

## **WISCONSIN'S CHILD SUPPORT LAWS**

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### **Introduction**

The purpose of Wisconsin's child support program is to ensure that every child receives financial support from both parents. Wisconsin's child support program is administered at the state level by the Department of Workforce Development. The program operates locally by 72 county child support agencies.

The following outline is an analysis of Wisconsin's laws as they apply to child support issues.

### **I. Establishing Paternity**

- A. Where the parents are not married, paternity of the child must be established.
- B. How may paternity be decided?

#### **1. [Sec. 891.405](#), Wis. Stats.: Presumption of paternity**

- a. [Sec. 69.15\(3\)](#) and [\(3m\)](#), Wis. Stats.: Parents acknowledge paternity by filing a *Statement of Paternity* form with the state.
- b. [Sec. 891.41\(1\)\(a\)](#) and [\(b\)](#), Wis. Stats.: Parents are or have been married to each other at the time the child was conceived or are married after the child is born but in a relationship at time of conception and no other man is adjudicated or presumed to be the father.

#### **2. [Sec. 767.80](#), Wis. Stats.: Judgment of paternity**

- a. Action or motion for purpose of determining the paternity of the child or for the purpose of rebutting a presumption of paternity may be brought by:
  - (1) the child
  - (2) the child's natural mother
  - (3) a man presumed to be the father under secs. [891.405](#) or [891.41](#), Wis. Stats.
  - (4) a man alleged or alleging himself to be the father
  - (5) the personal representative of a person specified under pars. (1) – (4) if that person has died.
  - (6) the legal or physical custodian of the child
  - (7) the state in limited circumstances
  - (8) a guardian ad litem for the child

- (9) parent of a person listed under pars. (2), (3) or (4) if parent is liable or potentially liable for maintenance of a child of a dependent
- b. Under [Sec. 767.84](#), **Wis. Stats.**, the court may, and upon request of a party shall, require the child, mother, or any male for whom there is probable cause to believe that he had sexual intercourse during a possible time of the child's conception, or any male witness who testifies or will testify about his sexual relations with the mother to submit to genetic tests.
- c. [Sec. 767.855](#), **Wis. Stats.**, states that, upon a motion by a party or the child's guardian ad litem, the court may refuse to order genetic tests and dismiss the action if the court determines that a judicial determination of whether a man is the father of the child is not in the best interest of the child.
- d. [Sec. 767.85](#), **Wis. Stats.** Mandates that the court make an appropriate temporary order for the payment of child support and allows the court to make a temporary order assigning responsibility for health care expenses of the child if, at any time during the action upon the motion of a party, genetic tests show that the alleged father is not excluded and that the statistical probability of the alleged father's parentage is 99.0% or higher.
3. [Sec. 767.805](#), **Wis. Stats.**: Voluntary acknowledgment of paternity  
This statute provides that a statement acknowledging paternity filed with the state registrar after the last day on which a person may timely rescind the statement is a conclusive determination, with the same effect as a judgment of paternity.

## II. Determining the amount of child support owed

### A. How are child support payments determined?

[Sec. 49.22\(9\)](#), **Wis. Stats.**: The department shall promulgate rules that provide a standard for courts to use in determining a child support obligation based upon a percentage of the gross income and assets of either or both parents. The rules shall provide for consideration of the income of each parent and the amount of physical placement with each parent in determining a child support obligation in cases in which a child has substantial periods of physical placement with each parent.

### B. What is the percentage of income standard?

1. [Sec. 767.511\(1j\)](#), **Wis. Stats.** states that the court shall determine child support

payments by using the percentage of income standard.

2. [Wis. Adm. Codes DWD 40.03\(1\)](#): child support payments are determined by multiplying the payer's base times the following percentages:
  - (a) 17% for one child;
  - (b) 25% for 2 children;
  - (c) 29% for 3 children;
  - (d) 31% for 4 children;
  - (e) 34% for 5 or more children.
3. [Wis. Adm. Codes DWD 40.03\(2\)](#): the court may adjust gross income by adding wages paid to dependent household members and by reducing gross income by the business expenses which the court determines are reasonably necessary for the production of that income or the operation of the business.
4. Gross income includes all income sources considered gross income under Internal Revenue Service (IRS) rules. It does not include public assistance, or child support received. See 26 USCA Sec. 71(c)(1); however, Supplemental Security Income (SSI) payments are included per 26 USCA Sec. 86(a)(1).
5. [Wis. Adm. Codes DWD 40.04\(2\)](#): provides for reduction in the obligation if the payer is caring for the child at least 30% of the time. In addition, both parent's incomes are used to determine child support when both parents share the children more than 40% of the time or when the children are split between homes.

C. May the court deviate from the percentage of income standard?

1. [Sec. 767.511\(1m\)](#), **Wis. Stats.**: upon request by a party, the court may modify the amount of child support payments determined under the percentage of income standard if, after considering the following factors, the court finds by the greater weight of the credible evidence that use of the percentage standard is unfair to the child or to any of the parties:
  - (a) the financial resources of the child
  - (b) the financial resources of both parents
  - (bj) maintenance received by either party
  - (bp) the needs of each party in order to support himself or herself at a level equal to or greater than that established under 42 USC 9902(2)
  - (bz) the needs of any person, other than the child, whom either party is legally obligated to support
  - (c) the standard of living the child would have enjoyed had the marriage not ended in annulment, divorce or legal separation
  - (d) the desirability that the custodian remain in the home as a full-time parent

- (e) 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
  - (ej) the award of substantial periods of physical placement to both parents
  - (em) extraordinary travel expenses incurred in exercising the right of periods of physical placement under s. [767.41](#)
  - (f) the physical, mental, and emotional health needs of the child, including any costs for health insurance as provided under s. [767.513](#)
  - (g) the child's educational needs
  - (h) the tax consequences to each party
  - (hm) the best interests of the child
  - (hs) 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
  - (i) any other factors which the court in each case determines are relevant
2. [Sec. 767.511\(1n\)](#), **Wis. Stats.** requires the court to state in writing or on the record its reasoning for finding that the percentage of income standard is unfair, what the support under the percentage of income standard would be, and how much the court is deviating from that amount

D. How long does the obligation to provide child support last?

[Sec. 767.511\(4\)](#), **Wis. Stats.** provides that courts shall order support of any child who is less than 18 years old, or any child who is less than 19 years old if the child is pursuing his/her high school diploma or its equivalent

E. May the court order medical support for the child?

1. [Sec. 767.513\(2\)](#) **Wis. Stats.** states that the a court shall specifically assign responsibility for and direct the manner of payment of the child's health care expenses. Also, a parent may be required to initiate or continue health care insurance coverage for a child under this subsection.
2. [Sec. 767.513\(6\)\(a\)](#), **Wis. Stats.**, provides that if a parent who is responsible for a child's health care coverage changes employers, the county child support agency shall provide notice of the order to provide coverage of the child's health care expenses to the new employer and to the parent.

F. May child support orders be revised?

1. [Sec. 767.59\(1f\)\(a\)](#), **Wis. Stats.** states that revisions of child support orders may be made only when the court finds a substantial change in circumstances.

2. [Sec. 767.59\(1f\)\(b\)](#), Wis. Stats., states that any of the following constitutes a **rebuttable presumption of a substantial change in circumstances sufficient to justify a revision of the judgment or order**:
  - (1) Commencement of receipt of aid to families with dependent children or participation in Wisconsin works by either parent since the entry of the last child support order.
  - (2) The expiration of 33 months after the date of the entry of the last child support order unless the amount of child support is expressed in the judgment or order as a percentage of parental income.
  - (3) Failure of the payer to furnish a timely disclosure under sec. [767.54](#).
  - (4) A difference between the amount of child support ordered by the court to be paid by the payer and the amount that the payer 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 provide the information required.
3. [Sec. 767.59\(1f\)\(c\)1.-4.](#), Wis. Stats. enumerates factors which may constitute a substantial change of circumstances sufficient to justify revision of the order, including change in payer's income, change in the needs of the child, change in the payer's earning capacity, and any other factor that the court deems relevant.
4. [Sec. 767.553](#), Wis. Stats. Allows support orders to provide for an annual adjustment in support obligations if the amount is expressed as a fixed sum based on the percentage of income standard. The adjustment cannot be made more than once a year, and must be made on the percentage of income standard. The order must specify what information the parties will exchange to determine if the payor's income has changed to warrant a modification.

### III. Enforcing Support Orders

- A. How does income withholding work, and is it mandatory?
  1. According to [Sec. 767.75\(3h\)](#), Wis. Stats., employers are required to withhold child support amounts from income when they are notified of the order. The employer automatically deducts the support amount from the payer's paychecks, bonus and commission payments, etc. and sends it to the clerk of court's office within 5 days of paying the employee. The employer may charge the payer up to \$3.00 to cover processing costs for the deduction.
  2. [Sec. 767.75\(6m\)](#), Wis. Stats., states that a county child support agency may convert a support amount in an order for income withholding under this section that is expressed as a percentage of income to the equivalent sum certain amount for purposes of enforcing a child support order in another state under sub. ch. V or VI

of [ch. 769](#).

B. What other methods are available for collecting past-due child support?

1. [Sec. 767.78](#), **Wis. Stats.**: contempt proceedings.
2. [Sec. 767.73\(1\)\(b\)](#), **Wis. Stats.** If payment is 90 days or more past due and the court finds that the payer has the ability to pay the amount ordered, the court may suspend the payer's operating privilege until the payer pays all amounts due in full or makes payment arrangements that are satisfactory to the court. The suspension period may not exceed 2 years.
3. [Sec. 767.75\(1f\)](#), **Wis. Stats.** creates an assignment of all commissions, earnings, salaries, wages, pension benefits, lottery prizes that are payable in installments, tax refunds and other money due or to be due in the future.
4. [Sec. 767.77\(3\)](#), **Wis. Stats.** allows the court to enforce the judgment by any appropriate remedy.

C. [Sec. 49.22](#) **Wis. Stats.**: Programs to enforce child support obligations, establish paternity, and enforce medical support liability.

1. [Sec. 49.22\(2m\)](#), **Wis. Stats.** provides that the department of workforce development may request from any person in this state any information it determines necessary for administration of the child support programs. A person shall provide the information within 7 days unless access to the information is prohibited or restricted by law, or unless the person has good cause for refusing to cooperate.
2. [Sec. 49.22\(2m\)\(am\)](#), **Wis. Stats.** provides that the department of workforce development or county child support agency shall advise the person from whom the information is requested of the time by which the information must be provided and any consequences to the person for failure to respond or comply with the request.
3. [Sec. 49.22\(2m\)\(b\)](#), **Wis. Stats.** allows the department of workforce development or county child support agency to issue a subpoena to compel the production of information.
4. [Sec. 49.22\(2m\)\(bc\)](#), **Wis. Stats.** mandates that a person in this state comply with a subpoena issued by another state to compel information.
5. [Sec. 49.22\(2m\)\(c\)](#), **Wis. Stats.** states that a person is not liable to any person for any of the following:
  - a. allowing access to financial or other records to the department of workforce

development or county child support agency.

b. disclosing financial or other records to the department of workforce development or county child support agency.

c. any other action taken in good faith to comply with this section or subpoena.

6. [Sec. 49.22\(2m\)\(d\)](#), **Wis. Stats.** states that any person who fails to respond to a subpoena or request for information may be required to pay a forfeiture.

7. Finally, [Sec. 49.22\(11\)\(a\)](#), **Wis. Stats.** makes it mandatory for the department of workforce development to disclose to the consumer reporting agency the amount of overdue child support owed by a delinquent payer. At least 20 business days before disclosing the information to the consumer reporting agency, the department shall notify the parent and inform the parent of the methods available for contesting the accuracy of the information.

D. Suspension of licenses, permits and other credentials - [Sec. 49.857](#), **Wis. Stats.**

1. Who is involved in enforcing the suspension of licenses, permits and credentials?

The department of workforce development shall enter into a memorandum of understanding with licensing authorities (if they agree), licensing agencies, & with the department of regulation and licensing. [Sec. 49.857\(2\)\(b\)](#), **Wis. Stats.**

2. What action may be taken?

The memorandum of understanding shall describe circumstances under which the licensing authority or licensing agency must restrict, limit, suspend, withhold, deny, refuse to grant or issue or refuse to renew or revalidate license. The memorandum of understanding with the department of regulation and licensing shall include the circumstances under which the department of regulation and licensing shall direct a credentialing board to restrict, limit, suspend, withhold, deny, or refuse to grant credential. The memorandum of understanding with all three governing bodies shall include guidelines for determining the appropriate action to take. [Sec. 49.857\(2\)\(b\)1](#), **Wis. Stats.**

3. Guidelines to be considered in determining the appropriate action, per [Sec. 49.857\(2\)\(b\)1](#);

a. Any adverse effect on public health, safety or welfare or on the environment

b. Whether the action is likely to adversely affect individuals other than the individual holding or applying for the license, such as employees of the individual.

4. Under what circumstances may action be taken in regard to a license, permit or credential?
  - a. Delinquency in making court-ordered payments of support. [Sec. 49.857\(2\)\(b\)2.a., Wis. Stats.](#) Support is defined as child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse. [Sec. 49.857\(1\)\(g\), Wis. Stats.](#)
  - b. Failure to comply, after appropriate notice, with a subpoena or warrant. [Sec. 49.857\(2\)\(b\)2.a., Wis. Stats.](#) Subpoena or warrant means a subpoena or warrant issued by the department of workforce development or a child support agency and relating to paternity or support proceedings. [Sec. 49.857\(1\)\(f\), Wis. Stats.](#)
5. What procedure is followed before action is taken regarding a license or credential?
  - a. The department of workforce development must certify to the licensing authority, licensing agency, or department of regulation and licensing that an individual is delinquent in making support payments or has failed to comply with a subpoena or warrant. [Sec. 49.857\(2\)\(b\)2.a., Wis. Stats.](#)
  - b. Before certification occurs, the department of workforce development shall notify the individual. Notification must include information regarding requesting hearings and that the certification will not take place if the individual makes the payment in full, complies with the subpoena or warrant, or makes satisfactory alternative arrangements. [Sec. 49.857\(3\)\(a\), Wis. Stats.](#)
  - c. If no hearing is held or if the hearing determines that the certification is valid, the licensing authority, licensing agency, or department of regulation and licensing shall restrict, limit, suspend, withhold, deny, refuse to grant or issue or refuse to renew or revalidate a license if an individual is included on the certification list. [Sec. 49.857\(3\)\(c\)\(1\), Wis. Stats.](#)
  - d. The licensing authority, licensing agency, or department of regulation and licensing must provide notice by regular mail to the individual. [Sec. 49.857\(3\)\(c\)\(2\), Wis. Stats.](#)
6. How long may a license or credential be restricted, limited, suspended, withheld, denied, refused to grant, issue, renew or revalidate?

- a. Not more than 5 years for delinquency in making support payments
  - b. Not more than 6 months for failure to comply with a subpoena or warrant [Sec. 49.857\(2\)\(d\)](#), Wis. Stats.
7. What licenses and credential are affected?
- a. For the purposes of [Sec. 49.857](#), credential is defined as a license, permit, certificate or registration that is granted under chs. 440 to 480. [Sec. 49.857\(1\)\(b\)](#), Wis. Stats.
  - b. For the purposes of [Sec. 49.857](#), a license means any of the following:
    - (1) a license issued under sec. 13.63 (lobbying)
    - (2) approval under sec. 29.024(2g) and 29.138 (hunting, trapping and fishing licenses)
    - (3) a license issued under sec. 48.66(1) (child welfare agencies, etc)
    - (4) Certification, license, training permit, registration, approval or certificate issued medical assistant service providers, emergency medical service providers, other health and safety related occupations, etc.
    - (5) a business tax registration certificate
    - (6) license, registration, certificate or certification specified in sec. 93.135(1) (agriculture, trade and consumer protection)
    - (7) license, permit or certificate specified in sec. 101.02(21)(a) (dept. of commerce, regulation of industry, buildings and safety)
    - (8) licenses issued under secs. 102.17(1)(c), 104.07, and 105.05 (employment licenses)
    - (10) certificate issued under secs. 103.275, 103.91, 103.92 (migrant labor)
    - (11) a license or permit issued under chs. 115 and 118
    - (12) license or certificate of registration issued to bankers, sellers of securities, etc.
    - (13) permit issued under sec. 170.12 (removal of sunken logs)
    - (14) certificate under sec. 165.85 (law enforcement, tribal law enforcement, jail or secure detention officers)
    - (15) license, permit or registration issued to motor vehicle dealers, driving school instructors, etc.
    - (16) license, registration or certification specified in sec. 299.08(1)(a) (regulation of environment)
    - (17) a license issued under ch. 343 (operating privileges)
    - (18) a credential
    - (19) license issued under sec. 563.24 or ch. 562 (gambling)
    - (20) licenses issued to insurance agents and insurance contracts
    - (21) license to practice law. [Sec. 49.857\(1\)\(d\)](#), Wis. Stats.

- c. Licensing agency is defined as a board, office or commissioner, department or division within a department that grants or issues a license, but does not include a credentialing board. [Sec. 49.857\(1\)\(e\)](#), **Wis. Stats.**
  - d. Licensing authority is defined as the supreme court or the Lac du Flambeau band of the Lake Superior Chippewa. [Sec. 49.857\(1\)\(em\)](#), **Wis. Stats.**
- E. Creating a record matching program - [Sec. 49.853](#), **Wis. Stats.**
- 1. Who is involved in implementing the record matching program?  
The department of workforce development must enter into agreements with financial institutions doing business in the state. The financial institutions shall participate through either the financial institution matching option or the state matching option. [Sec. 49.853\(2\)](#), **Wis. Stats.**
  - 2. What is the financial institution matching option?  
[Sec. 49.853\(3\)\(a\)](#), **Wis. Stats.**
    - a. The department of workforce development shall provide information regarding delinquent obligors (person who is obligated to pay court-ordered support).
    - b. The financial institution shall take action to determine whether any obligor has an ownership interest in an account maintained at the financial institution. If so, the financial institution shall provide the department of workforce development with the obligor's name, address of record, social security number, and account information. [Sec. 49.853\(3\)\(b\)](#).
  - 3. What is the state matching option?  
[Sec. 49.853\(4\)](#), **Wis. Stats.**
    - a. Each financial institution shall provide the department of workforce development with the name, social security number, and description of interest for all accounts maintained at the financial institution.
    - b. The department of workforce development shall take necessary action to determine whether an obligor has an ownership interest in an account maintained at the financial institution.
  - 4. How are financial institutions protected from liability?  
[Sec. 224.40\(3\)](#), **Wis. Stats.** establishes that the financial institution is not liable to any person for the following:

- a. disclosing financial record of individual
- b. disclosing information to the department of workforce development pursuant to the financial records matching program
- c. encumbering or surrendering assets in response to the department of workforce development's instructions
- d. any other action taken in good faith to comply with [Sec. 49.853](#) or [Sec. 49.854](#).

F. Liens against property for delinquent support payments - [Sec. 49.854](#), **Wis. Stats.**

1. How is a lien created?
  - a. If a person fails to pay any court-ordered amount of support, that amount becomes a lien in favor of the department of workforce development.
  - b. The department of workforce development shall maintain a statewide support lien docket which lists the name, social security number, the date the lien is entered, and the amount of each delinquent payer.

2. When is a delinquent payer notified of the lien?

When a delinquent support obligation is included in the statewide support lien docket, the department of workforce development must notify the obligor that a lien exists with respect to the delinquent support obligation. The notification must inform the obligor of his/her right to request a hearing. [Sec. 49.854\(3\)\(a\)](#), **Wis. Stats.**

3. How does the department levy against financial accounts?

[Sec. 49.854\(5\)](#), **Wis. Stats.**

- a. The department of workforce development shall send notice of levy to the financial institution instruction it to prohibit the closing of or withdrawals from the obligor's account(s).
- b. The department of workforce development shall send notice to the obligor and any other person who has an ownership interest.
- c. The financial institution may continue to collect fees.

4. How does the department levy against other personal property?

[Sec. 49.854\(6\)](#), **Wis. Stats.**

- a. The department of workforce development shall immediately notify the obligor that the property has been seized. Notification must include information regarding the obligor's right to request a hearing.

- b. As soon as practicable, the department of workforce development shall notify the obligor that it intends to issue an execution requiring the sheriff to sell the property within 90 days.
- 5. How does the department levy against real property?  
**[Sec. 49.854\(7\)](#), Wis. Stats.**
  - a. The department of workforce development shall provide the obligor and all owners of the real property with a notice of intent to levy. The notice shall describe the procedures for requesting a hearing.
  - b. The department of workforce development may send the obligor a final notice of intent to seize and sell the property. The final notice may not be sent until 20 days after the initial notice of intent to levy.
  - c. After the final notice, the department of workforce development may issue an execution.
  - d. The statute also includes provisions whereby any person other than the obligor may request a hearing to determine the proportion of the value of the property that is attributable to his or her net contribution to the property.
- 6. May the delinquent payer be required to pay levying fees and costs?  
**[Sec. 49.854\(11\)](#), Wis. Stats.**
  - a. A third party is entitled to a levy fee of \$5.00 for each levy.
  - b. The department of workforce development may assess a collection fee to recover the department's costs incurred in levying against the property.
- G. Intercepting delinquent support payments from pension plan disbursements  
**[Sec. 49.852](#), Wis. Stats.**
  - 1. What type of action may be taken against pension plan disbursements?  

The department of workforce development may direct the department of employee trust funds, the retirement system of any 1st class city, any retirement system established under c. 201, laws of 1937, or the administrator of any other pension plan to withhold from any lump sum payment from a pension plan that may be paid a delinquent support obligor.
  - 2. A directive by the department of workforce development shall constitute a lien.
- H. Intercepting delinquent support payments from court judgments and settlements  
**[Sec. 49.856](#), Wis. Stats.**
  - 1. What type of action may be taken against court judgments and settlements?

If an obligor receives a judgment against another person or has settled a lawsuit, the department of workforce development may send notice to any person who is ordered to pay judgments or has agreed to a settlement. The department may notify the person that the amount due to the obligor is subject to a lien.

2. The person shall withhold the amount equal to the amount specified in the statewide support lien docket.

I. Other methods of enforcement - inclusion of social security numbers

1. The social security number of each party is required as part of any child support order. [Sec. 767.58\(2\)](#), **Wis. Stats.**
2. The form prescribed by the state registrar for acknowledging paternity shall require the social security number of each parent. [Sec. 69.15\(3\)\(d\)](#), **Wis. Stats.**
3. The form supplied by the state registrar shall require that the social security numbers of the parties to the divorce or annulment and the social security number of any child of the parties to be provided. [Sec. 69.17](#), **Wis. Stats.**