Wisconsin Child Support
Attorney's Desk Reference
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The Child Support Program

History

The Child Support Program was created under Part D of the Federal Social Security Act (42 USC 651 et seq.) in 1974. (Pub. L. No. 93-647, 88 Stat. 2351). The program had its inception as a welfare cost-recovery mechanism. It was believed that burgeoning welfare rolls at the time were linked to single-parent families with dependent children who were either not receiving financial support from the other parent or receiving inadequate amounts of support. Since that time, it has evolved to a point where services are now available to all parents, regardless of the receipt of public assistance. Under the new IV-D program, federal funding was made available to states "for the purpose of enforcing the support obligations owed by absent parents to their children…, locating absent parents, establishing paternity, and obtaining child and spousal support." Receipt of federal funding (66% of program costs in most cases) was contingent upon compliance with federal program requirements, including assignment of support rights by parents receiving public assistance benefits.

In Wisconsin, the child support program is administered by the Wisconsin Department of Children and Families, and operated by 71 county and four tribal child support agencies. See Wis. Stat. ss.49.22, and 59.53(5)(6).

The remaining 34% of program cost is funded by the state, usually from a variety of sources including performance based incentives that states can earn from the federal government. Federal standards for operation of the child support program are located in title 45 of the Federal Code of Regulations, sections 300-399.

Child Support Enforcement Amendments of 1984 (Public Law 98-378)

The Child Support Enforcement Amendments of 1984 placed more mandates on states with respect to both the establishment and enforcement of support orders as well as the establishment of paternity. Although many states had developed guidelines for the establishment child support orders, the new law required the development of mathematical formulas for the calculation of support amounts. Additionally, wage withholding of support payments, interception of tax refunds and expedited or administrative processes as alternatives to judicial enforcement were all mandated as well.

Wisconsin had been a leader nationwide in the use of immediate income withholding to enforce child support orders. An extensive public relations effort with state employers and the ability to deduct a fee from the employee to cover the administrative costs of withholding helped to cushion the impact of this new enforcement tool. In an effort to overcome the negative stigma associated with garnishments, payers were reminded of the benefits of not having to write and mail checks on a bi-weekly or monthly basis.

Wisconsin also pioneered the use of percentage-expressed child support orders, a concept designed to create self-fluctuating orders that changed automatically with changes in a payer's income. The orders were calculated using a percentage of income standard intended to establish child support as a percentage of a parent's income, determined based on studies showing the cost of raising children. The standard was designed to provide children with as close as possible to the same standard of living they would have had if the parents had remained together.[1] Wisconsin's standard was promulgated by the Legislature as an Administrative Rule, DHSS 80, in 1987. [2] It has the distinction of being the only administrative rule promulgated by an agency in the executive branch of state government to be administered by the judiciary. The unique relationship between the three branches of government in the administration of Wisconsin's child support program has created a set of checks and balances that assures that the interests of all participants in the program are heard.

The development of Wisconsin's Percentage of Income Standard and its application in a variety of special circumstances including serial family, shared-time and split-placement, were the responsibility of a committee created at the behest of the Wisconsin Legislature, known as the Committee for the Review of Initiatives in Child Support (CRICS). The committee included representation from the judiciary, the State Bar, custodial and noncustodial parents, and numerous advocacy groups representing the interests of both high and low income payers and payees. There have been two significant revisions to the Wisconsin's administrative rules on child support since its inception. Those will be discussed in greater depth in the establishment chapter of this handbook. After more than 20 years, the Percentage of Income Standard continues to be the model used by Wisconsin for the establishment of support orders. However, the use of percentage-expressed orders has been virtually eliminated following a determination by the federal government that Wisconsin was not in compliance with federal program requirements. Still permissible under limited circumstances in some non IV-D cases, all IV-D orders must be converted to fixed dollar amounts.[3]

[1] Sommer v. Sommer, 108 Wis. 2d 586, 323 N.W.2d 144 (Ct. App. 1982)
[2] With the transfer of the child support program to the Department of Workforce Development in 1998, the child support administrative rule on the percentage of income standard was renumbered DWD 40. As of July 1, 2008, the child support program is located in the Department of Children and Families and the rule is numbered DCF 150.
[3] 767.34(2)(am) Wis. Stats.

In another effort to ensure that children received the support they were entitled to, Congress enacted the "Bradley Amendment"[4] named after its primary sponsor, Senator Bill Bradley, requiring states to have laws in effect prohibiting retroactive modification of support arrearages. Wisconsin complied with this requirement by enacting § 767.32(1m)[5]. This amendment significantly limited the discretion of state family courts. It also placed a heavy burden on child support obligors to seek immediate relief when circumstances affecting their ability to pay their court ordered child support changed.

The Family Support Act of 1988[6]

The focus of the Family Support Act of 1988 continued to be on the adequacy of support orders. Effective enforcement tools were of little value if the support amount being enforced did not adequately represent the ability of the noncustodial parent to pay support. The new legislation required that the guidelines developed by states for establishing child support orders must be used presumptively. Additionally, it mandated that child support amounts must be reviewed and adjusted periodically to ensure that the support continued to represent changes in the payer's income. The law also created timelines for establishing paternity, created a requirement that states have procedures for obtaining health care coverage for children subject to support and, probably of most significance, required that IV-D services be available upon request not only to those who were entitled to receive support, but those who pay it as well.

This change in emphasis also entailed a significant change in the role of the IV-D attorney. For years child support matters were criminal matters, and paternity cases had been considered quasi-criminal. The role of the child support attorney was as a prosecutor. Following the change in focus at the federal level, state statutes were amended to provide that the state is a real party in interest in any action not only whenever public assistance was being provided, but also whenever a completed application for services was filed with the child support program under § 49.22.[7] Perhaps even more importantly, the statutes were amended to alter the legal relationship of child support attorneys to both custodial and noncustodial parents applying for IV-D services. Child support attorneys no longer represented these people as clients. Instead, they now represent the

[4] The Budget Reconciliation Act of 1986 (Public Law No. 99-509), sec. 9103, amended sec 466(a) of the Social Security Act. 42 USC 666(a)(9).

[5] Renumbered s.767.59(1m) by 2006 Wisconsin Act 443, provides: "In an action under sub. (1) to revise a judgment or order with respect to child support, maintenance payments or family support payments, the court may not revise the amount of child support, maintenance payments or family support payments due, or an amount of arrearages in child support, maintenance payments or family support payments that has accrued, prior to the date that notice of the action is given to the respondent, except to correct previous errors in calculations."

[6] Public Law No. 100-485 (October 12, 1988)

[7] S.767.075

interests of the state in establishing paternity, and establishing and enforcing support orders. [8]

The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA)

The passage of PRWORA in 1996 marked not only a shift in emphasis from establishment to enforcement of support orders, but also an end to the Aid to Families with Dependent Children (AFDC) program and a move from entitlement programs to block grants as a source of federal funding for public assistance programs that were supposed to promote self-sufficiency. The new Temporary Assistance to Needy Families (TANF) program placed time limits on the receipt of benefits and required recipients to participate in work programs.

PRWORA significantly expanded the reach of the child support program into the lives of those affected by it in an effort to make it even more difficult to evade court-ordered child support obligations. Among other things, PRWORA required states to have in effect simple civil processes for the acknowledgment of paternity that would carry the force and effect of a judgment, create administrative authority to conduct genetic testing, adopt the Uniform Interstate Family Support Act, create subpoena powers for administrative agencies, create processes for the attachment and seizure of financial accounts, suspension and denial of recreational, occupational and driver's licenses, denial of passports, interception of lump-sum pension awards, placement of administrative liens on real and personal property, and participation in a national "New Hire" program.

Wisconsin complied with the requirements in PRWORA by enacting 1997 Wisconsin Act 191, a comprehensive piece of legislation that was the product of a legislative committee that included representation from many of the agencies and groups that have a direct interest in the child support program. A key provision in that legislation created Wisconsin's child support lien docket. A completely administrative, web-based operation, the Wisconsin lien docket lists any obligor with qualifying arrearages in excess of $500. Title companies routinely check the docket when conducting title searches and any property transaction involving a payer on the lien docket will be subject to a lien for that individual's delinquent child support.

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[8] § 49.22(7) provides: "The department may represent the state in any action to establish paternity or to establish or enforce a support or maintenance obligation. The department may delegate its authority to represent the state in any action to establish paternity or to establish or enforce a support or maintenance obligation under this section to an attorney responsible for support enforcement under § 59.53(6)(a) pursuant to a contract entered into under s.59.53(5)…."

§ 59.53(6) provides: "ATTORNEYS: SUPPORT ENFORCEMENT RESPONSIBILITY (a) 1. Except as provided in subd. 2., each board shall employ or contract with attorneys to provide support enforcement. Section 59.42(1)(2)(a)and (3) does not preclude a board from assigning these support enforcement duties to any attorney employed by the county.
(b) Attorneys responsible for support enforcement under par. (a) shall institute, commence, appear in or perform other prescribed duties in actions or proceedings under sub (5) and §§ 49.22(7), 767.205(2), 767.501 and 767.80 and ch. 769.

The Child Support Program Today

The IV-D program in Wisconsin provides direct services to over 340,000 cases affecting over 400,000 children. Nearly $1 billion is collected and disbursed each year and over 18,500 paternities are established. Wisconsin consistently ranks in the top 10 states nationwide on every federal performance measure. In addition to the direct services provided by our agency, child support for another 100,000 cases not receiving the services of a IV-D agency are processes annually through the Wisconsin Support Collections Trust Fund.[9] Payment records for all Wisconsin cases, both IV-D and non IV-D are maintained on the Kids Information Data System (KIDS). Accordingly, we have a responsibility to serve as an information source for anyone subject to a child support order in this state, whether they receive the direct services of a IV-D agency or not. There is often a fine line between our role as advisor and as public servant. It is not a responsibility to be taken lightly. It is our hope that this handbook will serve as a useful reference tool in handling your cases and serving the citizens of the State of Wisconsin.

[9] See § 767.29(1)

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