

**Child Support Guidelines Review
Advisory Committee Report**

To

Wisconsin Department of Children and Families

September 2015

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In the spring of 2015, Bureau of Child Support Director Jacqueline Scharping appointed an advisory committee to provide guidance to the Department on revisions to the state policy regarding the guidelines used to determine child support payments and the application of those guidelines in special circumstances. This report is the result of the extensive deliberations of the advisory committee composed of representatives of the courts, the Wisconsin Bar, community-based organizations and county child support agencies, state legislators, citizens and the Department of Children and Families.

SUMMARY

September 2015

On October 20, 2014, the Department of Children and Families announced the formation of an advisory panel to review the percentage of income standard for child support orders in Wisconsin. The Child Support Guidelines Review Advisory Committee includes representatives from the judiciary, public interest groups and the Department of Children and Families. The Committee held four meetings between February and August of 2015.

Committee Purpose

The federal government requires that states review their child support guidelines every four years. The Committee was charged with providing input and recommendations to the Department for consideration as part of the next required guidelines review. The Committee's charge with addressing the following:

- Review reports from the University of Wisconsin, Institute for Research on Poverty (IRP) related to the methodology for establishing child support in special circumstances.
- Review published literature related to the impact of the Affordable Care Act on medical support guidelines.
- Review case law related to the application of the Percentage of Income Standard in shared time, serial family, split placement and high- and low-income cases
- Make recommendations to the Department on the treatment of social security disability income and mandatory contributions to pension plans in the consideration of income available for child support.

Committee Process

The Committee included individuals with considerable experience in child support policy formation, who represented the interests of custodial parents, non-custodial parents, and children.

The Committee benefited from a presentation by Dr. Robert G. Williams, President of Veritas HHS, a nationally known expert in the establishment of child and medical support awards. Dr. Williams spent a day with the Committee presenting research on the impact of the Affordable Care Act on the child support program. Staff from the Institute for Research on Poverty (IRP) at the University of Wisconsin were also present at all meetings to address questions related to child support research.

The Committee also considered research reports and economic data. The Committee reviewed the following literature:

- The Use of Child Support Guidelines in Wisconsin: 1996-2007, Steven T. Cook and Patricia Brown, Institute for Research on Poverty, September 2011, Revised December 2013.
- Child Support Models and the Perception of Fairness, Jennifer L. Noyes, Institute for Research on Poverty, December 2011.
- Shared Placement: An Overview of Prevalence, Trends, Economic Implications and Impacts on Child Well-Being, Judi Bartfeld, Institute for Research on Poverty, December 2011.

- Who Owes child Support Debt? Characteristics of Child support Arrears in Wisconsin Compared with Other States, Yeongmin Kim, Maria Cancian, Daniel R. Meyer and Vanessa Rios Salas, Institute for Research on Poverty, September 2013, Revised November 2013
- Child Support Orders and Child Care Costs, Yeongmin Kim and Daniel R. Meyer, Institute for Research on Poverty, December 2013
- Child Support Orders and the Incarceration of Noncustodial Parents, Daniel R. Meyer and Emily Warren, Institute for Research on Poverty, December 2011
- Complex Families and Equality in Child Support Objectives: A Comparative Policy Analysis, Daniel R. Meyer, Christine Skinner, Jacqueline Davidson, Children and Youth Services Review, October 2011
- Updating Estimates on the Costs of Raising children with a Focus on Medical Support Costs, Maximilian D. Schmeiser and Gina M. Longo, Institute for Research on Poverty, February 2010
- Characteristics of Shared-Placement Child Support Formulas Used in the Fifty States, Patricia R. Brown, and Tonya Brito, Institute For Research on Poverty, March 2007
- Wisconsin's 2004 Shared-Physical Placement Guidelines: Their Use and Implications in Divorce Cases: Patricia R. Brown and Maria Cancian, Institute for Research on Poverty, March 2007
- Alternative Approaches to Child Support Policy in the Context of Multiple Partner Fertility, Marian Cancian and Daniel R. Meyer, Institute for Research on Poverty, December 2006
- Child Support Guidelines and Complicated Families: An Analysis of Cross-State Variations in Legal Treatment of Multiple Partner Fertility, Tonya Brito, Institute for Research on Poverty, Revised May 2005
- Review of Child Support Policies for Multiple Family Obligations: Five Case Studies, Emma Caspar, Institute for Research on Poverty, September 2006
- <http://www.supportguidelines.com/links.html> Analysis of all state's guidelines.
- *Koch v. Koch*, 353 Wis. 2d 303, 844 N.W.2d 665, Appeal No.2011AP1186, 2/6/2014 (unpublished decision) High Income
- *Paternity of W.A.S.-W. and L.M.S.-W.*, 351 Wis. 683, 840 N.W.2d 138, Appeal No. 2013AP59 (unpublished decision) Shared Time/Equivalent Care
- *Wolfe-Ginter v. Ginter*, 2009AP2862, July 29, 2010 (unpublished decision) Shared Time/Variable Expenses
- *Weis v. Weis*, 215 Wis. 2d 135, 572 N.W.2d 123 (Ct. App. 1997) Definition of gross income.

- CSB 13-02 SSDI Payments and Calculating Child Support.
- CSL 14-08 Setting and Reviewing Medical Support Orders
- Time to Rethink Medical Support: The Impact of the Affordable Care Act on Child Support, Prepared by Veritas, Robert G. Williams, President, December 2013

In addition, the Committee also reviewed the guidelines of various states to see how they were applied in special circumstances.

Committee Membership

Connie Chesnik, Chairperson, DCF

Tom Antholine (Wisconsin Child Support Enforcement Association/Jefferson County)

Steve Blake (Dads of Wisconsin)

Jacquelyn Boggess (Center for Family Policy and Practice)

Jenifer Cole (Wisconsin Women's Network)

Rod Dequaine (Wisconsin Child Support Enforcement Association/Door County)

Tiffany Highstrom (State Bar Family Law Section)

State Representative Scott Krug

Mike Landwehr (Wisconsin Fathers for Children and Families)

Richard Lavigne (ABC for Health)

Christine Lidbury (Wisconsin Women's Council)

Korey Lundin (Legal Action of Wisconsin)

Janet Nelson (Wisconsin Child Support Enforcement Association/Milwaukee County)

David Pruhs (Family Court Commissioner's Association)

State Representative Jessie Rodriguez

Jacqueline Scharping (Wisconsin Bureau of Child Support/DCF)

Ken Taylor (Wisconsin Council on Children and Families)

Tom Walsh (Brown County Circuit Court Judge)

Morgan Young (End Domestic Abuse Wisconsin)

HIGH INCOME PAYERS

Recommendation:

- 1) The Committee strongly recommends no change to the high-income formula.
- 2) If there is a desire to change the formula, the committee suggests starting the percentage reduction at no less than \$300,000 income.
- 3) If there is a desire for a cap, the Committee suggests a cap of \$500,000 with the retention of judicial discretion to order support above that amount.

If a change in the formula is desired, using the Committee's suggestion, the Child Support guidelines for high-income payers would be modified as follows:

- Apply the current standard percentages in DCF 150 to a payer's income up to the \$84,000 annual gross income level.
 - 17% for one child
 - 25% for two children
 - 29% for three children
 - 31% for four children
 - 34% for five or more children
- Apply the current percentage reductions in DCF 150 that represent 80% of the current standard to the amount of a payer's gross income between \$84,000 and \$150,000 annually.
 - 14% for one child
 - 20% for two children
 - 23% for three children
 - 25% for four children
 - 27% for five or more children
- Apply the current percent reductions in DCF 150 that represent 60% of the current standard to the amount of a payer's gross income between \$150,000 and \$300,000 annually.
 - 10% for one child
 - 15% for two children
 - 17% for three children
 - 19% for four children
 - 20% for five or more children
- Apply a sliding scale, represented on the attached spreadsheet, to reduce the current percentage reductions in DCF 150 beginning at \$300,000 annual gross income and reaching an amount that represents 30% of the current standard for gross annual incomes of \$500,000 and above.
- If a cap is desired, provide that the court has the discretion to determine support for incomes above \$500,000 annually.
- Provide that the high-income formula can be combined with the shared, serial, and split placement formulas.

The committee's suggestions were passed on an 8-5 vote.

The following committee members approved the above suggestion:

Steve Blake, Jennifer Cole, Rod Dequaine, Mike Landwehr, Richard Lavigne, David Pruhs, Ken Taylor, Tom Walsh

The following committee members opposed the above suggestion:

Janet Nelson, Tom Antholine, Tiffany Highstrom, Korey Lundin, Morgan Young

Absent: Jacquelyn Boggess, Rep. Scott Krug, Christine Lidbury

Abstained: Jacqueline Scharping, Connie Chesnik, Rep. Jessie Rodriguez

Justification

- A. Economic data shows that as income rises above certain high-income levels, families spend a lower percentage of their gross income on their children, but the small number of these high-income families is statistically insignificant. There is, therefore, no data demonstrating a specific income level at which this occurs. The Committee, therefore, was very uncomfortable with recommending any of the proposals, given that research does not exist to substantiate a change in the high-income formula.
- B. The Committee agreed that the percentage standard should apply in most cases, and therefore chose a high-income starting point for further reduction of the percentages at \$300,000.
- C. Most other percentage standard states begin reductions around \$300,000.
- D. Other states that include a cap on the application of their high-income formula, allow judicial discretion to set support above the cap.

Discussion Points/Considerations

- A. The Committee struggled with providing further reductions for a group of payers who comprise less than 1% of the population and who have the resources to litigate the issue if they believe their support is too high.
- B. There is considerable pressure in the legislature from high-income payer advocates to amend Wisconsin's high-income formula in order to bring Wisconsin's formula in line with other state's guidelines for high income payers.
- C. Many high-income cases also have shared-time placement for the children and may have a further reduction of support based on the shared time formula.
- D. The court currently has the authority to place a portion of the child support in trust for the child/ren's post-majority education.
- E. There was unanimous support in the Committee for retaining judicial discretion.

LOW INCOME PAYERS

Recommendations: Modify the Child Support Guidelines for low-income payers as follows:

- Retain the current formula for low-income payers at DCF 150.04(4)
- Modify the current language for imputing income based on earning capacity in DCF 150.03(3) as follows:

(3) Determining income imputed based on earning capacity. In situations where the income of a parent is less than the parent's earning capacity or is unknown, **and in the absence of credible evidence to the contrary**, 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. 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 unavailable, the court may impute to the parent the income that a person would earn by working **10 to 35 hours per week, based on the availability of work in or near the parent's community for individuals in similar circumstances of the parent**, for the higher of the federal minimum hourly wage under [29 USC 206](#) (a) (1) or the state minimum wage in s. [DWD 272.03](#). If a parent has gross income or income modified for business expenses below his or her earning capacity, the income imputed based on earning capacity shall be the difference between the parent's earning capacity and the parent's gross income or income modified for business expenses.

- Provide that the low-income formula can be combined with the shared, serial, and split placement formulas.
- Provide language suggesting job search and/or the Children First program as alternatives to imputing income in low income cases.
- Remove the words 'up to' from Appendices C and D in DCF 150 to clarify that the amounts in the low income and birth costs charts apply to incomes at or above 75% of the federal poverty level. The court should exercise its discretion in setting support for payers with incomes below 75% of the federal poverty level.

Justification

- A. It is important to retain the provisions authorizing the imputation of income to address the payers who are shirking their responsibility to their children.
- B. Many low-income payers work multiple part-time jobs to support themselves and their families and may often work less than 35 hours per week.

- C. It is not realistic to require proof of actual income given the large number of payers who fail to show up for their court hearings.
- D. Most of the automated calculators being used by attorneys are programmed to calculate a support obligation for payers with incomes below 75% of the federal poverty level.

Discussion Points/Considerations

- A. Although the Committee did not make any recommendations for changes to the current formula for setting support in low income cases, the Committee agreed that income should not be improperly imputed to payers, resulting in orders they can't comply with.
- B. Many pro-se litigants don't know to ask for application of the low-income formula. The court should be encouraged to utilize these provisions where applicable.
- C. The Committee felt this approach uses credible information when it's available and offers guidelines for when it's not.

SHARED TIME PAYERS

Recommendations: Modify the child Support Guidelines for shared-time parents, as follows:

- Require that variable costs to be shared by the parties be determined based on a list of variable costs agreed to by the parties or ordered by the court based upon lists furnished by the parties. It was suggested that transportation costs be included in that list.
- Require that a change in circumstances to modify a child support order should be a change in the circumstances of the parties and not a change in variable costs alone.
- Retain the current formula for calculating support in shared time cases in DCF 150.04(2) using overnights as a measure of shared time but provide more examples of equivalent care that include a pattern of time spent with the children that involves blocks of time that may be less than overnight.
 - Include a requirement that a meal be provided and include examples in which the total number of days exceeds 365.
- Variable Costs should not be rolled into the child support amount.

- Provide that the shared time formula can be combined with the low-income formula where applicable.

Justification

- A. Most states use an overnight model for calculating support in shared time cases. Arizona is the only state that uses a combination of hours and overnights. Arizona uses an Income Shares Model for setting support.
- B. Concern was expressed that a formula similar to the one used by Arizona would increase litigation given that eligibility for credit would be based on hours, as opposed to days, with the children.
- C. There is often no agreement between the parents as to what variable costs are appropriate.
- D. Although DCF 150 already includes language allowing the court to consider both overnights and equivalent care, most courts won't consider equivalent care unless required to do so.

Discussion Points/Consideration

- A. It was suggested that it would be helpful if the rule included a list of what was 'not' a variable cost.
- B. It was recommended that pro-se documents should also be amended to reflect possible variable costs.
- C. It was noted that hours were not weighted equally in the Arizona model which could create an incentive for litigation.

SERIAL FAMILY PAYERS

Recommendations: Modify the Child Support Guidelines for serial family parents, as follows:

- Retain the current serial family formula in DCF 150.04(1) with a clarification that serial family parents may be eligible for application of the low-income formula if multiple child support obligations put their income below the low-income threshold.
- Provide further clarification that the serial family formula applies to obligations to children in intact families.

Justification

- A. None of the formulas reviewed by the Committee provided a fairer way of calculating support in serial family cases than the current formula.

- B. While a pro-rata method of calculating support treats all the children equally, it is administratively difficult to utilize given that orders are often in different counties or different states.

Discussion Points/Considerations

- A. The Committee attempted to balance fairness to all children involved with reasonableness of orders for the payer.

MEDICAL SUPPORT OBLIGATIONS/BIRTH COST RECOVERY

Recommendations: Modify the Medical Support provisions of DCF 150.05 as follows:

- Change the measure of reasonable cost from 5% of each parent's gross monthly income to 10% of the gross monthly income of each parent and apply it to the full cost of the policy as opposed to the incremental cost of adding the child(ren).
- Provide that a contribution toward the cost of insurance for the children from the custodial parent should not exceed the incremental cost to add the children to the policy.
- Educational language should be added to DCF 150.05 on the effect of the dependency exemption on health insurance responsibility. Clarification should also be provided on what the court's authority is to award the dependency exemption.
- Clarification should be provided in DCF 150 that public programs like Badger Care are acceptable sources of medical support that meet federal requirements for minimal essential coverage.
- The addition of a note to DCF 150.05 (2) BIRTH COST JUDGMENT to indicate that the recovery of birth costs is inappropriate in cases where the alleged father is a member of an "intact family" that includes the mother and the subject child, and the father's income, if any, contributes to the support of the child.

Justification

- A. Wisconsin's current affordability test is inconsistent with the Affordable Care Act (ACA) and health care cost increases.
- B. If neither parent has insurance coverage available through their employer at reasonable cost, the custodial parent may be eligible for insurance through the marketplace. However, educational language should be added to rule explaining that the custodial parent must have the dependency exemption in order to be eligible for subsidies under the ACA.

- C. Efforts to obtain private health care coverage through employers in IV-D cases nationwide results in enrollment of the children between 10-25% of the time.
- D. Based on Urban Institute estimates, 91% of IV-D cases have incomes below 400% of the federal poverty level which is the income limit for subsidies under the Affordable Care Act.
- E. Only a small percentage of the total medical assistance being paid for birth costs is recovered.
- F. Unmarried parents who live together jointly contribute to the needs of the child and the family.

Discussion Points/Considerations

- A. Court forms should also be amended to include language requiring parties on Badger Care to continue to pursue affordable health care coverage and on the impact of the award of a dependency exemption.
- B. Although it was agreed that the non-obligated parent's contribution to the cost of insurance was not impacted by the amount of their placement, no agreement was reached on whether the non-obligated parent's contribution to the cost of health care coverage should be calculated in portion to their income or as a dollar for dollar adjustment.
- C. The Committee agreed that the current birth cost policy is applied inconsistently across counties and supported the addition of language citing the circumstances under which the recovery of birth costs was inappropriate.

DEFINITION OF INCOME

Recommendations:

Contributions to Pension Plans

- The Committee recommended removing the word 'voluntary' from reference to employee contributions to any pension or retirement account in the definition of gross income in DCF 150.02(13).

SSDI

- Clarify that a payer may only receive credit for SSDI derivative benefits for their children in a primary placement case if the benefits are being received by the custodial parent.
- In shared placement cases, the policy established by DCF in Child Support Bulletin 13-02 (attached as Appendix 1) should be incorporated in the guidelines to pro-rate the child's benefit based on the parent's percentage of shared care-taking responsibility.

Adoption Assistance

- The same methodology recommended for SSDI derivative benefits should be used when considering adoption assistance in the calculation of a child support order.

Veteran's Benefits

- Provide clarification that the portion of veteran's disability benefits intended to replace income should be considered income available for child support.
- DCF should specify the exact names of the benefits subject to this provision given the wide variety and complexity of veteran's benefits.

Justification

- A. The current reference in DCF 150 to 'voluntary' contributions to pension plans infers that mandatory contributions are not to be considered a part of gross income.
- B. Current language in DCF 150.02(13)4 authorizes the court to consider the net proceeds for a worker's compensation payment or other personal injury award intended to replace income.
- C. SSDI benefits paid to children are directly related to the income of the disabled parent. Current provisions in DCF 150 assume that payer does not have placement of children.

APPENDIX 1: CHILD SUPPORT BULLETIN 13-02

APPENDIX 2: MINUTES OF COMMITTEE MEETINGS

Wisconsin Child Support Guidelines Advisory Panel Meeting

February 18, 2015

Committee Members Present: Connie Chesnik, Department of Children and Families, Legal Counsel; Christine Lidbury, Wisconsin Women's Council; Tom Antholine, Wisconsin Child Support Enforcement Association; Morgan Young, End Domestic Abuse Wisconsin; Jacqueline Scharping, Wisconsin Bureau of Child Support; Jacquelyn Boggs, Center for Fathers, Families and Public Policy; Rodney Dequaine, Wisconsin Child Support Enforcement Association; Janet Nelson, Wisconsin Child Support Enforcement Association; Korey Lundin, Legal Action of Wisconsin; Jenifer Cole, Wisconsin Women's Network; David Pruhs, Wisconsin Family Court Commissioners Association; Richard Lavigne, ABC for Health, Inc.; Peter Kerr, Wisconsin

Fathers for Children and Families; Steve Blake, Dads of Wisconsin; Ken Taylor, Wisconsin Council on Children and Families; Thomas Walsh, Wisconsin Supreme Court, Office of Court Operations; Jessie Rodriguez, State Assembly Committee on Children and Families

Others Present: Roy Williams, Milwaukee County Child Support; Jennifer Noyes, Institute for Research on Poverty; Dan Meyer, Institute for Research on Poverty; David Berndt, Bureau of Child Support, Katherine Marek, Bureau of Child Support; Patti Reuter, Bureau of Child Support, Nicole Price Bureau of Child Support

Connie Chesnik called the meeting to order. Introductions were done and a reminder was made that all materials and minutes will be maintained on SharePoint and that members should contact Katie Marek to obtain access to the site. A review of the topics and discussion of what the committee would like to accomplish during the meetings was presented.

Discussion of policy objectives:

An overview of the Guidelines was presented. The percentage standard was introduced in 1983 and the Family Support Act requires the guidelines must be reviewed on a quadrennial schedule. The committee was advised that their recommendations would serve as a basis for possible changes to our guidelines in DCF 150.

It was noted that the department's interest is in the application of the percentage standard in special circumstances. The Institute for Research on Poverty (IRP) has recently reviewed the percentages used in Wisconsin's guidelines and determined that they still accurately reflect the cost of raising children in Wisconsin.

Following discussion surrounding Wisconsin's use of a percentage standard as opposed to an Income Shares Model for setting support, there was no objection to focusing the committee's review on the application of the percentage standard rather than on a review of other models for setting support. Focus of discussion at meeting was Shared Placement and Serial Family calculations.

Discussion of Shared Placement

Threshold:

In order to be eligible for application of the shared time formula under DCF 150, a shared time payer must have placement of the children at least 25% of the year, calculated by determining the number of overnights they have the children.

Concern was also expressed that when the application of the shared time formula results in a higher income parent with more placement owing support, the court often orders no support at all.

Questions were raised related to the history of the 25% threshold and whether the reduction in support at the 25% threshold created an incentive for parties to litigate for a minimum of 25%

placement solely for the purpose of receiving a reduction in child support. It was also noted that lowering the threshold would blur the distinction between a percentage of income standard and an income shares model. The IRP has research on the use of shared time. It will be provided at the next meeting.

Equivalent Care:

Although the shared time formula in DCF 150 already requires the court to consider both overnights and equivalent care, it was discussed that most courts won't consider equivalent care unless required to do so. It was noted that accomplishing this may require a statutory, as opposed to a rule change.

It was noted that unlike 30 years ago when the concept of overnight time with the children involved a significant time commitment, today parents have significant interaction with their children that doesn't always involve overnight care.

It was also suggested that the Department draft some suggested scenarios involving equivalent care that could be included in DCF 150 for the committee to review.

Variable Expenses:

There was extensive discussion surrounding what parents' obligations are with respect to variable expenses. DCF 150 provides that in order for a parent to be eligible for application of the shared placement formula they must share variable expenses in proportion to the amount of time they have the children. Some concern was expressed that there is often no agreement between the parents as to what variable expenses are appropriate. It was noted that it would be helpful to the court to have a better definition of both basic support costs and variable expenses and a list provided to the court at the time of the hearing in order to reduce future litigation. It was recommended that transportation costs be included in that list. Pro-se documents should also be updated to list possible variable expenses. The idea of setting a cap on variable expenses to account for an increase in costs over time was also discussed.

There was also concern expressed that child support should only take basic support costs into consideration and any sharing of variable expenses should be worked out between the parents.

There was also discussion as to whether there should be separate formulas for addressing both shared time and serial family cases in low income situations. One way to approach this would be to reduce the 150% multiplier in the shared time formula.

Optional Use of Shared Time Formula

The Committee discussed the Court of Appeals decision in the Randall case which required presumptive use of the shared time formula. No decision was reached on whether the committee was interested in pursuing legislation clarifying that application of the percentage standard in special circumstances is optional. The Department will provide language for the committee to review.

Discussion of Serial Family

The Committee was apprised of past legislative efforts to require notification to the court of a child support payer's status as a serial family payer. The Department will provide the committee with that language.

The committee discussed that DCF 150 does not expressly grant credit for situations in which a payer is not living with children from a previous relationship and is not court ordered to provide support for them. There was also discussion on whether in low income cases there should be a different formula that recognizes non court ordered financial support provided to children from previous relationships. Concern was expressed that this might create an incentive to hide income. The committee noted that the Adjusted Gross Income method for establishing support in serial family cases was established 30 years ago when multiple partner fertility wasn't as prevalent as it is today.

The Committee expressed a willingness to consider modifications of earlier orders, including the possibility of pro-rating subsequent orders to reflect the additional amount that would be appropriate under the percentage standard for the total number of children. There was also discussion about whether the order for the children in the first family should be set at the full amount under the percentage standard and only subsequent orders reduced. It was noted that counties have different practices with respect to how they impute income which could impact the calculations.

The department will provide options at the next meeting.

Concern was expressed that reference to "additional child support obligation" in DCF 150.04(1) has been interpreted to refer to the first child which was not the intent. The department will propose alternate language at the next meeting.

There was discussion related to combining the use of various special applications. It was noted that the rule addresses only two areas-the combination of split and shared placement and low income and shared placement.

Next Guidelines Advisory Panel Meeting – April 22, 2015 – Robert Williams, President of Veritas HHS, a national consulting firm providing services to Health and Human Services Agencies, will present on the Affordable Care Act and its impact on child support in the morning and the Department will provide additional material for the committee's review on the shared time and serial family formulas in the afternoon.

Meeting adjourned at 2:15 pm.

Wisconsin Child Support Guidelines Advisory Panel Meeting

April 22, 2015

Committee Members Present: Connie Chesnik, Department of Children and Families, Legal Counsel; Christine Lidbury, Wisconsin Women's Council; Tom Antholine, Wisconsin Child Support Enforcement Association; Roy Williams, Milwaukee County Child Support; Morgan Young, End Domestic Abuse Wisconsin; Jacqueline Scharping, Wisconsin Bureau of Child Support; Jacquelyn Boggs; Center for Fathers, Families and Public Policy; Rodney Dequaine, Wisconsin Child Support Enforcement Association; Janet Nelson, Wisconsin Child Support Enforcement Association; Korey Lundin, Legal Action of Wisconsin; Jenifer Cole, Wisconsin Women's Network; David Pruhs, Wisconsin Family Court Commissioners Association; Richard Lavigne, ABC for Health, Inc.; Peter Kerr, Wisconsin Fathers for Children and Families; Steve

Blake, Dads of Wisconsin; Ken Taylor, Wisconsin Council on Children and Families; Thomas Walsh, Wisconsin Supreme Court, Office of Court Operations; Rep. Jessie Rodriguez, State Assembly Committee on Children and Families; Tiffany Highstrom, State Bar of Wisconsin

Others Present: Jennifer Noyes, Institute for Research on Poverty; Dan Meyer, Institute for Research on Poverty; David Berndt, Bureau of Child Support, Katherine Marek, Bureau of Child Support; Patti Reuter, Bureau of Child Support, Phyllis Fuller, Bureau of Child Support

Medical Support

The committee heard a presentation from Bob Williams, Ph.D., President of Veritas, a consulting group that provides policy analysis to the Federal Office of Child Support Enforcement. Mr. Williams presented on the impact of the Affordable Care Act on medical support orders.

Some of the key recommendations made by Mr. Williams:

- The Dependency Exemption should be aligned with the obligation to provide health care coverage to avoid misdirected penalties from the IRS and ensure that the custodial parent (CP) is not locked out of the marketplace.
- Educational language should be included in Wisconsin's guidelines on the effect of the dependency exemption on health insurance responsibility. Clarification should also be provided on what the court's authority is to award the dependency exemption.
- Wisconsin should consider raising our affordability test to be consistent with the ACA and health care cost increases.
- Wisconsin guidelines should clarify that public programs like Badger Care are valid sources of medical support that meet federal requirements for minimal acceptable coverage.
- Wisconsin should consider eliminating references to requiring insurance coverage "if available at reasonable cost" and "without large out of pocket deductibles" and amend our guidelines to factor in the cost of premiums and out of pocket costs which can be significant at incomes above 200% of the federal poverty level. Given today's high cost of health care coverage, most insurance involves high out of pocket costs.
- ACA terminology should be used. The term 'insurance' should be replaced with 'essential health care coverage'.
- Wisconsin should consider amending its guidelines to provide that when neither parent has access to affordable insurance; the CP should be ordered to obtain coverage from private or public sources. Enforcement in these cases would be left to the IRS.
- There was a suggestion that health care coverage costs be built into the percentage standard rather than addressed as a separate amount. However, there was no agreement on how that could be done given the wide variance in the cost of health care coverage and circumstances of the parties.

Mr. Williams encouraged the committee to focus its efforts in the IV-D program on those cases where custodial parents (CP's) can't get coverage on their own. This occurs most often in

cases where coverage is considered available at reasonable cost under the provisions of the ACA because single coverage is available at less than 9.5% of the CP's income, but family coverage is significantly higher and, from a practical standpoint, is not available at reasonable cost. In those cases, the IV-D program should pursue the noncustodial parent (NCP) and enforce any court ordered requirement to obtain health care coverage.

Mr. Williams noted that less than 25% of cases have employer sponsored health insurance. He also noted that 91% of IV-D cases nationally have incomes below 400% of the federal poverty level which is the eligibility limit for subsidies under the ACA.

Discussion followed Mr. William's presentation. The committee discussed a few additional options:

- It was suggested that Wisconsin's affordability standard be raised from 5% to 10% and changed to reflect the cost of family coverage rather than the incremental cost of moving from single to family coverage.
- It was suggested that court forms be amended to include language requiring parties on Badger Care to continue to pursue affordable health care coverage.
- It was suggested that the Department work with Records Management in the Office of State Courts to include language in mandatory court forms explaining the impact of the dependency exemption on health care coverage.
- It was agreed that the cost of health care coverage is not impacted by placement decisions but no agreement was reached on whether the non-obligated parent's contribution to the cost of health care coverage should be calculated in proportion to the parties' incomes or as a dollar for dollar adjustment.
- It was recommended that orders remain general so as not to be providing advice to the parties on what to do if their circumstances change.
- A request was made to eliminate the practice of recovering birth costs.

Shared Time

The Committee reviewed follow-up material from the previous meeting's discussion on the Shared Time formula. It was agreed that there was no interest in pursuing legislation to reverse the impact of an appellate court decision mandating the use of the shared time formula in setting support.

A memo prepared by the Institute for Research on Poverty was reviewed. The memo was prepared in response to a question raised at the last committee meeting about whether the 25% threshold for eligibility for application of the shared time formula created an incentive for parties to negotiate for placement either immediately above or below the threshold. IRP's research did not find any evidence of clustering at the 25% threshold.

A request was made to add language for determinable expenses like transportation to exercise placement.

The committee recommended that the definition of 'basic support costs' be amended to remove the word 'recreational'.

Equivalent Care

The committee agreed that statutory language to encourage the use of the shared time formula when a non-primary placement parent does not provide overnight care but does provide equivalent care is not necessary. Instead, the committee prefers that additional guidance, including examples, be provided in DCF 150 on when to consider equivalent care. The Department agreed to provide additional examples.

There was discussion about the Arizona model under which every 6 hours of consecutive time spent with the children is considered the equivalent of ½ day. The Department agreed to gather additional information from the state of Arizona on how their formula works.

The committee discussed the 150% multiplier in the shared time formula which is designed to account for the duplicate costs associated with the children being cared for in two households. It was agreed that there is not enough data to support elimination of the multiplier from the formula.

Variable Costs

The committee agreed that parenting plans were not the appropriate place to address variable costs. A suggestion was made to require the parties to have an agreed upon list of variable costs which would be shared in proportion to the percentage of placement each parent has. Costs would be considered as they were at the time of the support proceeding. A change in the variable costs should not be reviewable unless there are other changes in the party's circumstances.

It was suggested that it would be helpful if the rule included a list of what was 'not' a variable cost.

The committee discussed whether language should be added related to variable costs in paternity cases where the parties have no past history together. It was agreed that this should not be addressed separately.

A suggestion was made to use the term 'non-essential costs' in place of 'variable costs.'

There was consensus that the contribution ordered toward variable costs should not be rolled into the child support amount as it would create more work for the child support agencies.

Serial Family

The committee discussed legislation that had been introduced but never passed requiring that the court be notified of any pre-existing support obligations. Although committee members agreed that while this is information the court should have, the petition might not be the best

place to include it. The petitioner may not even know that information to include it in the petition. There was discussion about including it as a question on the financial disclosure form.

The Committee reviewed and approved the proposed rule language that would clarify the serial family formula may not be used to modify an existing order based on a subsequently incurred obligation.

There was a discussion about whether a payer should receive credit for obligations to children from previous relationships when there is no court order and the payer does not live with those children. This is a particularly important issue in low income cases where a payer may provide money to support the children from their first family whenever they can. There was debate about whether a formula that provides more discretion in low income cases should be discussed further at the next meeting as a part of the discussion on the low income formula and it was agreed on a vote of 8 to 4 that this would be discussed further at the next meeting.

It was noted by IRP that Canada includes an undue hardship provision in their guidelines. Copies of Canada's guidelines will be provided to the committee.

The committee discussed alternatives to the Adjusted Gross Income method for setting support in serial family cases. The formula is over 30 years old and was established at a time when the number of serial family cases was significantly lower than it is today.

One option discussed was to incorporate the 150% multiplier used in shared time cases into the serial family formula to account for duplicate expenses. That idea was rejected.

The committee wants to continue to look at options involving pro-rating orders. There was not agreement on whether a pro-rating option should include a requirement for modification of prior orders. The Department will provide additional examples at the next meeting.

Next meeting is Thursday, June 25, 2015 at 9:00 am at the Pyle Center.

Wisconsin Child Support Guidelines Advisory Panel Meeting

June 25, 2015

Committee Members Present: Connie Chesnik, Department of Children and Families, Legal Counsel; Christine Lidbury, Wisconsin Women's Council; Tom Antholine, Wisconsin Child Support Enforcement Association; Morgan Young, End Domestic Abuse Wisconsin; Jacqueline Scharping, Wisconsin Bureau of Child Support; Jacquelyn Boggess; Center for Fathers, Families and Public Policy; Rodney Dequaine, Wisconsin Child Support Enforcement Association; Janet Nelson, Wisconsin Child Support Enforcement Association; Korey Lundin, Legal Action of Wisconsin; Jenifer Cole, Wisconsin Women's Network; David Pruhs, Wisconsin Family Court Commissioners Association; Richard Lavigne, ABC for Health, Inc.; Peter Kerr, Wisconsin Fathers for Children and Families; Steve Blake, Dads of Wisconsin; Ken Taylor, Wisconsin

Council on Children and Families; Hon. Thomas Walsh, Wisconsin Supreme Court, Office of Court Operations; Vince Williams, office of State Representative Jessie Rodriguez; Tiffany Highstrom, State Bar of Wisconsin

Others Present: Jennifer Noyes, Institute for Research on Poverty; Dan Meyer, Institute for Research on Poverty; David Berndt, Bureau of Child Support, Katherine Marek, Bureau of Child Support; Patti Reuter, Bureau of Child Support, Phyllis Fuller, Bureau of Child Support, Benjamin Kain, National Parent's Organization; Roy Williams, Milwaukee County Child Support; Melody Waring, Institute for Research on Poverty; Kimber Liedl, Department of Children and Families Legislative Liaison

Shared Time

Variable Costs

The committee reviewed the recommendations related to the treatment of variable costs. It was agreed that the rule should be amended to require that the variable costs shared by the parties be determined based on a list of variable costs agreed to by the parties or ordered by the court based upon lists furnished by the parties.

It was agreed that a change in circumstances to modify a child support order should be a change in the circumstances of the parties and not a change in variable costs alone. At such time as a substantial change of circumstances is established, the order for variable costs can be reviewed.

Equivalent Care

It was noted that Arizona had been contacted regarding their formula for calculating eligibility for application of their shared time formula and the formula is well received in that State. Under that formula, 6 hours of caretaking responsibility equals ½ day and 12 hours of shared caretaking equals a full day. The committee has been considering the use of this formula for determining eligibility for application of the shared time formula in situations that may be considered the equivalent of the 'overnight' standard currently used. However, it was noted that the Arizona model doesn't blend the concept of overnights with their formula. When parents have a combination of overnights and 6-12-hour periods of placement, the amount of placement may exceed 365 days per year. (If 12 hours = a full day, both parents could claim the same day.)

The committee was open to the idea of eliminating the use of an 'overnight' formula and replacing it with units of time. However, some concern was expressed about adopting a model that would require a computer program to calculate. Simpler formulas allow parties to work it out themselves and better understand the process, which saves judicial time. The committee also didn't want a formula that would encourage litigation over hours spent with the children.

The Department agreed to provide examples at the next meeting of various options using both the Arizona model and variations combining the Arizona model and the overnight formula. It

was suggested that we develop a formula that provides both positive and negative examples. I.e., 'you can use the formula this way, but you can't use it this way....7am Saturday -7pm Sunday is not 3 days. It was noted that many pro se litigants may not know to ask for consideration of equivalent care and so judges should be required to ask parties about it. It was also suggested that we change the term 'overnight' to a different unit of expression.

Serial Family

The committee discussed what the objective was in looking at modifications to the existing Adjusted Gross Income formula. Some models leave more money for the payer but result in disproportionately less support for later born children. It was noted that the objective may be different for serial payers with higher incomes than for those with low incomes.

It was noted that approximately 4% of cases involve payers with more than 3 cases.

It was agreed that amendments are needed to clarify the circumstances under which both parents might be eligible for application of the serial family formula. Specifically, revision is needed to the definition of 'intact family'.

Additionally, clarification was requested in circumstances where a serial payer is also a shared placement parent. It is not clear in DCF 150 whether they receive credit only for the amount of their order or for the applicable percentage under the standard to account for the expenses they incur while caring for the children in addition to the amount of support they pay for the time they are not in their care.

The committee expressed interest in looking at the North Dakota serial family formula. That formula averages the amount that a payer would pay if there were no other children with the amount calculated under the adjusted gross income formula. **The Department agreed to provide examples utilizing the North Dakota formula.** It was noted that children are not treated the same under the current formula and the committee was interested in learning whether the North Dakota model did a better job of treating children equally. There was also discussion about how much the formula was impacted by what the payer's starting income was.

The committee voted unanimously to amend DCF 150 to allow combinations of both the high- and low-income formula with the shared, serial, and split placement formulas.

Medical Support

It was agreed that the measure of reasonable cost should be changed in DCF 150 from 5% of the incremental cost to add the children to the policy to 10% of the total policy cost for a family. However, there was discussion about the fact that the Affordable Care Act standard for reasonable cost is based on household income. The question was raised, therefore, whether both parent's incomes should be factored into the determination of reasonable cost with the parent not carrying the insurance being required to contribute up to 5% of their income toward

the cost of the premium. The Department agreed to create examples for the committee to review.

It was noted that DCF 150 should also be amended to reflect that Badger Care meets the requirements for health care coverage under the Affordable Care Act.

A recommendation was also made to add educational language to DCF 150 explaining the ramifications of awarding the dependency exemption on the requirement to provide health insurance for the children. The Department also agreed to explore adding language to mandatory court forms and review Wisconsin Statutory language related to the dependency exemption, among other things to ensure correct citations to federal law,

Birth Costs

A paper prepared by ABC for Health was shared with the Committee that offered some of the arguments supporting the elimination of birth cost recovery. One argument against seeking birth cost recovery is that it deters women from seeking pre-natal care. IRP indicated that this issue has never been studied. However, there have been studies showing that the large debt associated with birth cost recovery at the outset of a case often results in less effective enforcement over the life of the case. The committee representative from ABC for Health noted that only a fraction of the total medical assistance being paid for birth costs was being recovered and many families living together were subject to birth cost orders and had limited access to Badger Care. It was also noted that in many cases referrals from economic support list father as unknown as the mother does not include him in the household when applying for assistance. As a result, the child support program often does not know the parties are living together when they seek recovery of birth costs and the father's income was not taken into consideration when determining the family's eligibility for assistance.

It was the consensus of the committee that they did not want a policy that completely removed the discretion of the court to order birth costs. However, the current policy is applied inconsistently across counties and the committee recommended including language in DCF 150 citing the circumstances under which it is appropriate to order birth costs and circumstances under which it is not. The Department agreed to provide examples at the next meeting.

Low Income

IRP noted that based on their case studies in 21 counties, 12,000 divorce cases and 20,000 paternity cases are eligible under the current rule for application of the low-income formula. It was noted that the low-income formula is often not used in pro se cases because the parties do not know to ask for it and judges are not required to use it. Thought should be given to finding ways to encourage the court to utilize the low-income provisions where applicable.

The committee recognized that it is important to balance the financial responsibility a parent has to their children against their ability to pay. It was agreed that the current formula is fair.

However, it was felt that income is often improperly imputed to payers, resulting in obligations they can't meet.

The committee agreed that the imputation language in DCF 150 was important to address cases of shirking where the payer had an earning ability but had voluntarily chosen not to earn income/pay support. There was discussion about removing the suggested imputation of minimum wage at 35 hours per week. However, concern was expressed that while that is often used inappropriately as a default, without the language the court might impute income at an even higher rate. Concern was expressed that judges are bound by the regulation as to what to do if the payer doesn't show up in court. If no work history is available, they must impute income at minimum wage. **The Department agreed to look at language revisions in DCF 150 that would limit the imputation of income provisions to cases involving shirking.**

It was noted that small counties often use job search orders as a means of addressing a payer's ability to earn. Other counties refer payers to the Children First program. It was suggested that language be added to DCF 150 listing this as an alternative to imputing income in low income cases that didn't involve shirking.

Incarceration history was also discussed as a basis for application of the low-income formula. However, it was agreed that this would likely be very controversial.

The Committee discussed the proposed federal rules related to low income payers. It was suggested that Wisconsin might be interested in some of the provisions of the proposed rules that address low income payers. Jacquelyn Boggess agreed to provide DCF with a list of the provisions from that rule that she'd like the committee to review. One of those provisions requires the use of actual income when setting support. Wisconsin opposed that proposal given the difficulty of obtaining that information in many cases.

High Income

The Committee was provided with a copy of 2013 AB 540 which proposed significant changes to the establishment and revision of child support orders, including a provision that would have prohibited the consideration of any income above \$150,000 per year in calculating a support obligation. It was noted that there was continuing interest in the legislature in introducing legislation to address high income payers.

IRP informed the committee that roughly 5% of cases currently meet the \$84,000 per year threshold for application of the high-income formula. It was estimated that less than .5% meet the \$150,000 per year threshold. Exact numbers cannot be determined as the sample size is too small to study.

The committee discussed the Canadian guidelines which provide a graduated reduction in support above incomes of \$150,000 per year. The committee was interested in learning more about how well the formula works in Canada. **The Department agreed to create tables following**

the Canadian model at various income levels beginning at \$150,000 up to \$500,000 per year for the committee to review.

A number of committee members expressed concern that any support above \$5,000 per month was de facto maintenance. The Department will take that into consideration in developing tables for the committee's review.

It was also noted that Nevada had a formula for high income payers that might be of interest to the committee. The Department agreed to provide more information on the Nevada formula for the committee at the next meeting.

The committee adjourned at 2:30pm.

The next meeting is Wednesday, August 19, 2015 at 9:00 am at the Pyle Center.

Wisconsin Child Support Guidelines Advisory Panel Meeting

August 19, 2015

Committee Members Present: Connie Chesnik, Department of Children and Families, Legal Counsel; Tom Antholine, Wisconsin Child Support Enforcement Association; Morgan Young, End Domestic Abuse Wisconsin; Jacqueline Scharping, Wisconsin Bureau of Child Support; Rodney Dequaine, Wisconsin Child Support Enforcement Association; Janet Nelson, Wisconsin Child Support Enforcement Association; Korey Lundin, Legal Action of Wisconsin; Jenifer Cole, Wisconsin Women's Network; David Pruhs, Wisconsin Family Court Commissioners Association; Mike Landwehr, Wisconsin Fathers for Children and Families; Richard Lavigne, ABC for Health, Inc.; Steve Blake, Dads of Wisconsin; Ken Taylor, Wisconsin Council on Children and Families; Hon. Thomas Walsh, Wisconsin Supreme Court, Office of Court Operations; State Representative Jessie Rodriguez; Tiffany Highstrom, State Bar of Wisconsin

Others Present: Jennifer Noyes, Institute for Research on Poverty; Dan Meyer, Institute for Research on Poverty; Steve Cook, Institute for Research on Poverty; David Berndt, Bureau of Child Support, Katherine Marek, Bureau of Child Support; Patti Reuter, Bureau of Child Support, Phyllis Fuller, Bureau of Child Support, Benjamin Kain, National Parent's Organization; Kimber Liedl, Department of Children and Families Legislative Liaison

Connie commenced the meeting by noting that this was the last scheduled meeting of the committee and thanking committee members for their time and input.

She then explained the next steps in the process, noting that the legislature had expressed an interest in having child support addressed by the end of the legislative session in May 2016. In order to meet the expedited timeline, DCF will need to complete the report of this committee's recommendations quickly and begin the process of seeking approval to start rule drafting.

Committee members were advised that they would likely see a draft of the full committee report within a week and a half. They were asked to plan on setting aside a couple hours during the week of August 31st to review the draft final report and provide comments by the end of that week. The report will be emailed to committee members and placed on the Share Point site.

Income Shares

Connie advised the committee that a constituent has been circulating a report among legislators advocating that Wisconsin convert from a Percentage of Income Standard state to an Income Shares state. The report was shared with the committee as it is anticipated that it will factor into any legislative initiatives related to child support. DCF does not endorse the report and Connie spent some time noting some of the concerns the department has:

- The author claims in the report that IRP advocates a conversion to the Income Shares model, citing a 2011 article written by Jennifer Noyes entitled “Child Support Models and the Perception of Fairness”. Jennifer addressed the committee and clarified that the report was intended only to be an overview of the three child support models being used in the country. The report spoke only to the perception of fairness and did not draw any conclusions as to whether these perceptions were valid.
- The author claims that the National Conference of State Legislatures has endorsed the Income Shares model. However, it was noted that NCSL has not taken a position on the models and has indicated the choice of a model should be left to state discretion
- The author cites to a 2000 Marquette Law Review article for the proposition that Wisconsin’s Percentage of Income Standard does an injustice to high income payers. However, it was noted that that article was published prior to Wisconsin’s adoption of a high-income formula in 2004.
- It was noted that none of the examples cited in the paper use an income below \$100,000 per year and that the primary motivation of the author may be to address high income payers. Connie emphasized that this could be done without converting to a different model for the establishment of support.

During subsequent discussion on the paper, a comment was made that if the perception exists that the Income Shares Model is fairer, perhaps Wisconsin should consider it, as Wisconsin already uses a form of income shares for anyone with at least 25% placement. It was also noted that this committee’s objectives had not included review of alternate models for setting support and adequate time did not exist to do a full analysis of those models.

Definition of Income

The committee reviewed proposals for addressing a number of issues that have arisen related to the calculation of income available for support:

- Contributions to Pension Plans. The current definition of gross income in DCF 150 includes voluntary contributions to pension plans. Connie explained that the provision had been added to address situations in which payers were diverting income to their

retirement plans to reduce the income against which child support would be calculated. However, the language was being interpreted to imply that involuntary/mandatory contributions to pension plans should not be considered as part of gross income. That was not the intent and the department is proposing the removal of the word 'voluntary' from the definition. The committee approved on a consensus vote.

- Low Income Payers: Appendix C in DCF 150 includes a chart with a column that refers to income 'up to' 75% of the poverty level. It was explained that some of the automated child support calculators automatically calculate a child support obligation for any income below 75% of the poverty level due to that language. The language of DCF 150 allows the court to exercise discretion in setting support for very low incomes. The department would like to remove the words 'up to' from the chart so that the chart only addresses incomes between 75% and 150% of poverty level. The committee agreed on a consensus vote.
- Veteran's Benefits: Connie explained that the Department has received questions from attorneys in cases where the court refused to consider veteran's disability benefits in calculating child support. There is a provision in DCF 150.02(13)(a)4 that allows the court to consider the net proceeds from a worker's compensation payment or other personal injury award intended to replace income. The Department would like to add language to the rule clarifying that the portion of a veteran's disability benefit intended to replace income should be considered available for the purpose of establishing a child support obligation.

The committee discussed who would have the burden of proof as to what portion of the benefit was intended to replace income. If the child support agency wanted the court to take the benefit into consideration, what information does the agency have access to in order to make that determination.

The committee supported the proposal with this clarification and with the requirement that the department specify the exact names of the benefits subject to this provision given the complexity and variety of veteran's benefits.

- SSDI Connie explained the difference between SSI and SSDI benefits. The current guidelines provide for a credit to the payer for SSDI derivative benefits received by the child. However, they do not take into consideration the possibility that the payer may be receiving the child's benefit. Nor do they address the treatment of the child's benefit when the parents are sharing care taking responsibility.

The committee agreed by consensus that the rule should be amended to clarify that a payer is only entitled to receive credit for the child's benefit in a sole placement case when the payee is receiving the benefit.

The committee also agreed by consensus that the policy established by the department in Child Support Bulletin 13-02 should be incorporated in the guidelines to pro-rate the child's benefit based on the parent's percentage of shared caretaking responsibility.

- Adoption Assistance It was noted that an issue similar to the one involving SSDI also occurs with adoption assistance payments. Child Support Bulletin 06-10 provides that in shared time cases, the adoption assistance payment is added to the income of the payee prior to the calculation of support. It was recommended that the same methodology be used when considering adoption assistance in the calculation of a support order as is used when considering SSDI benefits received by the children. The committee agreed by consensus.

High Income

The Department provided the committee with 4 different examples of a sliding scale for reducing the amount of child support that a payer would owe at various income levels. The spreadsheets provided examples of a sliding scale beginning at \$150,000 and at \$200,000. Within each of these examples, the department varied the sliding scale to reduce the applicable percentage at \$150,000 by ½ at different points.

The committee struggled with this issue and the amount of time being devoted to address an issue that impacts less than 1% of the population in Wisconsin. They were also very uncomfortable with making recommendations on when the reductions should occur given that there is no research and no statistical data to support their decision.

The committee recommended that the high-income formula remain as it is as the parties that it impacts have the resources to litigate if they believe the order is too high. They also noted that the However, the committee was also aware that the legislature is interested in addressing this issue and looking for the committee's input on alternatives to the status quo.

It was suggested that a requirement be made that a portion of the support above a certain amount be placed in a trust for the child's post majority needs. The court currently has the authority to establish a trust. To require it under certain circumstances would necessitate a statutory change.

It was noted that most states using a percentage of income standard model begin reductions around \$300,000 in annual income and most grant judicial discretion to set awards above any ceiling placed on application of their formula. The committee strongly felt that to provide for further reductions beginning at \$150,000 in annual income would leave Wisconsin as an outlier among other states.

The committee agreed, by a vote of 8-5, to make two suggestions, as opposed to recommendations, given that the decision is arbitrary:

- 1) No change to the existing high-income formula; however, if there is a desire to cap the amount of support that can be ordered, the committee suggests a cap at \$500,000 annual income with judicial discretion retained to order support above that amount.
- 2) Retain the existing high-income formula up to annual incomes of \$300,000 and incorporate a sliding scale after that. The committee does not recommend a cap.

However, if there is a desire to cap the amount of support that can be ordered, the committee once again suggests a cap at \$500,000 annual income with judicial discretion retained to order support above that amount.

The following committee members approved the above suggestion:

Steve Blake (Dads of Wisconsin)
Jennifer Cole (Wisconsin Women's Network)
Rod Dequaine (Wisconsin Child Support Enforcement Association/Door County)
Mike Landwehr (Wisconsin Fathers for Children and Families)
Richard Lavigne (ABC for Health)
David Pruhs (Family Court Commissioner's Association/Milwaukee County)
Tom Walsh (Brown County Circuit Court Judge)
Ken Taylor (Wisconsin Council on Children and Families)

The following committee members opposed the above suggestion:

Janet Nelson (Wisconsin Child Support Enforcement Association/Milwaukee County)
Tom Antholine (Wisconsin Child Support Enforcement Association/Jefferson County)
Tiffany Highstrom (State Bar Family Law Section)
Korey Lundin (Legal Action of Wisconsin)
Morgan Young (End Domestic Abuse Wisconsin)

Absent: Jacquelyn Boggess (Center for Family Policy and Practice)
Rep. Scott Krug

Abstained: Jacqueline Scharping (BCS)
Connie Chesnik (DCF/SO)
Rep. Jessie Rodriguez

Low Income

The committee reviewed the following possible language changes to the provisions in DCF 150 related to imputing income based on earning capacity:

DCF 150.03 (3) Determining income imputed based on earning capacity. In situations where the income of a parent is less than the parent's earning capacity or is unknown, **and in the absence of credible evidence to the contrary**, 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. 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 unavailable, the court may impute to the parent the income that a person

would earn by working 10 to 35 hours per week, based on the availability of work in or near the parent's community for individuals in similar circumstances of the parent, for the higher of the federal minimum hourly wage under [29 USC 206](#) (a) (1) or the state minimum wage in s. [DWD 272.03](#). If a parent has gross income or income modified for business expenses below his or her earning capacity, the income imputed based on earning capacity shall be the difference between the parent's earning capacity and the parent's gross income or income modified for business expenses.

There was extensive discussion regarding the range of hours from 10-35. The question was raised how it would be applied in cases where the payer fails to show up for the hearing. It was acknowledged that in many cases 35 hours will become the default. However, some committee members felt that having the option to impute income for less than a full-time work week would be utilized by some courts.

The committee reached a consensus agreement to recommend the above language. It was felt that credible information is utilized when it's available and this language provides guidelines for when it's not.

Serial Family

The committee reviewed examples prepared by the Department of both the North Dakota serial family formula and a pro-rata methodology that calculated support based on the percentage applicable to the total number of children for whom the payer had a support obligation.

None of the proposed models had any impact on the support obligation to the first child. There was discussion about whether the objective of any change was fairness to all the children or reasonableness of orders for the NCP. Based on the examples presented, it was determined that the small amount of change in orders using the revised pro-rata methodology was not worth the change. The committee liked the idea of revising earlier orders based on subsequently incurred obligations. However, they recognized that many orders are not in the same county, or even the same state, so it would be very difficult to accomplish.

The committee recommended, on a consensus vote, that the serial family formula remain unchanged, with a clarification made in the rules that serial family payers may be eligible for application of the low income formula if multiple child support obligations put their income below the low income threshold.

Shared Time

The committee reviewed examples of shared time formula calculations using a combination of overnights and hours spent with the children based on Arizona's child support model.

Concern was expressed that this type of formula would increase litigation given that eligibility for credit against a support obligation would be based on hours spent with the children. Concern was also expressed that under the Arizona model, time spent with the children was not

weighted equally. A 6-hour block of time equaled ½ day under the Arizona model, but an 18-hour block of time only equaled 1 day.

Rather than recommending a change in the current overnight formula, the committee recommended by consensus that the rule include more examples of equivalent care that include a pattern of time spent with the children that involves blocks of time that may be less than an overnight.

It was also recommended both that the examples include a requirement that a meal be provided and that an example be included in which the total number of hours exceeds 365 days. The rule will need to be amended to remove references to 365 so that the calculation divides by the number of overnights or their equivalent in order to calculate the percentage of time each parent has with the children.

Medical Support

The committee agreed by consensus that the measure of reasonable cost should be changed in DCF 150 from no more than 5% of the combined incomes of the parents to cover the incremental cost to add the

Birth Costs

The Department apologized for not having prepared an example for possible inclusion in a rule change of a situation involving a nonmarital intact family in which it would be inappropriate to seek recovery of birth costs. Connie promised to provide that example via email.

The committee adjourned at 3:30pm.