



2019 BILL

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5 **SECTION 5.** DCF 150.02 (28) of the administrative code is repealed.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

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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:

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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

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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):

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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

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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) or s. DCF 150.035 (1). 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. s. DCF 150.04~~ s. DCF 150.04 (1).

20 2. Multiply each parent's monthly income available for child support by the
21 appropriate designated 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. subdivision~~ subdivision or the amount determined using the appropriate designated

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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 designated 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)~~ 150.035. 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)~~
24 150.035 (2) to a payer's monthly income available for child support that is less than
25 \$7,000.

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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~~ designated 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~~ designated
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~~ designated percentage ~~under DCF 150.03 (1)~~ by the
21 parent's monthly income available for child support.

22 3. Multiply the ~~appropriate~~ designated 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.

