

Child Support Guidelines Advisory Panel Meeting Minutes

August 17, 2021

Virtual Meeting

Attendance

Emilie Amundson (DCF), Jill Mueller (DCF), Marianne Rosen (DCF), Mark Schmitt (DCF), Connie Chesnik (DFES), Maggie Renno (DFES), Debra Barnes (BCS), Phyllis Fuller (BCS), Katie Marek (BCS), Nicole Price (BCS), Patti Reuter (BCS), Jenny Laufer (BCS), Alicia Breininger (BCS), Aviva Gellman (BCS), Brian McReavy (BCS), Adrienne Gilbert Ramirez (Wisconsin Women's Network), Marylee Richmond (Walworth County), Katie Murphy (Milwaukee County), Christine Lidbury (Wisconsin Women's Council), Commissioner Mark Fremgen (WIFCCA), Jacquelyn Boggess, (The Nina Collective), Karyn Youso (WI State Law Family Section Board), Dan Meyer (IRP), Steve Cook (IRP), Lisa Klein Vogel (IRP), Dominic Anderson (Dads of Wisconsin), Steve Blake (Dads of Wisconsin), Keith Wessel (Dads of Wisconsin), Charles Myadze (Aldersperson 18th District – Madison Common Council), Lia Ocasio (End Domestic Abuse WI), Bob Held (Legal Action of WI), Thomas Walsh (WI Circuit Court Judge), Jonathan Koch (WFCF), and Tony Bickel (WFCF)

Welcome & Introductions

Connie Chesnik, WI Division of Family and Economic Security Administrator

Connie welcomed meeting participants at 1 P.M. and noted that because the meeting is being held virtually the way we operate would be a little different. She shared that the meeting is being recorded solely for the purpose of minute taking, and that once the minutes have been compiled, the recording would be destroyed. She asked if there were any objections. Hearing none, she proceeded with some housekeeping announcements that included an invitation for participants to use Zoom features like the Chat and Raise Hand functions. Connie thanked Nicole Price for organizing the series of meetings and Mark Schmitt for serving as Zoom Master.

Connie took attendance of Committee Members and asked other meeting attendees to enter their names in chat for attendance purposes.

Secretary's Welcome

Emilie Amundson, WI Department of Children and Families Secretary

Connie introduced Emilie Amundson, WI Department of Children and Families (DCF) Secretary.

Emilie thanked the Guidelines Review Committee for taking the time to be part of these critical discussions and for the work ahead. She also acknowledged DCF staff and management for their work, and the Institute of Research on Poverty who provided valuable research and staff to the Committee. Emilie shared that August is Child Support Awareness Month, and thanked the county Child Support Agencies for their commitment to raise awareness of the need for financial stability for children and families. Wisconsin has been a leader and innovator in child support for many years, and she cited examples like, "A Father for Every Child" law, programs like "ELEVATE," and partnerships like "LIFT Dane."

Secretary Amundson stated that the primary goal of this committee is to review the application of our guidelines in low-income cases, and cases impacting other marginal populations. She shared that the Department is committed to making decisions through an equity lens, and that begins by making sure that our child support orders reflect a parent's ability to pay. Emilie also said that we are committed to giving courts the guidance they need to establish orders that fit the circumstances of individual payers. Our commitment to promoting equity and inclusion in our programs carries with it a recognition of racial disproportionality in the child support system. Finally, Emilie stated that our partnerships are extremely valuable to us, and that we are very fortunate to have such a diverse group of individuals that have come together to share their collective expertise.

Historical Overview of Guidelines

Connie Chesnik, DCF Division of Family and Economic Security Administrator

Connie shared that we have a very diverse panel this year representing a lot of different groups. Some have worked intimately with the WI Child Support Percentage of Income Standard daily, and others may have only had an indirect relationship to it. Therefore, a very brief overview of the Percentage Standard and what is actually in our guidelines presentation was reviewed.

Connie shared a PowerPoint presentation titled, "Wisconsin Percentage of Income Standard" that highlighted the following points:

- Federal law requires that all states have guidelines that lead to specific dollar amounts of child support and this is a requirement for our State Plan.
- The program receives 66% federal funding and must comply with requirements like having state guidelines in place.
- WI Child Support Guidelines requirement is in Wis. Stat. s. 49.22 and it directs the Department to engage in rule making. Administrative rules are promulgated by agencies in the Executive Branch and they basically lay out the details for how the Percentage Standard works. The percentages themselves are in the statutes, but all the remaining details are part of administrative rule. At the time the statute was created, we were part of the WI Department of Health Services and the rule was DHS 80; we were then moved to the WI Department of Workforce Development, and in 2008 became a part of the WI Department of Children and Families when the rule was renumbered as DCF 150.
- It is important to note the standard is based on the principle that a child's standard of living should, to the degree possible, be maintained at the level the child would have enjoyed had the parents remained together.
- Our rule is based on resource sharing and the percentages that reflect the cost of raising children. This eliminates having to establish the children's needs, and it utilizes a standard with rates dependent on the number of children.
- The Percentage of Income Standards are based on studies done on the cost of raising children. Although the Percentage Standard is only applied to payer's court ordered obligation, it is assumed that the other parent is also sharing a comparable percentage of their income with the children, which is critical to maintaining the child's standard of living to reflect what it would have been had the parents remained together.
- The Percentage Standard utilizes Gross Income.
- Deviation factors are listed in the statutes, and the court can deviate upon motion of one of the parties for a variety of reasons listed in the standard. The final reason is a "catch all" factor that enables the court to deviate providing it states the reason on the record.
- We want to establish guidelines that cover most circumstances, and if there is significant deviation from the guidelines, then we want to review the reason for the deviations; that is one of the purposes of this Committee.
- In the 1980s, when the Department was directed to create Administrative Rules, we were directed to address the application of the Standard in special circumstances. Specifically, "Shared Placement," "Split Placement," and "Serial Family." We were not directed to address high-income and low-income cases.
- High-income cases were not addressed because it was difficult to define high-income. In Wisconsin, less than 5% represent of the population has income over \$150,000, and less than 1% has income over \$500,000. In our current guidelines, the amounts are reduced at two specific thresholds. Once an individual reaches \$84,000 in annual income, the 17% for one child is reduced to 14% (only for the

income above the \$84,000 income threshold). Once an individual reaches \$150,000 in annual income, the percentage is further reduced to 10% (only for income above the \$150,000 income threshold).

- There are no further thresholds, so someone making \$150,000 is going to pay 10%, and so is someone making \$500,000. At our last guidelines review, we had extensive discussion pertaining to high-income cases; although, this only represents a very small percentage of the overall cases. No changes were made because of that discussion, and there are currently no plans to make changes to the high-income formula.
- Over the next month, we will be focusing our attention on the low-income cases.
- The formula is in DCF 150, and Appendix C contains a table of rates that is based on a sliding scale.
- The formula is applicable for individuals whose income is between 75% and 125% of the federal poverty level. It is a sliding scale, and once a person reaches 125% of the federal poverty level, their support would be at the levels in the current Percentage Standard. For individuals with income below 75% of the federal poverty level, support is at the discretion of the court.
- This formula has been well received; however, when income information is unavailable, the court has the authority to impute income to someone. We would like to look at the impact this may have on our marginalized populations.
- During the last guidelines review, we looked at different options. Under the current rule, 36-hours per week is considered full-time, and the rule states that income can be imputed based on full-time work at the federal minimum wage. However, we know that many people have obstacles that prevent them from working full-time, so consideration was given to setting a range between 10-hours to 40-hours a week. Unfortunately, we were not authorized to proceed with that change, but it is an option we may choose to consider during this review.
- The Shared Placement formula means that parents are sharing placement of their children. Anything above 25% is eligible for application of the Shared Placement formula, and the formula assumes that parents are sharing variable costs. The formula itself covers basic costs like shelter, food, and clothing. Variable expenses mean the expenses may vary from one family to the next like childcare, tuition at a private school, and the cost of other activities. There is a 150% multiplier in the formula to account for the increased cost of having children in two households, and the formula does require overnight care.
- During the last Guidelines review, the Committee looked at the definition of overnight care to account for unique circumstances like parents who do shift work. If the child stays with one parent during the day, but has them for the equivalent of an overnight, they may be entitled to some reduction in their support. We will be looking at this formula again during this review.
- The Shared Placement formula is presumptive. There is a court of appeals decision, *Randall vs. Randall*, where the court decided that most of the optional applications in our rule are discretionary with the court; the use of the Shared Placement formula is presumptive. Jill Mueller provided an update on two recent pieces of legislation to take into consideration (see below).
- In Wisconsin, the Shared Placement formula is an income shares model; it looks at the income of both parents. Under legislation that was recently adopted and will take effective on December 1, 2021, the Shared Placement formula is now the primary method for setting support in Wisconsin. This effectively makes us a hybrid income shares model.
- Another piece of recent legislation is Act 37. It requires the court to state on the record its reasons for deviation if anything less than 25% placement is ordered, which is likely to ensure that a significant number of cases are at the threshold and eligible for application of the Shared Placement formula.
- The Serial Family cases are cases where the parent has an obligation to more than one family. It is realized that it costs more money to raise children who live in separate households, and the committee looked at some alternative formulas the last time it met. Under our current rules, an adjusted gross income methodology is used that effectively subtracts the amount of any existing obligation from the

person's income before calculating the new obligation. This can result in the children in the first family getting a disproportionate amount. We would like to see the children in all the families receive equal amounts of support, but those cases are not all in court at the same time and they may not even be in the same county or the same state. Today, the formula remains as it was originally established.

- The Split Placement formula applies to cases where the children are split between the parents. For example, if there were three children, one child could be with one parent, one child with the other parent, and one child could split time between the two parents.
- Medical support is required by both state and federal law and means that every child support order enforced by the child support program has a provision in it for health care coverage. A parent can be ordered to provide coverage if it is available to them at reasonable cost, or they can be required to make some contribution to the cost of health care coverage. The healthcare coverage could be private or public, so BadgerCare is considered an acceptable form of healthcare coverage.
- The Quadrennial Review is a federal requirement that each state review its child support guidelines at least once every four years.
- As part of the review, the State must consider economic data on the cost of raising children; labor market data (such as unemployment rates, employment rates, hours worked, and earnings) by occupation and skill-level.
- The impact of guidelines policies and amounts on custodial and noncustodial parents who have family incomes below 200% of the Federal Poverty Level must also be considered.
- Factors that influence employment rates among noncustodial parents and compliance with child support orders must also be considered.
- The state should analyze case data on the application of and deviations from the child support guidelines, including the rates of default and imputed child support orders.
- The state should do a comparison of payments on child support orders by case characteristics, including whether the order was entered by default, based on imputed income, or determined using the low-income adjustment.
- Finally, the state must provide a meaningful opportunity for public input, including input from low income custodial and noncustodial parents and their representatives, and obtain the views and advice of the state child support agency funded under title IV-D of the Act.

Wisconsin Act 35 Overview

Jill Mueller, WI Department of Children and Families Attorney

Katherine Marek, WI Bureau of Child Support Policy Automation Specialist

Connie introduced Jill Mueller and Katie Marek to discuss changes to recent legislation that passed that made changes to DCF 150. They shared a PowerPoint presentation titled, "2021 Wisconsin Act 35 Changes to DCF 150".

Katie stated that Act 35 changed DCF 150, and those changes will take effective on December 1, 2021. As mentioned earlier, every state is required to have a methodology to establish support. Different states use one of three different models: the Percentage of Income Standard, the Income Shares Model, or the Melson Formula Method, which is a hybrid of the other two.

Wisconsin leads with the Percentage of Income Standard, unless there is the 25% requisite amount of shared placement, where the Income Shares Model could be used. Institute for Research and Poverty (IRP) research shows that in recent cohorts, shared placement is more common than sole placement in divorce cases (and now exceeds half of divorce cases). As a result, the shared placement calculator is most frequently relevant in the case of divorce.

IRP also shared a study on public perception of the various models and the Income Shares Model was perceived by the public as being the fairest. This public perception of fairness was what Act 35 wanted to address. Act 35 sought to remedy the public's perception of fairness by making the Shared Placement Formula what Wisconsin uses, and having the exception be to use the Percentage of Income Standard whenever the requisite 25% placement requirement does not exist. Katie then introduced Jill Mueller.

Jill stated that two things that came out of Act 35 were that there were changes made to Wis Stat. Ch. 767 that removed the option to establish a new family support order. A family support order combines child support with maintenance, or spousal support. Previously, before the federal tax laws were changed, there were potential tax benefits for some families to enter into a family support order, rather than a child support and maintenance order. Now that those tax benefits no longer exist, no new family support orders should be ordered.

The second thing is the major reorganization to DCF 150. Most notably, the Shared Placement Formula has been moved further up in the Rule, removing it from the heading "Special Circumstances", and changing the title to the "Child Support Standard".

In summary, while Wisconsin does have the Percentage Standard model, the Shared Placement formula really is more of an Income Shares Model because it looks at the percentage that each parent has, and it looks at the income that each parent brings to the family when calculating support. So, by moving the Shared Placement formula and making it the primary method of setting support, Wisconsin now is effectively using an Income Shares Model. Jill states that the public perception of fairness is addressed by making the primary way of calculating income consider the income of both parents. Fortunately, the Rule has only been reorganized, rather than having to write a new model, and the case law and history regarding the establishment of child support will not be thrown out. Therefore, although the Rule changed, the substantive method for calculating support under all the various circumstances has not changed. The Rule does have a new definition for "designated percentage," which is now defined as the applicable percentage of a parent's monthly income available for child support, or adjusted monthly income, available for child support.

Act 37, which was passed at the same time as Act 35, requires the court to, when setting a placement order that is not Shared Placement, state on record why this placement is in the best interest of the child. This may result in more Shared Placement Orders; although, we will have to wait to see what happens. The Rule states that the Shared Placement formula may be applied, but it does not state that it must be applied, and there are still reasons that a court may deviate from this guideline.

Jill concluded the overview of Wisconsin Act 35 and there were no comments or questions.

Racial Equity Discussion

Jacquelyn L. Boggess, The Nina Collective

Connie introduced Jacquelyn Boggess. Jackie has previously participated in several of our Guidelines Reviews and has always represented the interests of many of our marginalized populations. Jackie is a lecturer of diversity, oppression, and social justice. She teaches at the University of Wisconsin – Madison in the School of Social Work, where she challenges students to think about systems of race, class and gender more broadly and in greater depth than current popular models of difference and theory of discrimination and bias can accommodate.

Jackie is also a Member Director of The Nina Collective, a cooperative counseling agency, where she works with organizations, teams, and individuals to determine why, whether and how they intend to incorporate racial equity into who they are, and how they work, internally and externally. Her focus is on leadership, readiness, and preparation for transformation. Jackie has also been a policy analyst and legal analyst focused on social welfare policy and practice; and, during her many years of work and study, she contributed to the national

conversation on family support, income stability, intimate partner violence and community violence, all through a racial and gender equity lens.

We have asked Jackie to speak today because we are focused on making policy decisions through an equity lens, we recognize that institutional racism is a part of our service delivery, and we want to be accountable for that.

Jackie shared a PowerPoint presentation titled, "Moving Toward Justice and Equity: Supporting Parents and Children in Wisconsin" and invited meeting participants to join her in an open discussion about perspective, ideas and understanding. She shared her perspective on the current situation. She drew attention to topics like the important distinction between cannot pay and will not pay, the disproportionate accumulation of debt for black, brown and indigenous parents, and how the child support system and the legal system order poor, low-income or unemployed parents to share nonexistent resources with their children's households. Jackie shared information on the racial wealth gap that exists between black, brown, and indigenous people and white people, and encouraged meeting participants to really think about this. The child support system cannot be "colorblind" and should acknowledge that economic inequity and disparity do exist, and policies need to reflect this reality. She encouraged meeting participants to focus on making policy decisions through an equity lens.

Jackie then invited meeting participants to share their own perspectives, especially those that differ from her perspective, because the objective of her presentation was to stimulate discussion. A discussion ensued and Jackie answered several questions.

Jackie concluded her presentation by thanking everyone for their time and encouraging the Guidelines Committee to focus on the hard questions like is current child support policy and practice detrimental to the economic security and well-being of low-income individuals and families; does the current structure of the child support system conflict with the goals of security and stability for children and families; does the child support system create and support structural racism; and how does racial inequity and disparities in poverty and unemployment influence child support policy and practice on families of color?

Connie thanked Jackie for her time and her ongoing commitment and support of the Guidelines Review Committee. Connie shared that a key takeaway for her pertained to the difference between asking how we can help more children; versus how we can collect more money. She encouraged the committee to be cognizant of this when addressing the work ahead. Data shows that 24% of our caseload is black, and 61% of those cases are in arrears, while 2% of our caseload is Native American and 67% of those cases are in arrears. Does that have something to do with how we are setting those orders, and whether we are looking at the individual circumstances of people and their ability to pay?

Connie concluded by saying that the Guideline Review Committee has the opportunity to review guidelines and determine whether there is currently enough flexibility built in to look at different circumstances, and address any structural racism that may inadvertently exist in the delivery of services. Nicole Price shared that the next meeting will be held at 1:00 p.m. on September 2, 2021. During this meeting, IRP will be presenting, and the group will begin discussing different areas of the guidelines. Nicole encouraged the group to review the resources materials available on the DCF public website in preparation for these upcoming discussions.

Adjournment

Connie Chesnik

Connie Chesnik asked if there were any further comments, and hearing none, the meeting was adjourned at 3:36 p.m.

Minutes prepared by Brian McReavy with contributing edits from other BCS staff.