



Legislative Fiscal Bureau

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Joint Committee on Finance

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Use of Percentage-Expressed Child Support Orders in Wisconsin (DWD -- Child Support)

CURRENT LAW

Whenever a court enters a judgment of annulment or divorce, a judgment in a paternity action, or otherwise takes action to require child support, the court must direct either one or both parents to pay an amount reasonable to fulfill the parental responsibility to provide for their minor children. At present, a support order in Wisconsin may be expressed in one of three ways:

- (1) as a percentage of parental income;
- (2) as a fixed sum; or
- (3) as a combination of both by requiring payment of the greater or lesser of either a percentage of parental income or of a fixed sum (mixed orders).

In all instances, however, a percentage standard is used as the starting point for determination of child support payment amounts. A court can modify the amounts indicated by the percentage standards following a finding that strict use of the percentage standard would be unfair to the child or to any of the parties involved in the support case. The percentage standards for determining the amount of support due are specified in an administrative rule promulgated by the Department of Workforce Development (DWD) as follows: 17% of the payer's gross (before-tax) income for one child; 25% for two children; 29% for three children; 31% for four children; and 34% of the payer's income for five or more children.

Federal and State Incentive Payments

The federal government distributes incentive payments to states in order to encourage and reward child support programs that perform in a cost-effective and efficient manner. In Wisconsin, these funds are distributed to county child support agencies.

At present, a new incentive system is being phased in nationwide. Under the new system, incentive payments to states will be based on five measures of performance: (1) paternity establishment; (2) establishment of support orders; (3) collection of current child support due; (4) collection of child support arrearages; and (5) cost-effectiveness. The previous system was based primarily on the ratio of each state's support collections to administrative costs and the amount of support collected on behalf of certain public assistance recipients.

The new system is being phased in over three years, beginning in federal fiscal year (FFY) 2000 (October 1, 1999, through September 30, 2000). As of the time of this writing, the federal Department of Health and Human Services (HHS) was in the process of determining individual states' allocations of incentive payments based upon their performance during FFY 2000. For this determination, two-thirds of each state's allocation will be calculated using criteria established under the old system, while one third will be determined by applying the new criteria. DWD expects a final decision regarding Wisconsin's portion of federal incentive payments to be made in August or September, 2001. For states' performance during FFY 2001, payments will be based one-third on the old system and two-thirds on the new. For the FFY 2002 allocation and for years thereafter, incentive payments will be awarded based entirely on the new system.

Under current state law, Wisconsin provides state incentive payments to counties to supplement federal incentive payments. State law specifies that the combined total of federal incentive payments and state supplemental funding cannot exceed \$12,340,000 annually, with state supplemental payments capped at \$5,690,000 per year. Under this structure, the amount available for distribution to the counties will fall below \$12,340,000 if federal incentive payments are less than \$6,650,000. Conversely, state supplemental payments will be less than \$5,690,000 if federal incentive payments exceed \$6,650,000. The state incentive payments are funded with program revenue from child support assigned to the state by certain public assistance recipients.

GOVERNOR

No provision.

DISCUSSION POINTS

Number of Child Support Orders in Wisconsin

1. Table 1 shows the total number of child support orders in Wisconsin as of April, 2001. "IV-D cases" are child support recipients who are receiving services from the county child support agency under Title IV-D of the federal Social Security Act. Such services are provided free of charge to most public assistance recipients and are available to parents who do not receive public assistance for a fee based on the individual's ability to pay. "Non-IV-D cases" are parents who do not receive child support enforcement services.

TABLE 1

**Total Number of Child Support Orders in Wisconsin
As of April 2001**

<u>Type of Order</u>	<u>IV-D Cases</u>	<u>Non-IV-D Cases</u>	<u>Total</u>
Fixed-Sum	128,849	24,309	153,158
Mixed	23,253	2,988	26,241
Percentage-Expressed	<u>39,434</u>	<u>14,919</u>	<u>54,353</u>
Total	191,536	42,216	233,752

Source: Department of Workforce Development

2. As shown in Table 1, there were 233,752 child support orders in Wisconsin as of April, 2001. Of these, 191,356 (81.9%) were IV-D cases, while 42,216 (18.1%) were non-IV-D cases. Most of the IV-D cases utilize fixed-sum orders (128,849, or 67.3% of the total IV-D caseload), while the remaining 62,687 (32.7% of the total IV-D caseload) had percentage-expressed or mixed orders. A roughly similar pattern was found with the non-IV-D cases.

3. Wisconsin is the only state that utilizes percentage-expressed support orders. As described later in this paper, federal child support funding may be at risk due to the state's use of percentage-expressed and mixed child support orders. In determining whether the state qualifies for this funding, the federal government examines only IV-D child support cases.

Percentage-Expressed Orders: Arguments Pro and Con

Arguments Advanced in Favor of PEOs

4. Percentage-expressed orders have the advantage of self-adjusting the level of support as an obligor's income changes. Thus, if the obligor's income increases, so do the support payments.

5. DWD has indicated that PEOs can result in significantly higher child support payments than fixed orders in cases where payments are regular and there are no interruptions in employment. Custodial parents and children are the beneficiaries when these circumstances prevail.

6. Allowing only fixed-sum orders to be entered would remove judges' ability to select an option that generally works well and provides more monetary support for children when specific circumstances prevail. Judges should retain maximum flexibility to tailor orders to specific circumstances.

7. PEOs are cost-efficient because they allow for adjustments in support to take place without having to arrange a court hearing first. In addition, they can help separated individuals avoid expenses for additional court hearings.

8. PEOs serve the interests of victims of domestic abuse particularly well because they provide for changes in support without forcing victims to potentially have to confront their abuser in the context of a hearing.

Arguments Advanced in Opposition to PEOs

9. According to the Department of Health and Human Services, the use of PEOs does not allow Wisconsin to provide the complete and reliable data required in order for the state's automated child support system [kids information data system (KIDS)] to be certified. According to HHS's audit finding, the use of PEOs prevents Wisconsin from supplying complete data for current child support collections and collections of amounts in arrears.

10. According to DWD, one problem with arrearages under PEOs is that if no payments are made, the payee is not entitled to enforcement services until the order can be reconciled against the payer's tax return to establish the level of the arrearage.

11. PEOs often do not "self adjust" as anticipated. For example, although Wisconsin statutes require employers to submit gross income amounts for the obligor with each support payment withheld, DWD indicates that only 50% to 60% of employers actually provide that information. Without that information, it is difficult to ensure that the appropriate level of support actually is being provided. According to DWD, reconciliations performed on PEOs have found significant underpayments. Lack of the information also contributes to the problems of misapplied payments and processing delays.

12. According to HHS, orders expressed in percentage terms would have to be reconciled at least monthly in order to accurately post child support amounts due and disburse payments to the appropriate individual within two business days, as required by federal law.

13. The circumstances under which PEOs work well -- when payments are regular and there is no interruption in employment -- frequently do not prevail in cases served by Wisconsin's IV-D program. At present, IV-D cases account for more than four out of every five child support cases in the state.

14. Since Wisconsin is the only state that utilizes PEOs, they have proven very difficult to enforce in other states. Enforcement of orders across state lines is important, as the federal Office of Child Support Enforcement estimates that roughly 30% of all cases nationwide involve parties who reside in different states.

Possible Federal Incentive Payment Losses

15. As mentioned, HHS has notified the state that the continued use of PEOs will likely prevent the KIDS system from receiving federal certification. HHS officials have also notified DWD that the use of percentage-expressed orders may result in reduced federal child support incentive payments because the use of PEOs does not permit a conclusive determination of total child support obligations owed in the state, particularly current support due and arrears due. As a result, HHS's Office of Child Support Enforcement cannot tabulate reliable findings regarding Wisconsin's performance on the two corresponding indicators that are components of the new system for distributing incentive payments: current collections performance level and arrearage collection performance level.

16. As noted, under the new incentive structure, payments to states are based on the state's performance on five measures, as modified by the phase-in schedule for the new incentive system. If the federal government is unable to accurately measure Wisconsin's performance on individual measures, the incentive payments will be reduced accordingly. For example, Wisconsin's failure to meet the criteria for two of the five performance indicators identified above during the current fiscal year (FFY 2001) will result in a loss of two-fifths of the scheduled two-thirds incentive payment established by the phase-in schedule. The net result is a 26.7% (two-thirds of two-fifths) reduction in Wisconsin's incentive payment for that year. Beginning in FFY 2002, when the new incentive system is to be fully implemented, the reduction will be 40% annually.

17. Table 2 presents DWD's current estimates of federal child support incentive payments to Wisconsin. It also shows what the penalty from the continued use of PEOs would be, should the incentive payments materialize as estimated, as well as the level of net incentive payments and estimated monetary losses to the counties under the assumed federal payment scenario. Because the new incentive system differs significantly from the former system, it is difficult to precisely estimate the incentive payment levels and the resulting revenue loss from the use of PEOs. DWD indicates that actual payments will not be determined until August or September, 2001, for federal fiscal year 2000.

TABLE 2

Estimates of Federal Incentive Payments and Revenue Losses from the Use of Percentage-Expressed Child Support Orders in Wisconsin

	Estimated Full Federal Incentive Earnings*	Penalty from use of PEOs	Net Estimated Federal Incentive Payment	Estimated Loss to Counties**
FFY 2000	\$7,551,000	\$1,637,000	\$5,914,000	-\$736,000
FFY 2001	9,739,000	3,323,000	6,416,000	-234,000
FFY 2002	12,400,000	4,960,000	7,440,000	0

* The level of estimated payments without penalties resulting from the use of PEOs.

** Amount by which net federal incentive payments are below \$6,650,000.

Source: Department of Workforce Development

18. DWD's estimates reveal that counties would stand to lose approximately \$736,000 in federal incentive payments for FFY 2000 and \$234,000 for FFY 2001. The county-level impact from these losses would be felt in state fiscal years 2001-02 and 2002-03, respectively.

Other Possible Federal Penalties

19. Possible financial consequences of the use of PEOs extend beyond the loss of federal incentive dollars. If child support data submitted by a state is determined to be incomplete or unreliable or if the state child support enforcement program fails to achieve performance standards established by the federal Office of Child Support Enforcement, that state may be assessed a penalty against its annual temporary assistance for needy families (TANF) block grant, which currently is \$317.5 million in Wisconsin. The TANF block grant funds Wisconsin Works (W-2) and a number of other public assistance programs.

The criteria against which a state's performance will be measured for purposes of this provision are: (a) paternity establishment; (b) order establishment; and (c) current collections performance. Penalties for noncompliance are 1% to 2% of the TANF block grant for the first finding; 2% to 3% of the TANF block grant for the second consecutive finding; and at least 3% but not more than 5% for the third or a subsequent consecutive finding.

20. Ultimately, rejection of the state's child support plan by federal officials could result in the loss of some \$63 million in federal child support matching funds plus the entire federal TANF block grant. The \$63 million in child support matching funds is used to support the Bureau of Child Support in DWD, the KIDS computer system, and county child support enforcement activities. Loss of monies under either or both of these funding streams represents a worst-case scenario and is a more remote possibility than the potential loss of federal incentive payments.

21. Representatives of the Midwest regional office of the Department of Health and Human Services have indicated that, at present, the problem of continued use of PEOs has not reached the point at which penalties against Wisconsin's TANF block grant would be levied. The Legislative Audit Bureau concurs with this assessment.

Actions the State Has Taken in Response to Potential Federal Funding Losses

Request of Waiver to Allow Continued Use of PEOs

22. In March, 2001, DWD requested a waiver from federal policy that could penalize Wisconsin through funding reductions over this state's continued use of PEOs. In its letter requesting the waiver, DWD asked that the state be allowed to continue utilizing PEOs "in a limited fashion," noting that child support payments in cases with percentage-expressed orders typically are higher than in cases that utilize fixed-sum orders so long as the obligor's payments are regular and there are no interruptions in employment.

23. In mid-April, HHS denied DWD's proposal for a waiver as it was expressed in the request. In its letter notifying DWD of the denial, HHS indicated that states are eligible to receive federal incentive payments only if data used to calculate the state's performance against the established criteria are complete and reliable, and that only support orders expressed as a dollar amount enable Wisconsin to meet these standards.

Initiatives Within DWD

24. In a January, 2001, Administrator's Memorandum, DWD established a goal of reducing the proportion of percentage-expressed and mixed orders to less than 10% of the overall IV-D caseload by late 2001. Currently, about 33% of IV-D cases utilize such orders.

25. To help achieve the stated goal of reducing the proportion of non-fixed sum orders in the IV-D caseload, DWD established a new policy, outlined in the same Administrator's Memorandum, requiring child support agencies and their attorneys to recommend only fixed-sum amounts in new orders or in orders being revised. In addition, it directs child support agencies and their attorneys to use "available opportunities" to convert percentage-expressed or mixed orders to fixed-sum orders. These provisions are not binding on the courts that actually enter the support orders, however, as current law does not explicitly prohibit the use of percentage-expressed or mixed orders nor require that only fixed-sum orders be entered.

Introduction of Legislation Requiring Orders to be Expressed in Fixed-Sum Amounts

26. With the threat of possible reductions in federal incentive funds looming because of the state's continued use of PEOs, legislation has been introduced that would require all future child or family support orders to be expressed as a fixed amount. The bill, AB 248/SB106, also provides that a court would not be required to establish a finding of substantial change in circumstances in order to change the manner of expressing the amount of child or family support to a fixed sum if the

support level is currently specified in percentage or in mixed terms. Current law requires such a finding prior to making the change. DWD indicates that it will direct child support agencies to convert existing IV-D percentage-expressed and mixed orders to fixed-sum orders if this legislation is passed.

27. AB 248/SB 106 also would require every child or family support order expressed as a fixed sum to provide for an annual adjustment in the support amount, based upon a change in the payer's income. The bill would require application to the appropriate family court commissioner in order for the adjustment to take effect. Either party could apply for the adjustment under the bill's provisions.

28. AB 248/SB 106 also would eliminate the requirement that the court order the payer to supply a financial disclosure form to the payee and to the county child support agency and require, instead, the court to order the payer to furnish copies of his or her most recently filed state and federal income tax returns annually to the payee. This provision is intended to streamline the process of applying for an adjustment in the support amount under the bill's provisions. The financial disclosure form is a relatively long document required to be filed at the time of divorce that contains information over and above that needed to determine the appropriateness of an adjustment in the support amount.

29. If percentage-expressed and mixed orders continue to be utilized in Wisconsin, federal financial penalties will grow in size as the new system of determining incentive payments continues to be phased in. In addition, reductions in Wisconsin's TANF block grant and federal child support matching funds would become more likely. The Committee may wish to incorporate the provisions of AB 248/SB 106 into the budget bill.

Options to Provide Funds to Counties to Offset Reduced Federal Incentive Payments and Assist in the Conversion of Percentage-Expressed and Mixed Orders to Fixed-Sum Orders

Raise the Cap on State Incentive Payments

30. Concerned about the potential loss of federal incentive dollars stemming from the use of PEOs, the Wisconsin Child Support Enforcement Association (WCSEA) has suggested that the current cap of \$5,690,000 on state incentive payments be raised to a level that would reduce or eliminate the possibility that payments to counties could fall below the \$12,340,000 statutory maximum.

31. Wisconsin will receive federal incentive payments for FFY 2000 in state fiscal year 2001-02 and federal payments for FFY 2001 in state fiscal year 2002-03. Assuming DWD's estimates of federal incentive payments for FFYs 2000 and 2001 to be correct, the cap on state incentive payments would have to be raised to \$6,426,000 in 2001-02 and \$5,924,000 in 2002-03 in order to ensure that counties receive the maximum \$12,340,000 in incentive payments during these years. These numbers represent increases over the current \$5,690,000 maximum of \$736,000 and \$234,000 for state fiscal years 2001-02 and 2002-03, respectively.

32. Another option would be to temporarily eliminate the \$5,690,000 cap on state incentive payments. This would provide the greatest assurance to counties that they would receive the full \$12,340,000 of funding, even if the federal incentive payments are lower than DWD's projections in Table 2. The estimated cost of this option would be the same as the alternative outlined in the preceding paragraph. However, the state would be obligated to spend additional funds if the federal payments were lower than DWD's estimates.

33. As noted, the current state incentive payments are funded with child support assigned to the state by public assistance recipients. The child support funds that are not allocated for state incentive payments are used to fund the W-2 program and are counted toward the maintenance-of-effort (MOE) requirement for the TANF program. Therefore, any increase in the state incentives should be funded with GPR, because it is likely that the TANF MOE requirement would not be met if additional child support collections were diverted from the W-2 program. Failure to meet the maintenance-of-effort requirement would result in a dollar-for-dollar reduction in the TANF block grant and a requirement that the state spend additional funds equal to the shortfall in the following year.

34. DWD estimates that the federal incentive payments for FFYs 2002 and 2003 [payable to Wisconsin in state fiscal years 2003-04 and 2004-05, respectively] will be at levels high enough to provide \$12,340,000 to counties without adjusting the \$5,690,000 cap on state incentive payments. Based on these estimates, it appears that the cap could be restored to \$5,690,000 for state fiscal years 2003-04 and thereafter with no threat of funding losses to counties.

Convert All Existing IV-D Percentage-Expressed and Mixed Orders to Fixed-Sum Orders

35. At present, Wisconsin has approximately 62,700 percentage-expressed and mixed support orders in effect that fall into the IV-D classification. As stated earlier, in evaluating states' performance for purposes of distributing incentive funds according to the established criteria, the federal government examines only IV-D cases. Therefore, these 62,700 orders are the ones that would need to be converted to fixed-sum orders if the loss of federal funds is to be averted.

36. Although AB 248/SB 106 would not require the conversion of existing PEOs and mixed orders, only new orders, DWD's fiscal note to the bill included an estimate of the cost of converting the existing IV-D percentage-expressed and mixed orders. At an assumed cost of \$65 per order, DWD estimates a total cost of \$4,316,000 to convert approximately 66,400 IV-D percentage-expressed and mixed orders. The 66,400 amount represents the number of such orders in place as of August, 2000, and differs somewhat from the more recently identified caseload total of 62,687. DWD indicates that it used the earlier number in its fiscal note to avoid penalizing counties that already had initiated efforts to begin converting their percentage-expressed and mixed orders.

37. Of the total \$4,316,000 cost of converting the orders, \$2,848,600 would be funded with the 66% federal match available for most child support enforcement expenditures. State or local funding would be needed for the remaining \$1,467,400.

38. Options for assisting counties with the \$1,467,400 state/local portion of conversion costs include using state funds to cover the entire cost or requiring that the burden be shared between counties and the state. If the costs are to be shared, one option might be to divide them evenly. Under this proposal, the \$733,700 state portion could be appropriated to DWD, with DWD directed to distribute the funds to counties based upon the counties' respective share of IV-D percentage-expressed and mixed orders.

ALTERNATIVES TO BILL

State Incentive Payments to Counties

1. Temporarily raise the current cap on state incentive payments from \$5,690,000 to \$6,426,000 in 2001-02 and to \$5,924,000 in 2002-03. Provide \$736,000 GPR in 2001-02 and \$234,000 GPR in 2002-03 to fund the cap increases.

Alternative 1	GPR
2001-03 FUNDING (Change to Bill)	\$970,000

2. Temporarily eliminate the current cap of \$5,690,000 on state incentive payments in 2001-02 and 2002-03. Create a sum-sufficient GPR appropriation in DWD with estimated funding of \$736,000 GPR in 2001-02 and \$234,000 GPR in 2002-03 to pay for the increased incentive payments.

Alternative 2	GPR
2001-03 FUNDING (Change to Bill)	\$970,000

3. Maintain current law.

Statutory Modifications Related to Percentage-Expressed and Mixed Child Support Orders

4. Adopt the provisions of AB 248/SB 106. These provisions would: (a) require all child or family support orders entered after enactment to express the amount of support as a fixed sum; (b) provide that a court would not be required to establish a finding of substantial change in circumstances in order to change the manner of expressing the amount of child or family support to a fixed sum if the support level is currently specified in percentage or in mixed terms; (c) require every child or family support order in which the amount of support is expressed as a fixed sum to provide for an annual adjustment in the support amount, based upon a change in the payer's income; (d) specify that application would have to be made to the family court commissioner for an adjustment in the support amount and that either party--not just the payee--could apply; and (e)

eliminate the requirement that the court order the payer to supply a financial disclosure form to the payee and to the county child support agency and require, instead, the court to order the payer to furnish copies of his or her most recently filed state and federal income tax returns annually to the payee.

5. Maintain current law.

Funding to Assist Counties in Their Efforts to Convert IV-D Percentage-Expressed and Mixed Orders

6. Provide \$1,467,400 GPR and \$2,848,600 FED in 2001-02 to provide assistance to county child support agencies for the costs of converting percentage-expressed or mixed child support orders to fixed-sum orders. Require DWD to develop a system to allocate these dollars to counties based upon the counties’ respective caseload of IV-D percentage-expressed and mixed orders.

<u>Alternative 6</u>	<u>GPR</u>	<u>FED</u>	<u>TOTAL</u>
2001-03 FUNDING (Change to Bill)	\$1,467,400	\$2,848,600	\$4,316,000

7. Provide \$733,700 GPR and \$1,424,300 FED in 2001-02 to provide assistance to county child support agencies for the costs of converting percentage-expressed or mixed child support orders to fixed-sum orders. Require DWD to develop a system to allocate these dollars to counties based upon the counties’ respective caseload of IV-D percentage-expressed and mixed orders.

<u>Alternative 7</u>	<u>GPR</u>	<u>FED</u>	<u>TOTAL</u>
2001-03 FUNDING (Change to Bill)	\$733,700	\$1,424,300	\$2,158,000

8. Maintain current law.

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