m) is created to read:**

**DCF 150.02 (15m)** “Income imputed when no information is known” means the amount that the court determines under s. DCF 150.03 (3m).

**SECTION 5. DCF 150.02 (17), (19), and (21) are amended to read:**

**DCF 150.02 (17)** “Intact family” means a family in which the child or children and the payer reside in the same household and the payer shares ~~his or her~~ the payer’s income directly with the child or children and has a legal obligation to support the child or children.

**(19)** “Low-income payer” means a payer for whom the court uses the monthly support amount provided in the schedule in Appendix C based on the court’s determination that the payer’s total economic circumstances limit ~~his or her~~ the payer’s ability to pay support at the level provided under s. DCF 150.035 and the payer’s income available for child support is at a level set forth in the schedule in Appendix C.

**(21)** “Monthly income available for child support” means the monthly income at which the child support obligation is determined, which is calculated by adding the parent’s annual gross income or, if applicable, the parent’s annual income modified for business expenses; the parent’s annual income imputed based on earning capacity; the parent’s annual income imputed when no information is known; and the parent’s annual income imputed from assets, and dividing that total by 12.

**SECTION 6. DCF 150.03 (1) is amended to read:**

**DCF 150.03 (1)** DETERMINING INCOME AVAILABLE FOR CHILD SUPPORT. The court shall determine a parent’s monthly income available for child support by adding together the parent’s annual gross income or, if applicable, the parent’s annual income modified for business expenses; the parent’s annual income imputed based on earning capacity; the parent’s annual income imputed when no information is known; and the parent’s annual income imputed from assets, and



dividing that total by 12. This may be done by completing the worksheet in Appendix B, although use of the worksheet for this purpose is not required.

**SECTION 7. DCF 150.03 (3) is repealed and recreated to read:**

**DCF 150.03 (3) INCOME IMPUTED BASED ON EARNING CAPACITY.** If a parent is voluntarily unemployed or underemployed without good cause, the court may impute income to the parent based on the parent's earning capacity. A parent's incarceration may not be treated as voluntary unemployment for purposes of establishing or modifying a child support order. In determining a parent's earning capacity, the court may consider the following factors:

- (a) The parent's recent work experience.
- (b) The parent's earnings during previous periods of employment.
- (c) The parent's job skills and training.
- (d) The parent's education.
- (e) A vocational evaluation of the parent, if available.
- (f) The parent's diligence in seeking appropriate employment.
- (g) Employment barriers the parent faces, such as homelessness, lack of a driver's license, alcohol or other drug dependence, or immigration status.
- (h) The parent's criminal history and history of incarceration.
- (i) If the parent is unemployed, whether the unemployment is due to the parent's job-related misconduct.
- (j) If the parent is the caretaker of a child common to the parties, the relationship between the parent's earning capacity and the child care costs that would be incurred if the parent obtained paid employment.
- (k) If the parent is the caretaker of a child common to the parties who has unusual emotional or physical needs, whether the child requires that parent's presence in the home.

(L) The parent's participation in reasonable career or occupational training to establish basic skills or enhance earning capacity.

(m) The parent's age.

(n) The parent's assets.

(o) The location of the parent's residence.

(p) The parent's receipt of Wisconsin Works cash assistance under s. 49.148, Stats.

(q) The parent's receipt of Supplemental Security Income under 42 USC 1381 to 1383f.

(r) Any other factor that the court determines is relevant.

**SECTION 8. DCF 150.03 (3m) is created to read:**

**DCF 150.03 (3m)** INCOME IMPUTED WHEN NO INFORMATION IS KNOWN. If a parent's income is unknown and evidence is presented that due diligence has been exercised to ascertain information on the parent's actual income or ability to earn and that information is unknown, the court may impute the income to the parent that an individual would earn by working 10 to 35 hours per week for the higher of the federal minimum hourly wage under 29 USC 206 (a) (1) or the state minimum hourly wage under s. 104.035 (1) (a), Stats.

**SECTION 9. DCF 150.035 (1) (a) is repealed and recreated to read:**

**DCF 150.035 (1) (a)** *Applicability*. The shared-placement formula may be applied when all of the following conditions are met:

1. Both parents have court-ordered periods of placement of at least 25 percent or 92 days per year based on the number of overnights or equivalent care under par. (ar) provided by each parent.

2. Each parent is ordered by the court to assume the child's basic support costs in proportion to the time that the parent has placement of the child.

**SECTION 10. DCF 150.035 (1) (ag), (ar), and (b) (title) are created to read:**

**DCF 150.035 (1)** (ag) *Periods of placement and total number of overnights.* 1. A parent's period of placement shall be determined by calculating the number of overnights or equivalent care under par. (ar) ordered to be provided by the parent and dividing that number by the total number of overnights in a year.

2. When a parent is providing court-ordered equivalent care of the child under par. (ar), the total number of overnights in a year may exceed 365.

3. The combined periods of court-ordered placement for both parents shall equal the total number of overnights.

(ar) *Equivalent care.* 1. 'General.' A parent's court-ordered period of placement may include periods when the parent is caring for the child that is not overnight, but is determined by the court to require the parent to assume basic support costs that are substantially equivalent to what the parent would spend to care for the child overnight, subject to subd. 2.

**Note:** For example, a parent working 3rd shift who is generally unable to provide overnight care may be eligible to receive credit for equivalent care provided during the day.

2. 'No duplicate credit.' A parent may not receive credit for equivalent care of the child during a period that is within 24 hours of a period for which the parent receives credit for overnight care of the child, unless the other parent is providing overnight care the night before and night after the period when the equivalent care is provided.

**Note:** The exception clarifies that Parent A may be eligible for equivalent care credit for care provided on Monday morning after providing overnight care on Saturday night if Parent B is providing overnight care on Sunday and Monday nights.

3. 'Calculation of equivalent care.' A block of time during which the parent cares for the child for at least 6 hours may be considered the equivalent of a half-day if the parent provides a meal during this period. Two half-day blocks may be considered equivalent to what the parent would spend to care for the child overnight.

(b) (title) *Determination.*

**SECTION 11. DCF 150.035 (1) (Note) is amended to read:**

**Note:** The following example shows how to calculate the child support obligations of shared-placement parents.

Number of children: Two

Parent A: \$2,000 monthly income available for child support

Court-ordered placement of the child for 219 days a year or 60%.

Parent B: \$3,000 monthly income available for child support

Court-ordered placement of the child for 146 days a year or 40%.

	<u>Parent A</u>	<u>Parent B</u>
1. Monthly income available for child support	\$2,000	\$3,000
2. Monthly income available for child support X percentage standard for two children	$\$2,000 \times 25\% = \$500$	$\$3,000 \times 25\% = \$750$
3. Amount in 2. X 150%	$\$500 \times 150\% = \$750$	$\$750 \times 150\% = \$1125$
4. Amount in 3. X the proportion of time that the child spends with the other parent	$\$750 \times 40\% = \$300$	$\$1125 \times 60\% = \$675$
5. Offset	$\$675 - \$300 = \$375$	
6. Court also assigns responsibility for payment of the child's variable costs.	Manner of payment is between the parents or from a parent to a third-party service provider.	

**Example of equivalent care:**

Number of children: Two

Parent A: \$2,000 monthly income available for child support

Parent A has court-ordered placement of the child 271 days a year or 74%.

Parent B: \$3,000 monthly income available for child support

Parent B has court-ordered placement of the child 94 days a year or 26%.

Parent B also provides day care 4 days a week from 3 pm – 9 pm and

Provides dinner to the children 46 weeks per year.

(4) 6 hour blocks per week = 2 overnights X 46 weeks = 92 overnights per year

Total number of overnights = 457 (271 + 94 + 92)

Parent A = 59%

Parent B = 41%

Time with Parent A = 59% (271/457 = .59)

Time with Parent B = 41% (~~94 = 92/457 = .407~~) (94 + 92)/457 = .407

	<u>Parent A</u>	<u>Parent B</u>
1. Monthly income available for child support	\$2,000	\$3,000
2. Monthly income available for child support X percentage standard for two children	$\$2,000 \times 25\% = \$500$	$\$3,000 \times 25\% = \$750$
3. Amount in 2. X 150%	$\$500 \times 150\% = \$750$	$\$750 \times 150\% = \$1125$
4. Amount in 3. X the proportion of time that the child spends with the other parent	$\$750 \times 41\% = \$307.50$	$\$1125 \times 59\% = \$663.75$
5. Offset	$\$663.75 - \$307.50 = \$367.50$	
6. Court also assigns responsibility for payment of the child's variable costs.	Manner of payment is between the parents or from a parent to a third-party service provider.	

**SECTION 12. DCF 150.04 (1) (b) 3. a. and (4) (a) are amended to read:**

**DCF 150.04 (1) (b) 3. a.** If the parent is subject to an existing support order for that legal obligation, except a shared-placement order under s. DCF 150.035 (1), the support for that obligation is the higher of the monthly amount of ~~that~~ the existing order or the monthly support amount that would currently be determined under this chapter.

(4) (a) The court may use the monthly support amount provided in the schedule in Appendix C as the support amount for a payer with a monthly income available for child support at a level set forth in the schedule if the payer's total economic circumstances limit ~~his or her~~ the payer's ability to pay support at the level determined under s. DCF 150.035. If a payer's monthly income available for child support is below the lowest income level in Appendix C, the court may set an order at an amount appropriate for the payer's total economic circumstances. This amount may be lower than the lowest support amount in Appendix C.

**SECTION 13. EFFECTIVE DATE.** This rule shall take effect the first day of the month following publication in the Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.