

LC Abstract

Child Support Law in Wisconsin



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This **LC Abstract** describes a particular aspect of Wisconsin law in effect as of the date printed on the document cover. The abstract is a general discussion and should not be used as legal advice for fact-specific situations. This LC Abstract was written by Robert J. Conlin, Senior Staff Attorney. The document is available on-line at www.legis.state.wi.us/lc/reports_by_topic.htm. Additional paper copies are available by contacting the Legislative Council office and requesting document LCA 02-5.

Child Support Law in Wisconsin

This Abstract provides an overview of Wisconsin's child support law. It reviews the general statutory and administrative provisions governing the establishment, modification and enforcement of child support obligations in the state. The Abstract also provides a brief history of the development and use of the standards used to establish child support obligations and offers some examples of how those standards are applied in various situations.

ESTABLISHING CHILD SUPPORT

Ordering Child Support

Wisconsin courts are routinely called upon to enter an order requiring a parent of a child to financially contribute to the child's expenses when the child's parents do not live together. Wisconsin law requires courts to order either or both parents of a child to pay "an amount reasonable or necessary to fulfill a duty to support the child" in certain actions affecting the family.

The court must enter an order for support when it does any of the following: (1) approves a marital settlement agreement or final stipulation providing for child support; (2) enters a judgment of annulment, divorce or legal separation; (3) enters an order for child support in an action to establish child support; (4) enters an order for family support; or (5) enters a paternity judgment. [s. 767.25 (1), Stats.] In addition, the court must also order either or both parents to pay child support when a court orders the placement of a child outside the home in a nonmedical residential facility, such as a foster home, group home, residential care center for children and youth, or juvenile correctional facility. [ss. 46.10 (14) (b) and 301.12 (14) (b), Stats.]

Generally, a support obligation will continue until the child turns 18 years old, or 19 years old if the child is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent. [s. 767.25 (4), Stats.]

The Child Support Percentage Standard

Federal Requirements

Federal law requires each state to establish one set of guidelines for use in establishing child support award amounts within the state. The guidelines may be established by law or by judicial or administrative action. Those guidelines must, at a minimum, consider all earnings and income of the noncustodial parent, be based on specific descriptive and numeric criteria, result in a computation of the support obligation and provide for the children's health care needs through health insurance coverage or other means.

Federal law requires that the guidelines established by the state constitute a rebuttable presumption that the amount of child support generated by the application of those guidelines is the correct amount of child support to be awarded in each case. Federal law allows, however, that the presumption may be rebutted by a written or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case as determined under criteria established by the state. That criteria must take into consideration the best interests of the child. Findings that rebut the guidelines must include a justification of why the order varies from the guidelines.

Federal law requires that a state's guidelines be reviewed, and revised, if appropriate, at least once every four years to ensure that their application results in the determination of appropriate child support award amounts. As part of that review, a state must consider economic data on the cost of raising children and analyze case data gathered through sampling or other methods on the application of and deviations from the guidelines. The analysis of the data must be used in the state's review of the guidelines to ensure that deviations from the use of the guidelines are limited. [45 C.F.R. s. 302.56.]

Wisconsin's Percentage- of-Income Standard

In 1983, pursuant to statutory directive, the Wisconsin Department of Health and Social Services, which at the time was responsible for administering the state's child support program, adopted what has come to be known as the "percentage-of-income standard" or the "percentage standard" for use in establishing child support obligations.

Under that standard, child support is determined by multiplying the income of a parent obligated to pay support by a certain percentage. The percentage amount varies depending on the number of children that parent is obligated to support.

The percentage of an obligated parent's income required to be paid as support under the standard is as follows:

- 17% for one child;
- 25% for two children;
- 29% for three children;
- 31% for four children; and
- 34% for five or more children.

[s. DWD 40.03 (1), Wis. Adm. Code.]

The rationale underlying the standard is described in the Wisconsin Administrative Code, as follows:

The standard is based on the principle that a child's standard of living should, to the degree possible, not be adversely affected because his or her parents are not living together. It determines the percentage of a parent's income and potential income from assets that parents should contribute toward the support of children if the family does not remain together. The standard determines the minimum amount each parent is expected to contribute to the support of their children. It expects that the custodial parent shares his or her income directly with their children. It also presumes that the basic needs of the children are being met. This latter presumption may be rebutted by clear and convincing evidence that the needs of the children are not being met. [See ch. DWD 40, Wis. Adm. Code, Preface.]

Mandatory Use of the Percentage Standard

Since 1987, Wisconsin law has generally required that a court determine the amount of child support owed in a case by using the percentage standard unless the court finds that to do so would be unfair to the child or any of the parties. [s. 767.25 (lj), Stats.]

Deviating From the Percentage Standard

Despite the general requirement to use the percentage standard, a court may, in certain cases, modify the amount of support generated by applying the standard. However, it may do so only if it finds, after considering a number of factors specified in the statutes, that the use of the percentage standard is unfair to the child or to any of the parties. The factors to be considered in a divorce action or other action in which the parents no longer reside together, or in a paternity action are as follows:

- The financial resources of the child.
- The financial resources of both parents.
- Maintenance payments received by either party.
- The needs of each party to support himself or herself at a level equal to or greater than the federal poverty level.
- The needs of any person, other than the child, whom either party is legally obligated to support.
- If the parties were married, the standard of living the child would have enjoyed had the marriage not ended in annulment, divorce or legal separation.
- The desirability that the custodian remain in the home as a full-time parent.
- The cost of day care if the custodian works outside the home, or the value of custodial services performed by the custodian if the custodian remains in the home.
- The award of substantial periods of physical placement to both parents.
- Extraordinary travel expenses incurred in exercising the right to periods of physical placement.
- The physical, mental and emotional health needs of the child, including any costs for health insurance ordered by the court.
- The child's educational needs.
- The tax consequences to each party.
- The best interests of the child.
- The earning capacity of each parent based on each parent's education, training and work experience and the availability of work in or near the parent's community.
- Any other factors the court determines are relevant in a particular case.

[s. 767.25 (1m), Stats.]

Similar factors are to be considered when a child is placed in a nonmedical residential facility. [See ss. 46.10 (14) (c) and 301.12 (14) (c), Stats.]

If a court, after considering the above factors, finds that the application of the percentage standard is unfair and the court sets support without strict adherence to the percentage standard, the court must state in writing or on the record: (1) the amount of support that would be required using the percentage standard; (2) the amount by which the court's order deviates from the amount that would be required using the percentage standard; (3) its reasons for finding that using the percentage standard would be unfair;

**Defining
Income Subject
to Child
Support**

(4) its reasons for the amount of the modification; and (5) the basis for the modification. [ss. 46.10 (14) (d), 767.25 (1n) and 301.12 (14) (d), Stats.]

When support is set, the percentage standard is applied to the obligated parent's **gross** income and, if applicable, the obligated parent's **imputed** income.

For purposes of setting child support "gross income" is defined broadly. A person's gross income includes all of the following:

- All income considered federal gross income under the Internal Revenue Code.
- Net proceeds resulting from Worker's Compensation or other personal injury awards intended to replace income.
- Unemployment compensation.
- Income continuation benefits.
- Voluntary deferred compensation, employee contributions to any employee benefit plan or profit-sharing, and voluntary employee contributions to any pension or retirement account whether or not the account provides for tax deferral or avoidance.
- Military allowances and veterans benefits.
- Undistributed income of a corporation, including a closely-held corporation, or any partnership, including a limited or limited liability partnership, in which the payer has an ownership interest sufficient to individually exercise control or to access the earnings of the business, unless the income is included as an "asset available for imputing" income. [Income under this provision is subject to reduction by the business expenses that a court determines are reasonably necessary for the production of that income or operation of the business.]
- Any income imputed to the payer.
- All other income.

[s. DWD 40.02 (13), Wis. Adm. Code.]

"Gross income," however, does **not** include public assistance or child support that the parent receives. [s. DWD 40.02 (13) (i), Wis. Adm. Code.]

To determine a parent's "gross income available for child support," certain adjustments are made to the parent's gross income. Generally, the parent's gross income is increased by adding to it wages paid to dependent household members and subtracting from it business expenses which the court determines are reasonably necessary for the production of that income or operation of the business. [s. DWD 40.02 (14), Wis. Adm. Code.]

As noted above, a court may sometimes set child support based upon a parent's "imputed income." "Imputed income" is the amount of income ascribed to assets which are unproductive or to which income has been diverted to avoid paying child support or from which income is necessary to maintain the child at the economic level he or she would enjoy if the child was living with his or her parents, and which exceeds the actual earnings of the assets. [s. DWD 40.02 (15), Wis. Adm. Code.]

To impute income for child support, the court must find that: (1) the payer has underproductive assets; (2) the payer has diverted income into assets to avoid paying

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of Different
Households
Under the
Percentage
Standard**

child support; or (3) the income from the payer's assets is necessary to maintain the child at the economic level he or she would enjoy if the child's parents lived together. Upon making one or more of the above findings, the court may attribute income to the payer's identifiable assets by multiplying the total net value of the assets by the current six-month treasury bill rate, or another rate that the court determines to be reasonable. The actual earnings of the assets are then subtracted from this amount to arrive at the imputed income available for child support. [s. DWD 40.05, Wis. Adm. Code.]

The Wisconsin Administrative Code provisions relating to child support contemplate the special application of the percentage standard to payers with obligations to support children in other households and to those who spend significant periods of time with the children they are ordered to support. The Code describes three different types of payers who receive special treatment in the application of the percentage standard: (1) a serial-family payer; (2) a shared-time payer; and (3) a split-custody payer. The application of the percentage standard to all these types of payers is described below.

The serial family payer. A "serial-family payer" is a payer with an existing legal obligation for child support who incurs an additional legal obligation for child support in a subsequent family as a result of a court order. [s. DWD 40.02 (24), Wis. Adm. Code.]

Generally, under the serial-family formula, a parent's existing support obligation is subtracted from the parent's gross income before the percentage standard is applied to the parent's remaining income to arrive at the parent's subsequent support obligation. Under this formula, children of a first family will not see their support reduced due to subsequently born children in different families.

Example: Parent A pays 17% of his gross income for the support of his one child from a previous marriage. Parent A subsequently incurs a second support obligation for a nonmarital child. Parent A's child support obligation for his second child is determined as follows:

\$1,000	Monthly gross income
- 170	Child support for first child (\$1,000 x 17%)
\$ 830	Income available for subsequent support order
x 17%	Child support percentage for second child
\$ 141	Child support for second child

[See s. DWD 40.04 (1), Wis. Adm. Code.]

The shared-time payer. For parents who spend significant periods of time with their children under a "shared-time" physical placement arrangement, the "shared-time" formula was developed as a recognition of the increased costs incurred by those parents. The law defines a "shared-time payer" as a payer who provides overnight child care or equivalent care above 30% of the year (109.5 days) and assumes all variable child care costs in proportion to the number of days he or she cares for the child under the shared-time arrangement. [s. DWD 40.02 (25), Wis. Adm. Code.] "Variable costs" include payment for food, clothing, school, extracurricular activities recreation, and day care. [s. DWD 40.02 (30), Wis. Adm. Code.]

In addition, the law recognizes that there are physical placement arrangements in which the payer provides child care beyond the 30% threshold and incurs additional costs in proportion to the time he or she provides care, but because of the physical placement arrangement agreed to by the parties or ordered by the court, the payer does not

provide overnight care. Accordingly, the law authorizes the court, upon request of one of the parties, to determine that a physical placement arrangement which provides for care other than overnight care is the equivalent of overnight care.

Under the shared-time formula, the net child support obligation of a parent who spends more than 30% but less than 40% of the overnights with his or her child will constitute a specified percentage of his or her base child support obligation (determined by multiplying the parent's gross income by the appropriate percentage). Under this formula, the more overnights that an obligated parent spends with a child, the lower his or her net child support obligation will be. The amount of time spent with a child and the corresponding percentage of the base child support obligation are represented in the table below:

<u>% of Time With Child</u>	<u>% of Base Child Support Obligations</u>
30	100
31	96.67
32	93.34
33	90.01
34	86.68
35	83.35
36	80.02
37	76.69
38	73.36
39	70.03
40	66.70

Example: Parent A has one child with which he spends 32% of the overnights. Parent A earns \$1,000 per month. Parent A's monthly support obligation is calculated as follows:

$$(\$1,000 \times 17\%) \times 93.34\% = \$159 \text{ (Net Monthly Support Obligation)}$$

When each parent spends more than 40% of the overnights with the child, support is calculated on the basis of both parent's income. To establish a support obligation under this approach, the court first determines each parent's base child support obligation by multiplying the parents' individual gross incomes by the applicable percentage under the standard. Next, each parent's base support obligation is multiplied by a specified percentage depending upon the percentage of time that each parent spends with the child to determine each parent's modified support obligation. The reduction percentages are listed in the table below:

<u>% Of Time With Child</u>	<u>% Of Base Child Support Obligation</u>
41	63.37
42	60.04
43	56.71
44	53.38

<u>% Of Time With Child</u>	<u>% Of Base Child Support Obligation</u>
45	50.05
46	46.72
47	43.39
48	40.06
49	36.73
50	33.40
51	30.07
52	26.74
53	23.41
54	20.08
55	16.75
56	13.42
57	10.09
58	6.76
59	3.43
60	0.00

Finally, having determined each parent’s modified support obligation, the lesser child support obligation is subtracted from the larger one to determine the net child support obligation of the parent with the larger modified support obligation. [s. DWD 40.04 (2), Wis. Adm. Code.]

Example: Parent A and Parent B have one child between them. Parent A has placement 42% of the time and Parent B has placement 58% of the time. Parent A’s monthly gross income is \$2,000 and Parent B’s is \$1,500. The net child support obligation is determined as follows:

- Parent A’s modified support obligation: $(\$2,000 \times 17\%) \times 60.04\% = \204
- Parent B’s modified support obligation: $(\$1,500 \times 17\%) \times 6.76\% = \17
- Subtract the smaller modified support obligation from the larger modified support obligation to obtain the net child support obligation of the parent with the higher modified support obligation: $\$204 - \$17 = \$187$ (Parent A’s net monthly child support obligation).

Split-custody payers. A payer who has two or more children but who has physical placement of one or more but not all the children is considered a “split-custody payer.” [s. DWD 40.02 (26), Wis. Adm. Code.]

A split-custody payer’s child support obligation is determined by first establishing each parent’s child support obligation by multiplying their individual gross incomes by the appropriate child support percentage corresponding to the number of children in the physical custody of the other parent. The smaller obligation is then subtracted from the larger one and the difference is the child support obligation of the parent with the larger child support obligation. [s. DWD 40.04 (3), Wis. Adm. Code.]

Example: Parents A & B have three children. Parent A has primary placement of one child and Parent B has primary placement of the other two children. Parent A earns \$2,000 per month and Parent B earns \$1,500 per month. The net child support obligation is determined as follows:

- Parent A's monthly base child support obligation: $\$2,000 \times 25\% = \500
- Parent B's monthly base child support obligation: $\$1,500 \times 17\% = \255
- Parent A's monthly net support obligation: $\$500 - \$255 = \$245$

Expressing the Child Support Order

Generally, support must be expressed as a fixed amount of money equal to the appropriate percentage of the income of the obligated parent at the time the order is established. However, the parties may stipulate to having the order expressed as a percentage of the obligated parent's income. A court may not approve such a stipulation unless the state is not a "real party in interest";¹ the obligated parent is not subject to any other order, in any other action, for the payment of child or family support, or maintenance; and all payment obligations included in the order, other than the annual receiving and disbursing fee, are expressed as a percentage of the obligated parent's income.

Other Orders Relating to Support

In addition to providing for child support in the form of monetary payments, Wisconsin law authorizes courts to order persons subject to support orders to do certain other things to ensure that their children are provided for. Some examples of these other orders are described below.

Seek Work Orders

Wisconsin law authorizes courts to require either or both parents to seek employment or participate in an employment or training program when the court orders child support. [s. 767.253, Stats.] In addition to this general grant of authority, two special situations are recognized in the law:

Unemployed teenage parents. The law requires courts to order an unemployed teenage parent to do one or more of the following: (1) register for work at a public employment office; (2) apply for jobs; (3) participate in a job training program; or (4) pursue or continue to pursue a high school degree or its equivalent if the unemployed teenage parent does not possess one. An "unemployed teenage parent" is a parent who is less than 20 years of age, is unemployed, is financially unable to pay child support and would be ordered to pay child support if financially able to pay it. [s. 767.254, Stats.]

Children First Program. The law requires courts in counties that participate in a work experience program to order an unemployed, noncustodial parent who lives in

¹ Under s. 767.075, Stats., the state is a "real party in interest" in any of the following circumstances: (a) in an action to establish paternity whenever there is an application for legal services filed with the county child support agency or whenever the attorney for the child support agency receives a referral from a children's or juvenile court to establish the paternity of a child who is the subject of an action in such a court; (b) in an action to establish or enforce a child support or maintenance obligation whenever there is a completed application for legal services filed with the county child support agency; (c) whenever certain public assistance benefits are provided on behalf of a dependent child or are provided to the child's custodial parent; and (d) whenever such benefits were provided in the past and the child's family is eligible for continuing child support services under federal law.

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that county to register for the program. In addition, if the county in which the proceeding takes place does not participate in such a program, but the county in which the payer resides does participate, the court may order the payer to participate if the other county agrees to enroll the payer. The program, known as the Children First Program, may offer the kinds of work experience and job training opportunities available to participants in the Wisconsin Works (W-2) welfare program and may also include job search and job orientation activities. A payer may be ordered into this program when the parent is able to work full time but works, on average, less than 32 hours per week, is not participating in another employment training program and has actual weekly gross income averaging less than 40 times the federal minimum hourly wage or less than the parent has the ability to earn.

While participating in the program, the parent is required to pay child support at an amount equal to the appropriate percentage standard multiplied by the current federal minimum wage earned in a 40-hour work week or equal to the amount of child support that the parent was ordered to pay in the most recent determination of support. Those payments are to continue until the parent makes full payment for three consecutive months or until the parent has participated in the program for 16 weeks, whichever occurs first. Once these conditions are met, the parent's support obligation is to be set by the regular application of the percentage standard to his or her income. A court need not make an order directing a person to participate in the program if the court makes written findings that there is good cause not to issue such an order. [s. 767.295, Stats.]

A court that issues a child support order for a child must also assign responsibility for payment of the child's health care expenses. In doing so, the court must consider the following: (1) whether the child is covered under a parent's health insurance policy or plan at the time of entry of the order; (2) the availability of health insurance to each parent through an employer or other organization; (3) the extent of coverage available for the child; and (4) the cost to the parent for coverage of the child.

The court may also require a parent to initiate or continue health insurance coverage for a child.

A parent required to provide health insurance coverage is also required to provide copies of necessary program or policy identification to the other parent and is liable for any health care costs for which he or she receives reimbursement from an insurer. [s. 767.25 (4m), Stats.]

The court may, in directing the manner of payment of a child's health care expenses, order that payment, including payment for health insurance premiums, be withheld from the income of the obligated parent and sent to the appropriate health care insurer, provider or plan, or sent to another destination for disbursement to the person for whom the payment has been awarded. [s. 767.25 (4m) (c), Stats.] (The law regulating the withholding for health care expenses parallels that for the withholding of child support. Income withholding for child support purposes is discussed in a following section.)

If a court orders a parent to provide for the health care expenses of the parent's child and the parent is eligible for family coverage of health care expenses under a health benefit plan that is provided by an employer, the employer must do all of the following: (1) permit the parent to obtain family coverage of health care expenses for the parent and the child, if eligible, without regard to any enrollment or waiting period restrictions that may apply; (2) provide family coverage of health care expenses for the parent and the child, if eligible, upon application by the parent, the child's other parent or the county child support agency; (3) notify the child support agency when coverage of the child is in effect and, upon request, provide copies of necessary program or policy identification to the child's other parent; and (4) after the child has coverage under the employer's health benefit plan, continue to provide coverage for the child unless the

employer receives satisfactory written evidence that the court order is no longer in effect or that the child has coverage of health care expenses under another comparable policy or plan. [s. 767.25 (4m) (d), Stats.]

If a parent obligated to provide health care coverage for a child changes employers, the county child support agency must provide notice of the health care coverage requirement to the new employer and the obligated parent. The notice to the parent must inform the parent that health care coverage will be in effect upon the employer's receipt of the notice. The parent may request a court hearing to contest the appropriateness of the order for health care coverage remaining in effect.

Trusts

In order to protect and promote the best interest of the minor child, the court may set aside a portion of the child support which either party is ordered to pay in a separate fund or trust. The accumulation is to be used for the support, education and welfare of the child. [s. 767.25 (2), Stats.]

Similarly, when the court deems it expedient to do so, it may appoint a trustee to receive any payments ordered, to invest and pay over the income for the support and education of a child or to pay over the principal at such time as the court may direct. [s. 767.31, Stats.]

Financial Disclosures

In every action in which a court orders child support, the court must require the parties to exchange financial information annually. [s. 767.27 (2m), Stats.]

Payment of Child Support

Where Payments Are Made

All court orders requiring the payment of child support must direct that the child support be paid to DWD or its designee. DWD has designated ACS State and Local Solutions, Inc., as the statewide, central disbursement unit for all child support payments in this state. The central disbursement unit, which maintains the Wisconsin Support Collections Trust Fund, receives the payment, keeps a record of the payments and disburses each payment, generally within two business days of its receipt, to the party entitled to receive it.

Generally, parties ordered to pay child support must pay an annual receiving and disbursing fee of \$35. [s. 767.29 (1), Stats.]

How Payments Are Made, Recorded, and Disbursed

Income assignment. In most cases, child support is automatically withheld from the pay of an obligated parent by the employer and sent to the central disbursement unit. Every child support order entered in Wisconsin constitutes an assignment of all income to be received by the payer. An assignment requires an employer or other person who pays money to a parent obligated to pay child support to withhold the appropriate amount of child support from the wages or other money to be paid every time that money is paid to the parent.

The assignment is to be in an amount sufficient to satisfy the current child support order as well as an amount necessary to satisfy any child support arrearage. The amount used to satisfy the arrearage, however, may not exceed 50% of the amount due for the child support obligation and may not leave the payer at a level of income below the federal poverty level. [s. 767.265 (1), Stats.] Federal law also limits the amount that an employer may withhold from a payer's wages pursuant to an order for support. If the obligated parent is supporting dependents in addition to the person for whom support has been ordered, the maximum amount that can be withheld is 50% of the parent's disposable earnings. ("Disposable earnings" are the part of the earnings of an employee remaining after the deduction of federal, state and local withholding taxes, and Social Security taxes.) If the obligated parent is not supporting dependents in addition to those for whom the support was ordered, the maximum amount that may be withheld is

60%. These amounts may be increased by 5% if the withholding is to enforce child support arrears.

An assignment may go into effect immediately or at some future date. If the child support order does not call for the immediate effectuation of the assignment, and if the obligated parent fails to make a required support payment under the court order within 10 days of its due date, the court, court commissioner, or county child support agency must, within 20 days of the payment's due date, put the assignment into effect and must send a notice to the obligated parent and to the person from whom the parent receives income that the assignment is in effect. The obligated parent may contest the effectuation of the assignment by filing a motion with the court within 10 days of the notice. A hearing must be held within 10 days of the date the motion was filed. If the court finds that the assignment is not proper because of a mistake of fact, the court must withdraw the assignment. [s. 767.265 (2h), Stats.]

If, after an assignment is in effect, the obligated parent's employer changes its payroll period or the parent changes employers and the new employer's payroll period is different from the former employer's payroll period, the clerk of court may amend the withholding order so that the withholding frequency corresponds to the new payroll period and the amounts to be withheld reflect the adjustment to the withholding frequency. After amending the withholding order, the clerk of court must provide notice of the amended withholding order by regular mail to the employer and to the obligated parent. [s. 767.265 (7m), Stats.]

The employer or other person who pays money to the obligated parent must remit the amount of support withheld from the parent's pay to the central disbursement unit within five days of paying the parent. The employer must report to the central disbursement unit the obligated parent's gross income or other gross amount from which the payment was withheld. The employer may withhold an additional amount, up to \$3, from the obligated parent's pay for the employer's necessary expenses in complying with the withholding order. [s. 767.265 (3h), Stats.]

If the employer, after having received notice of the assignment, fails to withhold the money or fails to send it to the central disbursement unit, the employer may be proceeded against for contempt of court or may be required to forfeit not less than \$50 nor more than an amount, if the amount exceeds \$50, that is equal to 1% of the amount not withheld or sent. [s. 767.265 (6) (a), Stats.]

Deposit account transfer. If a court or court commissioner determines that income withholding is inapplicable, ineffective or insufficient to ensure payment, the court or court commissioner may require the obligated parent to identify or establish a deposit account, owned in whole or in part by the obligated parent, that allows for periodic transfers of funds. The parent must also file an authorization with the financial institution at which the account is located to allow transfer of funds to the central disbursement unit. The authorization must be on a form approved by the court and must specify the rate and frequency of the transfers. The authorization must also include the obligated parent's consent for the financial institution to disclose information to the court, court commissioner, county child support agency, or central disbursement unit regarding the account for which the obligated parent has executed the authorization for transfer.

A financial institution that receives an authorization must transfer the amounts as specified in the authorization. However, the financial institution may deduct from the payer's account for each transfer its usual fee for such fund transfers. If the account is closed or if no funds are available for transfer, the financial institution must notify the county child support agency and the central disbursement unit of that fact within 10 days after the date on which the funds should have been transferred. An authorization

for child support transfer has priority over other authorizations and may not be revoked except by court order. [s. 767.267, Stats.]

Record keeping and disbursement of child support by the central disbursement unit. The central disbursement unit is responsible for the receipt and disbursement of the child support paid to it under various court orders. Generally, the central disbursement unit is required to disburse the child support to the appropriate party within two business days after receiving it. [s. 767.29 (1), Stats.] The central disbursement unit must also keep accurate records of the child support and arrearage payments made by payers. County child support agencies have access to these payment records through the Kids Information Data System (KIDS).

If a court finds that the record of child support payments and arrearages kept by the central disbursement unit is substantially incorrect and that the unit has failed to correct the record within 30 days after having received information that the court determines is sufficient for making the correction, the court may order payment of costs by the unit. [s. 767.262 (4) (b), Stats.]

When support is received, it must be applied according to the following order of priority: (1) first, to payment of child support due within the calendar month during which the payment is received; (2) second, to payment of unpaid child support due before the payment is received; and (3) third, to payment of interest accruing on unpaid child support. [s. 767.25 (6), Stats.]

If the central disbursement unit receives support money that exceeds the amount due in the month in which it was received and determines that it is for support due in a subsequent month, the central disbursement unit may hold the overpayment portion for disbursement in the next month if: (1) the payer or payee requests it; (2) the court or court commissioner orders it; (3) the support has been assigned to the state as a condition of receiving public assistance; or (4) the central disbursement unit determines that it should be held and disbursed in the next month. [s. 767.29 (1m), Stats.]

MODIFICATION OF CHILD SUPPORT ORDERS

General

A final judgment or order for child support is, from time to time, subject to modification by court order. A party wishing to modify a child support order may commence an action to modify the support order. The Office of Family Court Commissioner is required to provide informational material relating to the procedure for modifying a judgment or order involving child support and the major issues usually addressed in such an action. [s. 767.081 (2), Stats.] Some counties also provide to parties, upon request, a “do-it-yourself” packet for filing an action to modify a judgment or order of child support. If a party desires legal assistance in modifying his or her child support order, that party may seek the services of a private attorney. In the alternative, a recipient of child support may seek child support modification services from the local child support agency.

Venue for Modification Actions

A party seeking to modify a judgment or order for child support must file either a petition, motion or an order to show cause in the county in which the original judgment or order was rendered or in the county where the minor child resides, unless: (1) all parties stipulate to filing in another county;

or (2) the court in the original county orders, upon good cause shown, the action to be filed in another county. [s. 767.025 (2), Stats.]

If the parties stipulate to filing in another county, the party bringing the modification action must send a copy of the petition, motion or order to show cause to the clerk of court in the original county. If a court in the original county orders the modification action to be filed in another county, the party bringing the action must attach a copy of that order to the petition, motion or order to show cause when it is filed in the other county. [s. 767.025 (2), Stats.]

Factors Considered in Modification Actions

A child support order or judgment may be modified only if the court finds that there has been a substantial change in the circumstances of the parties or of the children since entry of the last order for support. The statutes specify several factors which give rise to a rebuttable presumption that a substantial change of circumstances has occurred. Those factors include:

- Commencement of participation in Wisconsin Works (W-2) by either parent since the entry of the last child support order;
- Except in the case of a percentage-expressed order, the expiration of 33 months after the date of entry of the last child support order;
- Failure of the obligated parent to furnish a timely annual financial disclosure; and
- A difference between the amount of child support ordered by a court to be paid by an obligated parent and the amount that the parent would have been required to pay based on the percentage standard if the court did not use the percentage standard in determining the child support payments and did not explain its reasons for doing so. [s. 767.32 (1) (b), Stats.]

In addition to the above factors, the statutes also specify several other conditions that may be found to constitute a substantial change in circumstances. Those include:

- A change in the obligated parent's income from the parent's income the last time support was set (except for orders expressed as a percentage of income);
- A change in the needs of the child;
- A change in the obligated parent's earning capacity; and
- Any other condition the court determines to be relevant.

[s. 767.32 (1) (c), Stats.]

Finally, in an action to modify a support order from one in which the support obligation is expressed as a percentage of the obligated parent's income to one in which the obligation is expressed as a fixed sum, the court need not find that a substantial change of circumstances has taken place. [s. 767.32 (1) (d), Stats.]

Determining the Amount of Modified Support

A court that modifies a child support order must do so by applying the percentage of income standard discussed above. If married or remarried, the obligated parent is treated as though he or she were single for purposes of applying the percentage standard. Thus, the percentage standard may be applied only to the income of the obligated parent and **not** to the income of that parent's spouse. [See *In re the Marriage of Abitz v. Abitz*, 155 Wis. 2d 161, 455 N.W. 2d 609 (1990).] Upon request of a party

to the action, the court may deviate from the percentage standard if it finds, by the greater weight of the credible evidence, that the use of the percentage standard is unfair to the child or any of the parties. In determining whether the use of the percentage of income standard is unfair to the child or parties, the court must consider the factors specified on page 3 of this Abstract. [s. 767.32 (2) and (2m), Stats.]

When the state is a real party in interest, the county child support agency must periodically review the case to determine if criteria exist for a modification. If the county child support agency determines that criteria exist for a modification of the child support order, the agency must seek a modification of the order.

Retroactive Adjustments

If the court decides to modify the child support order, it may not revise the amount of support due, or the arrearages that have accrued, prior to the date that notice of the action to modify the child support order is given to the responding party, except to correct previous errors in calculation. [s. 767.32 (1m), Stats.] However, in some cases, a court may grant a credit to the obligated parent against support that is due prior to the date of notice to the other party for payments made by the obligated parent in a manner other than the manner required by the court order. The court may grant such a credit in any of the following circumstances:

- The obligated parent shows by documentary evidence that the payments were made directly to the recipient of support by check or money order, and shows by a preponderance of the evidence that the payments were intended for support and not intended as a gift to or on behalf of the child, or as some other voluntary expenditure, or for the payment of some other obligation to the recipient.
- The obligated parent proves by clear and convincing evidence, with evidence of a written agreement, that the recipient of support expressly agreed to accept the payments in lieu of child or family support paid as required under the support order, not including gifts or contributions for entertainment.
- The obligated parent proves by documentary evidence that, for a period during which unpaid support accrued, the child received certain Social Security benefits based on that parent's entitlement to Social Security disability benefits. (Any credit granted under this provision is limited to the amount of unpaid support that accrued during the period for which the benefits were paid.)
- The obligated parent proves by a preponderance of the evidence that the child lived with the obligated parent, with the agreement of the other parent, for more than 60 days beyond a court-ordered period of physical placement. (Credit may not be granted under this provision if, with respect to the time that the child lived with the obligated parent beyond the court-ordered period of physical placement, the other parent sought to enforce the physical placement order through civil or criminal process or if the other parent shows that the child's relocation to the obligated parent's home was not mutually agreed to by both parents.)
- The obligated parent proves by a preponderance of the evidence that both parents resumed living together with the child and that, during the period for which a credit is sought, the obligated parent directly supported the family by paying amounts at least equal to the amount of unpaid court-ordered support that accrued during that period.

[s. 767.32 (1r), Stats.]

Annual Adjustments in Support

In addition to the above-described modification process, a child support order may contain provisions that call for the amount of support to change on an annual basis based upon a change in the obligated parent's income. The order may specify the date upon which the order is to change. However, no annual adjustment may be made unless the order allows for the adjustment and the person entitled to the payments applies for the adjustment. A person is limited to one annual adjustment per year. In the order, the court must specify what information the parties must exchange to determine whether the obligated parent's income has changed, and must specify the manner and timing of the exchange of information. [s. 767.33 (1), Stats.]

If the court provides for an annual adjustment, the court must make available to the parties a form approved by the court for the parties to use in stipulating to an adjustment of the amount of support. The form must include an order, to be signed by the court, for approval of the stipulation. [s. 767.33 (2), Stats.]

If the obligated parent's income changes from the amount found by the court or stipulated to by the parties for the current support order, the parties may implement an annual adjustment by stipulating to the changed income amount and the adjusted support amount. The stipulation must be signed by all the parties and filed with the court. If the stipulation is approved, the order must be signed by the court and becomes effective as of the date on which the order is so signed. [s. 767.33 (3), Stats.]

Any party may file a motion, petition, or order to show cause for implementation of an annual adjustment if a party refuses to exchange the required financial information or the obligated parent's income changes, but a party refuses to sign a stipulation adjusting the support order. If the court determines, after a hearing, that an adjustment should be made, the court must enter an order adjusting the support payments. The adjustment may not take effect before the date on which the responding party received notice of the requested modification. However, the court may direct that all or part of the adjustment not take effect until such time as the court directs if any of the following applies: (1) the parent receiving the support was seeking an adjustment and the obligated parent establishes that extraordinary circumstances beyond his or her control prevent fulfillment of the adjusted child or family support obligation; (2) the obligated parent was seeking an adjustment and the parent receiving the support establishes that the custodial parent voluntarily and unreasonably reduced his or her income below his or her earning capacity; or (3) the obligated parent was seeking an adjustment and the parent receiving the support establishes that the adjustment would be unfair to the child. [s. 767.33 (4) (a) to (c), Stats.]

If a court determines that a party has unreasonably failed to exchange the required financial information or failed to do so in a timely manner, or unreasonably failed or refused to sign a stipulation for an annual adjustment, the court may award to the aggrieved party actual costs, any costs attributable to time missed from employment, the cost of travel to and from court, and reasonable attorney fees. [s. 767.33 (4) (d), Stats.]

ENFORCEMENT OF SUPPORT

In addition to providing for the establishment and modification of child support orders, Wisconsin law, and to a lesser extent federal law, provides several tools for enforcing those child support orders. The types of enforcement mechanisms available can be broadly categorized as follows: (1) civil and administrative; and (2) criminal. A person seeking assistance in enforcing a child support order may either contact a private attorney or his or her county child support agency. Several enforcement mechanisms are discussed below.

Civil and Administrative Enforcement Mechanisms

New Hire Reporting

Employers are required to report information on all newly hired or rehired employees to DWD to aid in the location of parents with child support obligations and to assist in the timely and efficient withholding of support from wages. Generally, reports are due within 20 days after the date the employee starts or restarts work or at least twice per month for employers that report electronically or on magnetic tape.

Employers are required to report the following: (1) the employee's name, address, Social Security number, date of birth and date of hire; and (2) the employer's name, address and Federal Employer Identification Number (FEIN). This information may be reported on the state WT-4 form for income tax withholding, which has been modified to accommodate the new hire reporting requirements. The information submitted to the state New Hire Reporting Directory will be linked to a National Directory of New Hires, which will help in the tracking of parents who owe child support across state lines. [s. 103.05, Stats.]

Financial Record Matching Program

DWD is responsible for the operation of the Financial Records Matching Program, which involves data sharing between DWD and financial institutions doing business in the state. The purpose of the program is to identify and locate assets held in accounts at financial institutions that belong to persons who owe delinquent support. When financial assets of an obligated parent who owes delinquent support are identified, they may be frozen or seized to satisfy the delinquent support obligation.

Support Lien Docket and Administrative Seizure of Assets

When a parent obligated to pay child support fails to pay the court-ordered support, the amount that is not paid becomes a lien in favor of DWD upon all property of the delinquent payer. The delinquency is listed in the statewide support lien docket, maintained by DWD. The support lien becomes effective when the delinquency is entered on the docket and made available electronically to the register of deeds. Obligated parents owing the greater of \$500 or one month of support will be added to the list.

When a delinquency is placed on the docket, DWD must notify the delinquent parent of the lien and allow the parent an opportunity to contest the delinquency, to satisfy the lien by paying the delinquency in whole or to enter into an alternative payment arrangement to satisfy the lien.

Once the lien is in effect, DWD and child support agency may take action to seize financial accounts of a delinquent obligated parent once the lien equals or exceeds \$1,000 or three months worth of support, whichever is greater. In addition, the child support agency may seize and sell real and personal property of the parent once the lien equals or exceeds six months worth of support to satisfy the child support delinquency. In addition, DWD may direct the pension administrator of public or private pension plans to withhold amounts from lump sum pension distributions to satisfy delinquent support amounts when the obligated parent's name is placed on the support lien docket.

Suspension of Licenses and Credentials

When a delinquent obligated parent has accrued at least three months worth of delinquent support, DWD and child support agencies may take administrative action to suspend or cause to be denied various licenses and credentials issued to the parent by state agencies. When notified by DWD or a child support agency that a person is delinquent in paying support, the agency may not issue or renew, or must suspend the person's license or credential for up to five years or until the delinquent support is paid or an acceptable alternative payment arrangement is agreed to by the delinquent obligor.

Generally, most professional licenses and credentials, hunting, fishing and other recreational licenses and drivers' licenses are subject to suspension or denial. In the

suspension or nonrenewal process, the delinquent obligor receives several notices of the proposal action and has several opportunities to challenge the accuracy of the delinquency or make satisfactory alternative payment arrangements to satisfy the delinquency.

Notification of Change in Employer or Address

Every child support order must contain a provision requiring the obligated parent to advise the county child support agency within 10 days of any change in his or her address or employer. [s. 767.263, Stats.] This allows the court, the parent who is owed the child support and the local child support agency to have ready access to the obligated parent's location and employment which, in turn, facilitates collection of child support through an assignment of income.

The county child support agency may disclose to a parent with legal custody of a child, upon the parent's request, the last-known address, and the name and address of the last-known employer, of the child's other parent if that other parent owes a support obligation to the child and is in arrears in the payment of the support. [s. 49.22 (2p), Stats.]

Assignments of Income

The assignment of income provides a major tool for the collection and enforcement of child support obligations. Use of an assignment leaves no discretion to the payer as to whether he or she pays his or her child support. The notice of assignment sent to the obligated parent's employer or other source of income requires deduction of child support by the employer or other person who pays money to the parent.

In addition, as noted above, s. 767.265, Stats., provides for the enforcement of the assignment through the contempt of court process under ch. 785, Stats., or through a forfeiture procedure against an employer or other person who fails to honor a wage assignment. [s. 767.265 (6) (a), Stats.]

Tax Refund Intercepts

DWD is required to certify to the Department of Revenue (DOR) a listing of persons who are delinquent in their child support payments or who owe past support and those who owe medical expenses in actions to establish paternity. If the person on the list is entitled to a tax refund, DOR must withhold from the refund an amount sufficient to meet the child support delinquency or other amount owed. [s. 49.855, Stats.] A similar tax refund intercept program is provided under federal law for the interception of federal tax refunds to satisfy delinquent support obligations.

Interest on Amounts Past Due

Past due child support, by operation of law, accrues interest at the rate of 1% per month on any amount in arrears that is equal to or greater than the amount of child support due in one month. [s. 767.25 (6), Stats.] (1999 Wisconsin Act 9 modified the amount of interest charged from 1.5% per month to 1% per month. The 1% interest rate applies to all arrearages regardless of when the order on which the arrearages are based was entered.) The accrual of interest may operate as an added incentive to obligated parents to remain current in their child support payments and, thus, work to deter delinquent payments.

Work Search Requirements

As noted previously, ch. 767, Stats., provides several opportunities for courts to require that unemployed parents with a child support obligation seek employment or job training when they are unemployed. [See ss. 767.253, 767.254 and 767.295, Stats.] Additionally, the Wisconsin Supreme Court has held that an appropriate remedy in a contempt proceeding brought because an obligated parent has failed to pay child support is to require the parent to actively seek employment until he or she can pay child support. [*In re the Marriage of Dennis*, 117 Wis. 2d 249, 344 N.W.2d 128 (1984).]

Contempt of Court

An order for child support may be enforced by a contempt proceeding under ch. 785, Stats. For purposes of child support enforcement, contempt of court usually means the intentional disobedience, resistance or obstruction of the authority, process, or order of a court. [s. 785.01 (1) (b), Stats.] A court may find that intentionally failing to pay child

support as ordered by the court is contemptuous conduct. Having made a finding of contempt, the court is authorized to impose either punitive or remedial sanctions.

Punitive sanctions are intended to punish a past contempt of court for the purpose of upholding the authority of the court. [s. 785.01 (2), Stats.] As a punitive sanction, the court may impose a fine of not more than \$5,000 or imprisonment in the county jail for not more than one year, or both, for each separate contempt finding made in a “nonsummary” procedure. [s. 785.04 (2) (a), Stats.] Alternatively, in a “summary” procedure, a court may impose a fine of not more than \$500 or imprisonment in the county jail for not more than 30 days, or both, for each finding of contempt. [s. 785.04 (2) (b), Stats.] A nonsummary procedure for punitive sanctions must be prosecuted by the district attorney, the Attorney General or a special prosecutor appointed by the court and must be initiated by the issuance of a complaint for the punishment of a past contempt. Under a summary procedure, on the other hand, a penalty is imposed by the court upon a person who commits a contempt of court in the actual presence of the court. The court imposes the penalty immediately after the contempt occurs for the purpose of preserving order in the court and protecting the authority and dignity of the court. It is not likely that enforcement of a child support order by contempt would involve a summary procedure.

Remedial sanctions are imposed by the court for the purpose of terminating a continuing contempt of court. [s. 785.01 (3), Stats.] As a remedial sanction, the court, after a hearing, may do one or more of the following:

- Order payment of a sum of money sufficient to compensate a party for a loss or injury suffered by the party as the result of a contempt of court.
- Order imprisonment which may extend only so long as the person is committing the contempt of court or six months, whichever is the shorter period.
- Order a forfeiture not to exceed \$2,000 for each day the contempt of court continues.
- Create a remedy designed to ensure compliance with a prior order of the court.
- Order any other sanction if the court expressly finds that the above sanctions would not terminate the continuing contempt.

[s. 785.04 (1), Stats.]

Unlike punitive sanctions, remedial sanctions may be pursued by any person aggrieved by a contempt of court by filing a motion for the imposition of remedial sanctions in the proceeding to which the contempt is related (e.g., by filing a motion for contempt within the divorce case in which child support has been ordered but not paid).

Arrest

Any respondent against whom an action to establish a child support order or an action to modify a child support order has been commenced may be arrested if the court finds that service of process cannot be made upon the respondent. In addition, if the respondent has been personally served and he or she fails to appear at the required hearing, he or she may be arrested and compelled to appear in court. [s. 818.02 (5), Stats.]

Arrearage Establish- ment

Support enforcement is aided by a statutory process which allows an arrearage to be established by an affidavit. [s. 767.293, Stats.] The procedure allows a recipient of support to file an affidavit with the court which sets forth the amount of the alleged arrearages that have accrued under a percentage-expressed order. A copy of the affidavit must be served on the obligated parent. After the parent has been served with the affidavit, the court must notify the parent that he or she may request a hearing to

dispute the arrearage or the amount of the arrearage. If the obligated parent does not request a hearing and the court is satisfied that the affidavit establishes that an arrearage exists, the court must enter an order for the amount of arrearage determined by the court. If a hearing is requested, the court must determine whether an arrearage exists and, if so, the amount of the arrearage. The arrearage may then be collected with the aid of an accompanying order for periodic payments, tax intercepts or a number of other enforcement remedies discussed herein.

Suspension of Driver's Licenses

In addition to the administrative license suspensions discussed above, courts have the authority to suspend an obligated parent's motor vehicle operating privilege if the person fails to pay child support or family support, the payment is 90 or more days past due and the court finds that the person has the ability to pay the amount ordered. The person's operating privilege may be suspended until the person pays all arrearages in full or makes payment arrangements that are satisfactory to the court. However, the period of suspension may not exceed two years. A person who has his or her operating privilege suspended under this provision is eligible for an occupational license to enable him or her to commute to work at any time if he or she is otherwise eligible for such a license. [s. 767.303, Stats.]

Other Civil Enforcement Tools

The statutes provide that, in ordering child support, a court may provide for the payment of support in amounts and at times as the court considers expedient. [s. 767.30 (1), Stats.] Furthermore, the court may impose liability for the payment of these sums as a charge upon specific real estate of the party liable for support or may require that party to give sufficient security for the payment. [s. 767.30 (2), Stats.] Also, if the party fails to make the payments or give adequate security, the court is empowered to enforce the order or judgment by any appropriate remedy as though it were a final order or judgment of the court.

Finally, DWD is required to disclose to a consumer reporting agency the amount of overdue support owed by a parent. [s. 49.22 (11), Stats.]

Criminal Sanctions

State Criminal Penalties

Under ch. 948, Stats., relating to crimes against children, it is a Class E felony for a person to intentionally fail for 120 consecutive days to provide support for a child, if the person knows or reasonably should know that he or she is legally obligated to provide support for the child. [s. 948.22 (2), Stats.] A person may be charged with one count for each 120 consecutive day period if payment is not made. If convicted, the person may be fined not more than \$10,000 or imprisoned not more than five years, or both, for each count on which he or she is convicted. (Effective February 1, 2003, such failure is considered a Class I felony, punishable by a fine not to exceed \$10,000, or imprisonment not to exceed three years and six months, or both.)

It is a Class A misdemeanor for any person to intentionally fail for a period of time of less than 120 consecutive days to provide support for a child if the person knows or reasonably should know that he or she is legally obligated to provide such support. [s. 948.22 (3), Stats.] If convicted, the person may be fined not more than \$10,000 or imprisoned not more than nine months, or both, for each count on which he or she is convicted.

Federal Criminal Penalties

Under provisions of the Child Support Recovery Act of 1992 (P.L. 102-521), the willful failure to pay a past due support obligation for a child residing in another state is a federal crime. For provisions of this federal law to apply, the support obligation must be unpaid for over one year or be greater than \$5,000 and be owed to a child residing in a state other than the state in which the payer lives.

For a first offense of this law, a person may be fined up to \$5,000 and imprisoned for up to six months. For second and subsequent offenses, an offender may be fined up to \$250,000 and imprisoned for up to two years.